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Hangzhou Internet Court

Civil Judgment

(2022) Zhe 0192 Minchu No. 1008

Plaintiff: Shenzhen Qicedie Cultural Creativity Co. Ltd.

[Shenzhen Strategems Cultural Creativity Co. Ltd.]

Legal representative: Shao Yunyi, Executive Director.

Defendant: Hangzhou Yuanyuzhou Technology Co. Ltd.

[Hangzhou Metaverse Technology Co. Ltd.]

Legal Representative: Shi Qi

In the case of the plaintiff Shenzhen Qicedie Cultural Creativity Co. Ltd. (hereinafter referred to as Qice) and the defendant Hangzhou Metaverse Technology Co. Ltd. (hereinafter referred to as Metaverse) for infringement of the right to disseminate works on information networks, the court held a hearing in open session on March 23, 2022. Qice's attorney Zhang Yanlai and Shan Qidi and Metaverse's attorney attended the proceedings. The case has now been heard and concluded.

Qice filed a motion to this court:

1. The defendant shall immediately stop infringing on the information network dissemination rights of Qice's works, i.e. by deleting the "Fat Tiger Vaccination" NFT work (the work [link]) published on the original platform "Grand Metaverse" (hereinafter abbreviated referred to as the Metaverse platform) (<https://www.nftcn.com.cn/pc/#/mall>), and the minted NFTs corresponding to such works will be destroyed or removed from the blockchain where they were released.
2. The company discloses the real name authentication information of the user, the specific blockchain and node location where the NFT of the work in question is located, and the content of the smart contract applied to the NFT of the work in question.
3. The company takes necessary measures to prevent other users of the platform from infringing on the work in question "I am not a Fat Tiger" by minting NFT, including but not limited to a prior ownership review of the work minted by the user, etc.
4. The defendant apologizes on its official website and compensates for economic damages and reasonable expenses, totaling 100,000 yuan.

During the trial, Qice withdrew the second, third and [part of the] fourth claims for apology.

Facts and Reasons

Cartoonist Ma Qianli, who goes by the pen name “不二马” ["Bu Er Ma"] and the microblogging name “不二马大叔” ["Bu Er Ma Da Shu"], created the "I am not a Fat Tiger" (hereinafter referred to as "Fat Tiger") cartoon image based on a charmingly naive northeastern tiger, which has quickly become a widely popular explosive IP, and has developed a series of co-branding, peripherals, emojis and other derivative works.

On September 12, 2021, Alipay released the "I am not a Fat Tiger" series NFT, which was sold in four time slots, each limited to 8,000 copies of "Tiger on the Mountain" and "Tiger down the Mountain", which attracted huge attention. As we enter the Year of the Tiger in 2022, the "Fat Tiger" series, based on the image of a tiger, corresponds with the atmosphere of the "Year of the Tiger". The "Fat Tiger" also seized the opportunity to cooperate with brands in various fields, such as Thomson, Nescafe, P&G, Phillip, Jingdong, Valentino, etc., and launched a series of limited IP co-branding for the Year of the Tiger, which was unanimously sought after by many Internet users.

In March 2021, Qice signed a "Copyright License Agreement" with the author Ma Qianli agreeing that Qice is authorized to enjoy the worldwide exclusive copyright property rights and is permitted to enforce the copyright of the "Fat Tiger" series worldwide.

Qice found that a user had minted and released the "Fat Tiger Vaccination" NFT for 899 RMB on the Metaverse platform, operated by Metaverse. Said NFT work is identical to the illustrated work released by Ma Qianli on Weibo, and even the watermark "@不二马大叔" is still on the bottom right corner of the NFT work. Metaverse advertises itself to the public as the first decentralized digital asset trading platform in China, and its biggest advantage over other NFT platforms is its use of a public chain.

It was also found that in the process of minting works, the original Metaverse platform only requires users to upload pictures of an NFT work, fill in the title, a brief description, a label, and an introduction to the artist along with other basic information. The user is not required to submit any proof of ownership of the work. After the user finishes minting the NFT work, the status of the work in the lower right corner shows the words "under review" until the review has occurred. Article 3 clause 3 of the "Platform User Service Agreement" states: The platform does not assume the obligation to verify in relation to the uploaded content by the user whether it enjoys copyright or authorization from the copyright owner.

Qice believes that once the NFT works are minted on the chain, it will be difficult to handle like traditional Internet information. Metaverse, as a professional NFT platform, should meet higher obligations to protect intellectual property rights and should conduct a preliminary review of ownership for the NFT works released on its platform. In this case, the infringing work clearly carried the watermark of "@不二马大叔", but Metaverse still allowed the work in question to be released for sale, indicating that its review mechanism is virtually useless. On one hand, Metaverse completely exempted itself from the obligation to review the work, and on the other hand, it charged a primary market [first sale] transaction fee (10% of the initial transaction price) and secondary market transaction fee (2.5% of the difference in price earned by the seller), and charged "Gas fees" for the process of minting, destroying and giving away the NFT works, so it obviously participated directly in the distribution of the infringing work and earned revenue. Qice believes that Metaverse's actions violate the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code), the Copyright Law of the People's Republic of China (hereinafter referred to as the Copyright Law) and other relevant provisions, which seriously harmed the copyright enjoyed by Qice and caused economic losses, so they filed motion to the court.

Metaverse rebutted:

- (1) Metaverse is a third-party platform and the work in question was uploaded by the user of the platform itself, so Metaverse is not liable.
- (2) It only has the obligation to review a work afterwards, and has already put the work in question into a black hole address. It has fulfilled its duty to remove it upon notification, so there is no need to stop an infringement.
- (3) It does not disclose the specific blockchain and node location where the NFTs of the works in question are located and the obligations of the content of the smart contracts applicable to the NFTs of the works in question, which are not expressly provided for by law.
- (4) The principle of exhaustion of rights should be applied to this case.

The parties submitted evidence in line with the law in relation to their litigation requests, and the Court conducted evidence exchange and cross-examination. In relation to evidence to which the parties did not raise objections, the Court confirmed and filed it as such, in relation to the disputed evidence and facts, the Court found the following:

1. Metaverse in relation to Qice's registration certificate of the work: Metaverse recognized the authenticity of the certificate of registration of the work provided by Qice, the Baidu encyclopedia search of "不二马", the real name authentication of "不二马大叔", the screenshot of the Weibo page of "Fat Tiger Vaccination", the copyright license contract and the "Confirmation letter of follow-up authorization" of Ma Qianli, but not the relevance, holding that the author information of the work of art "Fat Tiger Vaccination" is unknown, the creation time on Weibo is later than the time agreed in the copyright license contract. After the Court's examination, the authenticity of the group of evidence is confirmed. Whether it can prove that Qice enjoys the copyright of the "Fat Tiger Vaccination" work of art will be determined in combination with the facts and evidence of the case.

2. Metaverse in relation to information as provided by Qice: Metaverse recognized the authenticity of «Year of the Tiger "I am not a Fat Tiger" popular!», «"I'm not a Fat Tiger" Super Cute Debut! Helping JD.com's New Year's Day», «Dior, Gucci, Hermes, The year of the tiger big brand WeChat red envelope cover free collection strategy», «Happy New Year's Day! I am not a Fat Tiger daily series, your New Year's lucky blind box! », (2021) Notary Certificate of Ganhong Dazheng Nei Zi No. 16849 «"I'm not a Fat Tiger" series of emoticon package series», Baidu Web Forum Ant Chain fans released information "I'm not a Fat Tiger", «"Upward posture! NFT artist's paradise, metaverse carnival!», «Get on board, don't miss Alipay's Mid-Autumn Festival NFT series!», but not the relevance, holding that it does not prove that the work of art "Fat Tiger Vaccination" has a certain popularity. The authenticity of this set of evidence was confirmed after the Court's review. Whether or not "Fat Tiger Vaccination" can be proven to be well-known will be determined in conjunction with other facts and evidence in this case.
3. Metaverse in relation to Qice's evidence related to the allegedly infringing NFT digital work published on the platform of "Big Metaverse": Metaverse recognized its authenticity, but not the relevance, as it is only a network service provider and has fulfilled its duty to delete works upon notification. After an examination by the Court, the authenticity of the evidence is confirmed, and the content of the evidence is relevant to the facts of the alleged infringement in this case, so the validity of the evidence is confirmed by the Court.
4. Qice in relation to Baidu search results and the results of the public search of the National Work Registration Information Publicity System provided by Metaverse: they recognized its authenticity and legality, but not the relevance and purpose of proof, the "Fat Tiger" IP itself has a high degree of being well-known. After the Court's examination, the authenticity of the group of evidence was confirmed, which proves the publication and registration of the work in question, so the validity of the evidence is confirmed by the Court.
5. Qice acknowledged the authenticity and legality of the information on the work published on the "... " account provided by Metaverse, and it acknowledged that the accused platform was not the publisher of the work, but believed that Metaverse assisted the infringement. After the Court's review, the authenticity of this evidence was recognized. Whether the Metaverse company can be found to have assisted in the infringement should be judged comprehensively in the determination part of this Court's [judgment] in combination with the platform attributes and transaction mode.
6. Qice recognized the authenticity, legality and relevance of the work review process provided by Metaverse, and believes that the fact Metaverse conducted the search on March 4, 2022 on the third-party work and the author in Baidu and in the National Work Registration Information Publicity System does not prove that it has established a regular review mechanism in its daily operation. Whether Metaverse has taken reasonable measures to prevent infringement does not depend only on whether Baidu and the "National Work Registration Information Publicity System" have been searched. The Court reviewed and confirmed the evidentiary validity of this evidence, but whether it can prove that the company has taken the necessary measures will be judged in a comprehensive manner in the determination section of this court.
7. Qice recognized the authenticity and legality, but not the relevance and purpose of the proof of the reporting channel for piracy on the concerned platform provided by Metaverse. This evidence does not prove that the company has taken follow-up measures to deal with the complaint, nor does it prove that the company has formed a mechanism for handling regular complaints in the course of its daily operation. The Court confirmed the evidentiary validity of this evidence after examination, but whether it can prove the facts to be proven will be judged in a comprehensive manner in the determination section by this court.
8. Qice recognized the authenticity and legality or relevance in relation to the order details of the order form for the work "RIIYTIIMGIRL", the refund approval form, and the proof of the balance of AliPay etc., but not the purpose of proof. If Metaverse were a neutral third-party platform, it should only receive a general technical service fee from the transaction, not the fee that originally belongs to the seller of the work. After examination, the Court considers that the evidence can prove the transactions of the allegedly infringing work on the platform in question and is relevant to the case, so the validity of its evidence is confirmed, but whether it can prove other facts to be proven will be determined in combination with other evidence.

9. Qice recognized the authenticity and legality or relevance in relation to the "TogetherNFT" APP minting process for works and the "Opense" platform minting application process, but not the purpose of proof. After examination, the Court confirmed the validity of the evidence, but whether it can prove the facts of the alleged infringement will be combined with other facts and evidence of the case to be determined comprehensively.

Based on the statements of the parties and the evidence examined and confirmed, the Court ascertained the facts as follows:

I. Facts related to the ownership of "Fat Tiger Vaccination"

A Baidu encyclopedia search shows: "不二马(real name 马千里 [Ma Qianli]). Founder of 不二马Studio, professional cartoonist". Weibo "不二马大叔".

The work of art includes all the art works included in the book "Fat Tiger down the Mountain".

QQ.com posted an article "Year of the Tiger, 'I'm not a Fat Tiger' becomes popular" on February 1, 2022, in which it was mentioned: "In the marketing boom of the Year of the Tiger, an IP named 'I'm not a Fat Tiger' has attracted the attention of many people. The popularity of 'I'm not a Fat Tiger' is another successful example of IP realization in the era of traffic. The naive fat tiger is actually a microcosm of the rapid development of the current 'Moe economy'. As an emerging economic form, one of the main problems currently facing the Moe economy' is the phenomenon of intellectual property infringement, with Shanzhai running rampant being a pain point plaguing the industry", after QQ.com repeatedly published related articles about the "I am not a Fat Tiger" IP. Baidu posted on February 1, 2022: "'I am not a Fat Tiger' super cute debut! Help the Jingdong New Year's Eve Festival tiger force into the New Year".

Notary Certificate No. 16849 (2021) states: On October 10, 2021, Lin Shanshan notarized the notary cloud account "lss@zbx1234" through the "Notary Cloud" platform: logging in to the WeChat Expression Open Platform, logging in to the account "不二马", entering the work management section. It can be seen that the "My Works" section contains the "I'm not a Fat Tiger" series of works.

With evidence obtained with a credible timestamp, Ant Chain Fan Web Forum displays: On September 12, 2021, Alipay released "I am not a Fat Tiger" series of NFT works; February 14, 2022, the public number "Shenzhen Honeycomb Technology" released an article "NFT meta-universe Posture up! The paradise of NFT artists, metaverse carnival!"; on February 14, 2022, the public number "Only Art" published an article "Get on board, don't miss Alipay's Mid-Autumn Festival NFT series!".

II. Related facts about NFT digital works

(1) The situation in relation to NFT and NFT digital works

During the trial, the parties confirmed that NFT is a Non-Fungible Token, which refers to a non-fungible equity certificate, and is a metadata on the blockchain used to mark specific digital content. NFT is also an emerging application scenario under the blockchain technology. NFT is represented as a set of time-stamped metadata on the blockchain, which has a unique and eternal pointer to a digital file stored at a location in the network, and the metadata is shown as a link to a specific URL or a set of hash values where a specific digital content is stored.

The credential is associated with a smart contract on the blockchain, which can record information about the initial issuer, the date of issuance and every future flow of the particular object. Each NFT is unique, one NFT is not interchangeable with another NFT, and one NFT cannot be split into several subunits, which is the meaning of "non-fungible". The NFT is a string of codes that cannot be tampered with, and when the NFT is minted, it is first converted into a hash of a specific length by a hashing algorithm, and then the hash, publisher, timestamp and other information is written into a smart contract to generate the NFT. The NFT does not store the digital work file, but only records the data characteristics of digital work file, NFT itself does not have any data directly into the picture and cannot be "viewed", but is only an abstract information record. Works in the field of literature and art traded through the NFT are called "NFT digital works", providing "NFT digital works" trading platforms are called "NFT digital works trading service platform".

(2) The situation in relation to NFT digital works trade

1. The situation of minting an NFT digital work

The minting of NFT digital works means that the registered user of the platform uploads the work on the blockchain in the NFT digital works trading service platform, and the work is chained to generate a serial number corresponding to the work. In the process of minting and uploading to the chain, the blockchain will record the encrypted wallet address corresponding to the uploader of the work, similar to the Weibo ID, pointing to the unique identity of the publisher. Smart contracts are deployed in NFTs to automatically execute transaction rules. The process of platform users minting NFT is to generate rights certificates and draft transaction contracts in a technical way. The act of publishing NFT works is equivalent to placing the works on the Internet.

2. Process of transaction of an NFT digital work

To distribute NFT digital works on a third-party trading service platform, the copyright owner or the subject authorized by him needs to register and log in to an NFT trading platform. The trading platform allows users to log in through a digital wallet account, a type of account similar to Alipay's wallet for online payments. After logging on to the NFT trading platform, you can add works you want to sell to your account. Generally speaking, the first step of the operation process is to upload the digital works stored in the computer to the NFT trading platform, which supports a variety of file formats such as pictures, motion pictures, audio and video, with an upper limit on file size, and they can be previewed after uploading. Then the name of the work, description information, classification attributes and other basic information is filled in. The second step is to set the transaction conditions, choose "single" or "multiple" sales of the same work, for which the transaction conditions are completely different. If it is a single work, then there is only one digital work for sale, if it is multiple, then you need to set the specific number of copies you want to sell. These number of copies are all the same digital work, without distinction between originals and copies, and can also be sold as a folder for multiple NFT digital works under the account. The third step is to select the underlying smart contract for this transaction. A smart contract is an automatically executable program composed of an underlying code, which serves as a tool to carry the agreement of both parties to the transaction, "containing the agreement of the parties or the promise of an offer". Then pay the NFT "minting" service fee through the digital wallet, click on the pop-up window in the digital wallet to confirm. At this point, an NFT is "minted" and is automatically written into a smart contract on the blockchain. Each NFT has a number, which refers to its code in the smart contract of the blockchain platform. Using the number, you can find the contract network address of the NFT on the blockchain platform, and open the address to see the underlying code of the smart contract corresponding to the NFT. In the query function of the contract, you can make a query about the original data of the NFT. For buyers on the NFT trading platform, the consideration and service fee can be paid through the digital wallet, and the buyer can become the owner of the digital work publicly displayed on the platform. The "auto-execution" code embedded in the smart contract is also triggered to generate new owner information on the blockchain.

III. Facts related to the sued Metaverse platform

(1) The related situation of the Metaverse platform

Logging in to Metaverse platform, the home page shows "Here, everyone has the right to create, trade, share and debut NFT artworks", clicking the "Explore" button shows the "Great Metaverse" introduction: Committed to building an NFT ecology in which everyone can participate; the developed side chain 'de-currency storage chain' technology greatly reduces the cost of use for users; the customized NFT minting system, one-click operation, zero threshold, users do not need to manually create a digital wallet, can achieve freely minting, retail and trade of NFT digital art works on the platform." According to the ICP record query, ICP record holder is: Hangzhou Metaverse Technology Co. Ltd., ICP filing/license number: Zhejiang ICP No. 2021025550.

The sued Metaverse platform is an NFT digital work trading service platform, which provides digital work platform services to both parties of the transaction. Registered users publish digital works and apply for minting non-fungible tokens (NFTs) of the works to be published. After the minting is completed, the users' digital works are traded with other users through the platform.

(2) Platform-related service agreements

The main content of the platform user service agreement, the service and privacy agreement for certified users of the Metaverse platform are:

1. Market price and fees

1) Primary Market Sales

After an artist settles on the platform, the platform will charge 10% of the first sale price of the work as commission, while the artist retains 90% of the total sale price as primary market sales revenue.

2) Secondary Market Sale

For works sold on the secondary market, the platform only charges 10% of the price difference earned by the seller as commission, while the artist receives 2.5% of the price difference earned by the seller as royalty. If the seller gives the work to others or transfers it for less than the starting price, the Metaverse platform does not charge a commission and the artist does not receive a royalty.

3) Gift and destruction of work

If the work is donated or destroyed, the number of Gas fee consumption will be consumed, and the transfer price recorded in the blockchain is 0 yuan.

4) Gas fee

Every time a user generates data on the platform, a Gas fee is consumed. For example, the user uploads a Gas fee (a fuel card); each time a sale is made, a Gas fee will also be consumed, and the Gas fee will be automatically deducted from the payment received by the seller. The current Gas fee is fixed at 33 yuan.

(3) The Platform Use Rules

1. When creating an account on the platform, the user must provide accurate and complete user registration information and agree that the Metaverse platform will maintain and update the account information in a timely manner when necessary, and the user must ensure the authenticity, legality and validity of the registration information on the platform. The user shall not impersonate others and shall not publish any information in the name of others or maliciously use the registered account to cause misleading of others. Otherwise, the platform has the right to immediately stop providing services, withdraw their accounts and the user shall be solely responsible for all legal responsibilities arising therefrom.

2. Users who use the platform services and data directly or indirectly in any way shall be deemed to have unconditionally accepted this agreement in its entirety; if users disagree with any of the terms of this agreement, they should stop using all services provided by the Metaverse platform.

6. The platform has the right to review and supervise the user's use of the platform, and if the user violates any of the above provisions in using the platform, the Metaverse platform or its authorized persons have the right to require the user to change or directly take all necessary measures (including but not limited to changing or deleting the content posted by the user, suspending or terminating the user's right to use the platform) to mitigate the impact caused by the user's misconduct.

8. Users shall not upload, publish, or sell any works involving piracy on the Metaverse platform, including but not limited to works reproduced and distributed without the permission of the copyright owner, works reproduced and distributed without the permission of the producer of the audio and video recordings; and not make and sell works that counterfeit the signature of others; otherwise, users shall bear all the economic losses to the platform and buyers as well as the loss of reputation caused to the Metaverse platform.

11. If the user's work involves infringement or piracy, including but not limited to works reproduced and distributed without the permission of the copyright owner; works reproduced and distributed without the permission of the producer of the audio and video recordings; production and sale of works that counterfeit the signature of others; the platform has the right to take down the relevant works in order to avoid causing losses to more users, and the platform will not bear any responsibility for the losses caused thereby.

(4) The NFT digital work minting process of the Metaverse platform

The minting process of NFT digital works is as follows:

1. The publisher registers an account and purchases the Gas fee from the platform at the same time. The price of each Gas fee is 33 yuan;

2. The publisher enters his personal account page and clicks on the "Start Minting NFT" button to officially enter the minting process;
3. According to the requirements of the platform, complete the basic information such as uploading the picture of the work, filling in the name of the work, artist information, and introduction of the work;
4. Click on the "Submit" button, the "Work in process of minting" pop-up window will appear, and after a few seconds the pop-up window will disappear, the minted work will be displayed on the publisher's personal homepage, and "Under Review" will be displayed in the upper left corner of the work;
5. After the user clicks submit, the platform pop-up window prompts "Please do not upload works suspected of infringement, pornographic violence, political involvement, suspected of promising return on investment", etc. The user checks and agrees to the "Platform User Service Agreement", clicks start minting, and the status of the work changes to under review;
6. After the platform review, the work will be automatically presented with the status of "On the shelf", which means the work has been officially released and the public can access the work at a specific time and place. If the publisher chooses "off the shelf", it means that the work is only visible to the publisher himself, but it does not affect the status of the work on the chain. The platform first converts the "digital work image file" uploaded by the user into a hash of a specific length through a hashing algorithm, and then uses the hash value, publisher, timestamp and other information on the chain using blockchain technology to generate the non-fungible token (NFT), while the image file involved in the case is not stored in the NFT in the process of generating the non-fungible token (NFT). The platform NFT is generated using the blockchain of the Ethereum side chain technology, which belongs to the Consortium chain, but in order to comply with domestic regulatory regulations and prevent virtual currency transactions, the cross-chain function has not been opened to users, and users cannot transfer NFTs to public chains such as Ethereum until there are clear regulatory policies.

For the original file of the picture and text of the work involved in the case uploaded by the user, the storage location of the picture file is the same as the storage location of the picture uploaded by the seller in the domestic e-commerce platform, and it is stored in the Metaverse platform server.

After the work is minted, the work involved in the case uploaded by the user can be sold on the platform. Log in to the platform, click on the collection on the "My" page, and you can see the work uploaded by the user.

(5) Review process of NFT digital works on the Metaverse platform

After the platform receives the work minting application, the system will conduct a manual review of the work, which includes checking whether there is information on the registration of the work to be minted in the "National Work Registration Information Publicity System" and checking whether there is information on the work to be minted in the search engine. If the information of the work to be minted is found in the "National Work Registration Information Publicity System" or search engine, the platform auditor will prompt the publisher to provide the corresponding proof of ownership, such as the work copy, copyright registration certificate, copyright authorization license contract, etc. If the publisher does not provide proof, or the proof of ownership provided cannot prove that the publisher is the copyright owner, the publisher's work will be rejected. If the publisher fails to provide, or the proof of ownership cannot prove that the publisher is the copyright owner, the publisher's application for putting on the shelf will be rejected. After the platform auditor does not find any information of the work in question, he selects the recommendation degree 0 for the work in question (the recommendation degree ranges from 0 to 20, and the recommendation degree increases gradually from 0 to 20), and the work is approved.

(6) Platform NFT digital works transaction process

1. Buyers register for an account, browse and select a specific work, click the "Buy" button and jump to the product payment page.
2. Click "Go to Pay", the page will bring up the Alipay payment page and the purchaser completes the payment.
3. After payment, the work is purchased successfully, the platform takes 10% commission and 33 Yuan Gas fee, that is, a fuel fee will be consumed when the work is minted and circulated. In the given case, the selling price of the work "a hot water bottle" was 60 Yuan, the platform took 6 Yuan commission and 33 Yuan Gas fee, and the minting party received 21 Yuan in the end.
4. After the purchaser has completed purchasing the work, he can reset the new sale price to enable

the secondary circulation of the work, and the platform also gets the commission and Gas fee from the sale price.

(7) Platform content recommendations

According to the IP value of the work itself and other factors, the platform will recommend NFT works on the homepage of the platform through banner images or the "Recommended" section.

(8) Platform piracy reporting channel

After the platform receives preliminary evidence of infringement of a work, the platform will take measures to delete, block and disconnect the infringing work and forward the evidence of the violation to the publisher of the work for verification. If it is determined that the work is infringing or the publisher of the work does not provide effective feedback within the specified period, the platform will take measures to delete the "digital work image file" and takes measures to block and disconnect the non-fungible tokens (NFT) corresponding to the "digital work image file". NFTs do not store digital work files, but only record the data characteristics of digital work files, and does not have data that can be directly transformed into images.

(9) NFT works gift and destruction

When a work is gifted or destroyed, it will consume a Gas fee for the number of times, and the transfer price recorded in the blockchain is 0 Yuan; the user will consume a Gas fee every time the data is generated on the platform. If the user uploads the work, it will consume a Gas fee (a fuel card); a Gas fee will also be consumed for each sale.

IV. The facts of the alleged infringement

The "... " user logged in with a password, clicked on Start Minting NFT and uploaded the work "Fat Tiger Vaccination". The Weibo watermark of "不二马大叔" was in the lower right corner of the work, the work was priced at 899 Yuan, the author: ..., description of the work: The cute fat tiger, in order to get vaccinated against the Corona virus was so scared that he shivered. The artist introduced: 不二马大叔, an excellent comic creator. On December 4, 2021, the account "Dian Didi" paid 899 Yuan for the work "Fat Tiger Vaccination" via Alipay to purchase the work "Fat Tiger Vaccination" via the account "... ". On March 4, 2022, a refund was made due to "the work involved in being moved".

During the trial, the Metaverse platform disclosed registered use of the account "... " is "... ". Both the plaintiff and the defendant confirmed that the allegedly infringing "Fat Tiger Vaccination" figure is consistent with the "Fat Tiger Vaccination" picture subject to this case.

V. Other facts

During the trial, it was confirmed by both parties that token destruction means the permanent removal of tokens from circulation. In other words, destroyed tokens are permanently frozen and can no longer be brought to the market. The most common method of token destruction is to put the tokens into a black hole address. Black hole addresses are addresses where the private key is lost or cannot be identified. These addresses are like black holes, which are inaccessible, and it is almost impossible for any Token to be transferred out into circulation.

Qice provided Hangzhou Internet Notary Office "NFT Fat Tiger Infringement Evidence" a system showing a consumption of 170 Yuan; three articles on the Feiloyin electronic certificate deposit platform cost a total of 15 printing coins; the "Rights Guard" electronic evidence platform consumes 3 timestamps, totalling 30 Yuan.

According to the facts identified in this case and the statements and defences of both parties, the main focus of the dispute in this case is as follows:

- i. whether the "Fat Tiger Vaccination" picture claimed by Qice constitutes a work or art;
- ii. whether Qice is an eligible plaintiff in this case;
- iii. the legal nature of NFT digital works minting and trading;

- iv. attribution of the sued Metaverse platform and the determination of liability;
- v. civil liability.

i. Whether the "Fat Tiger Vaccination" picture claimed by Qice constitutes an art work

According to Article 3 of the Copyright Law: "The works referred to in this Law refer to intellectual achievements in the fields of literature, art and science that are original and can be expressed in a certain form: including (4) fine arts, architectural works";

According to Article 4(8) of the Regulations on the Implementation of the Copyright Law, fine art works refer to paintings, calligraphy, sculptures and other works of plastic art with aesthetic significance composed by lines, colours or other means. Therefore, apart from the two basic attributes of originality and reproducibility of general works, fine art works must also have a certain aesthetic significance. As long as the creator expresses his unique view of aesthetics in a visible way on a material carrier and meets the minimum requirements of creativity, it can constitute a work of art. The author Ma Qianli created the image of the Siberian tiger with fat knees, strong body, faithful and honest by depicting the body proportions, facial features, colours and lines of the "Fat Tiger". Concrete and blind, the fat tiger has a big round head, lacks a neck, has bulging cheeks, significantly shortened limbs and tail length compared with normal tigers, and is endowed with a lot of anthropomorphic facial features. The "Fat Tiger" shows an intimate, cute "big cat" image. It can be seen from this: The work involved in the case, "Fat Tiger Vaccination", presents the author's unique individual expression and reflects a certain artistic beauty, and belongs to the fine art work in the sense of Copyright Law. The objection raised by Metaverse against a work involved is not supported by the court.

ii. Whether Qice is an eligible plaintiff in this case

According to Article 11 of the Copyright Law, the copyright belongs to the author, except as otherwise determined in this Law. The natural person who creates the work is the author. Article 7 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Civil Dispute Cases on Copyright stipulates that the copyright-related manuscripts, original and legal publications, copyright registration certificates, certificates issued by certification agencies, etc. provided by the parties can be used as proof. Signature of its name on the work or product by a natural person, a legal person or an unincorporated organization is considered to show the owner of the copyright or copyright-related rights and interests, unless there is proof to the contrary. After the Court's examination, on December 16, 2021, Ma Qianli published the work in question, "Fat Tiger Gets Vaccinated", on his real name registered Weibo account, "不二马大叔", and published the book "Tiger Down the Mountain" in January 2022, containing a picture of "Fat Tiger Vaccination". It can be seen that the evidence available in this case is sufficient to prove that the work in question, "Fat Tiger Vaccination", has been publicly published and the copyright holder is Ma Qianli, and Qice signed the Copyright License Contract with Ma Qianli as the exclusive licensee of the work in question and enjoys the right of action according to law. Metaverse's claim that Company is not a qualified plaintiff in this case lacks factual and legal basis, and this court does not support it.

iii. The legal nature of NFT digital works minting and trading

From the facts identified in this case, the trading of NFT digital works involves minting, selling and other links.

First of all, in the process of minting NFT digital works, there is the act of uploading the work, which causes the digital work stored in the molder's terminal device to be copied to the web server.

Secondly, from the point of view of the sales process of NFT digital works, it refers to the presentation of the NFT digital work on the trading platform for the purpose of sale. In the case where the work is presented, the display behavior enables the public to obtain it at a selected time and place. When the registered user of the NFT trading platform pays the consideration and service fee through the digital wallet, he immediately becomes the owner of the NFT digital work publicly displayed on the platform. In other words, the minting and trading of NFT digital works includes the three actions of reproduction, sale and information network dissemination of the digital works.

As far as this case is concerned, combined with the transaction process of the involved work "Fat Tiger Vaccines" on the sued platform, this Court believes:

First, in an NFT transaction mode, each digital file has a unique mark, and each copy of a digital work is referred to by a string of unique metadata, resulting in the effects of "uniqueness" and "scarcity" and so on, so when a copy of a digital work exists on the trading platform in the form of NFT, it is set as a specific "digital commodity", and NFT transaction is essentially the transfer of ownership of a "digital commodity" and presents certain investment and collection value attributes.

Second, "digital goods" are a simulation of real things that exist in virtual space and possess property in the form of data codes, which are virtual, dependent and particular in the way of being exercised, but also have certain independence, specificity and dominance. For digital works, when their copies are stored in cyberspace and become a negotiable commodity through a unique NFT point, a legally protected property interest is created. The rights that NFT digital work holders enjoy include exclusive possession, use, disposal, income, etc. The NFT transaction model is essentially a buying and selling relationship with digital content as the transaction content. What the buyer obtains is a property right, not a license to use a digital property, nor a transfer or license of an intellectual property.

Third, according to Article 10(6) of the Copyright Law, "The right of distribution means the right to offer the original or copies of a work to the public by way of sale or gift". It can be seen that although the object of the transaction of NFT digital works is the digital works themselves as "digital commodities", the legal effect arising from the transaction is also manifested as the transfer of ownership. However, since the core feature of the right of distribution lies in the transfer of ownership of the original or copy of the work, i.e. the distribution in the current copyright law is limited to the transfer or gift of ownership of the original or copy of the work in tangible form, the sale of NFT digital works on third-party trading platforms without the permission of the right holder cannot yet fall into the scope controlled by the right of distribution.

Fourth, Article 10(12) of the Copyright Law stipulates: "The right of information network transmission, i.e., the right to make the work available to the public by wire or wireless means so that the public can access the work at a selected time and place". In this case, although the transfer of ownership of NFT digital works combines blockchain and smart contract technology, the NFT digital works are provided in the public Internet environment through minting, and the object of the transaction is unspecified public, and each transaction is automatically executed through a smart contract, which enables the public to obtain the NFT digital work at the selected time and place, so the transaction of NFT digital works is consistent with the characteristics of information network communication behaviour. Although there is an act of uploading the work in the process of minting NFT digital works, which makes the digital works stored in the terminal device of the maker be copied to the network server simultaneously, the copying is a step of network transmission, and its purpose is to provide the work to the public by means of the Internet, so the damage caused by the copying has been absorbed by the damage caused to the right holder by information network transmission, and there is no need to evaluate it separately. The Court finds that the damage caused by the reproduction has been absorbed by the damage caused by the information network transmission to the right holder, and there is no need to evaluate this separately. In summary, the Court believes that the act of trading the "Fat Tiger Vaccination" NFT digital work through the sued Metaverse platform without the plaintiff's permission should be considered as infringement of the plaintiff's right of information network transmission.

It is important to note that the principle of exhaustion of rights does not apply to transactions in NFT digital works.

First, in the field of copyright, the principle of exhaustion of rights is mainly applied to the restriction of the right of distribution, known as the "principle of one-time exhaustion of distribution rights" or the "principle of first sale", which is mainly aimed at preventing others from selling illegal copies of works, rather than restricting the use and disposal of legally sold original works or copies. However, the application of the "exhaustion of rights" principle in the copyright field is based on the inseparability of the work and its tangible carrier. By regulating the right to use the tangible carrier of the work, it has the controllability of physical space and practical operation. But the Internet has changed the way dissemination of works. The public can obtain copies of the work without transferring a tangible carrier. The fundamental difference between this process and the traditional means of distribution is that it does not result in the transfer of the physical carrier of the work in a physical sense.

Secondly, under the NFT transaction mode, the assignee who legally obtains the NFT digital work from the copyright owner can resell it on the same trading platform or other cooperative trading platforms without uploading the digital work. NFT digital works have scarcity and transaction security; if the NFT digital works can be copied without cost and limitation on quantity, even if a subject legally obtains the NFT digital works copies, it is difficult to control the potential number of files available for subsequent distribution, which is against the intention of the distribution right system and is unfair to copyright owners.

Third, under the NFT transaction mode, the unspecified public can obtain NFT digital works at a selected time and place, which is a typical act of information network distribution. This kind of dissemination of works through information networks belongs to the flow of information, which does not lead to the transfer of ownership or possession of the tangible carrier of the work, and is naturally not controlled by the right of distribution. It lacks of the premise and basis for the application of "exhaustion of rights".

iv. Attributes and Determination of liability of the Metaverse Platform

According to the Regulations on the Protection of the Right to Information Network Dissemination and related judicial interpretations, network service providers generally include the provision of network services such as automatic access, automatic transmission, information storage space, search, link and file sharing technology and other network services. From the perspective of transaction mode and service content provided by the sued platform, it is a platform that provides NFT digital works transaction services. The NFT digital works traded are provided by the registered users of the platform, and there is no participation in NFT digital works by means of division of labor and cooperation with others. Therefore, according to the relevant provisions of the current law, the Metaverse platform is a network service provider rather than a content provider platform. As the operator of the Great Metaverse platform, Metaverse is a network service provider rather than a network content, but at the same time, Metaverse does not belong to network service providers who "provides automatic access, automatic transmission, information storage space, search, link, file sharing technology and other network services" in accordance with the above-mentioned regulations. The transaction of NFT digital works is an innovation in the transaction mode of cyberspace "digital commodities" derived from the development of Internet technology and combined with blockchain and smart contract technology, and belongs to a new business model. For the nature of a network platform like a platform that provides NFT digital works transaction services, the platform's responsibility boundary should be comprehensively judged in combination with the characteristics of NFT digital works and the NFT digital works transaction mode, technical characteristics, platform control capability, and profit model.

First, from the viewpoint of NFT digital works transaction mode, NFT digital works as the object of transaction are both works and commodities, and they have both their copyright as digital works and their ownership as "digital commodities". As mentioned above, the legal effect produced under the NFT transaction model is the transfer of ownership. Therefore, the maker (seller) of NFT digital works should be the owner of the original or copy of the work; at the same time, according to the relevant provisions of the Copyright Law, when the original or copy of the work is transferred as an object, the ownership is transferred, but the copyright of the work is not transferred. Under the NFT trading model, the act of the maker (seller) of NFT digital works copying and uploading the NFT digital works to the platform for trading falls under the control of the reproduction right and the information network transmission right in the Copyright Law respectively. Therefore, the minters of NFT digital works (the seller) should not only be the owner of the copy of the work, but also the copyright owner or licensor of the digital work, otherwise it will infringe the copyright of others. In this regard, the platform, as a service platform for trading NFT digital works, knows and should know about this, and should take reasonable measures to prevent infringement by examining the legality and authenticity of the source of the NFT digital works and confirm that the NFT maker has the appropriate rights or license to engage in this act.

Second, from the viewpoint of the technology adopted in the NFT digital works transaction, the whole transaction model adopts blockchain and smart contract technology. NFT, as an emerging application scenario under blockchain technology, not only solves the ability to circulate and the scarcity (non-fungible) of digital works as commodities, but also solves the lack of trust and security concerns among transaction subjects, and builds a new kind of network transaction integrity. The smart contract is the carrier that carries the agreement of both parties to the transaction. Each transaction on the platform will be automatically triggered and completed by the "auto-execution" code embedded in the smart contract. Therefore, if there are defects in the rights of NFT digital works, it will not only destroy the trust mechanism already established by the transaction subjects and the NFT trading platform, but also seriously damage the certainty of the transaction order as well as the legitimate rights and interests of the transaction counterparties and the copyright owners. At the same time, because the whole transaction is automatically executed by code through smart contract, the number of transactions will not be controlled manually, and the transaction of NFT digital works belongs to the act of information network communication, and the principle of exhaustion of rights does not apply. Therefore, once the NFT digital works constitute infringement, it will often damage the legitimate interests of several or even dozens of counterparties in the transaction. This leads to frequent disputes between the two parties and shakes the trust ecosystem under the NFT business model.

Third, from the perspective of the ability of control of the Grand Metaverse platform, first of all, all the data formed under the NFT transaction mode is stored in the Grand Metaverse platform, especially after the users

upload their work until the completion of the NFT "minting", the entire process and all the contents are controlled by the Grand Metaverse platform.

Further, from the perspective of the platform NFT digital works minting process, users follow the platform requirements. After uploading the work and submitting it, it will enter the platform review process. Only those that pass the examination can be put on the shelf and finally traded on the platform as NFT digital works; finally, from the viewpoint of the objects reviewed by the platform, there is not a huge amount of data content. Each user submits a single work for review each time. Therefore, the Court believes that the platform has rather strong control over the NFT digital works traded on its platform, and also has the corresponding review ability and conditions, and that it does not increase its control costs.

Fourth, from the perspective of the profit model of the Metaverse platform, it is different from e-commerce platforms and network service platforms that provide storage and linking services, in that it obtains benefits directly from NFT digital works. From the facts identified in this case, the Metaverse platform not only collects Gas fees for works when minting, but also receives a certain percentage of commission and Gas fees after each successful work transaction. According to Article 11 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in Civil Dispute Cases Involving Infringement of the Right to Information Network Dissemination, "Where a network service provider obtains direct economic benefits from works, performances, audio and video recordings provided by a network user, the people's court shall find that it has a higher duty of care." Since the platform receives direct economic benefits from the NFT digital works, it should naturally have a higher duty of care in this regard.

In summary, taking into account factors such as the transactional level, technical characteristics, platform control ability, and profit model of the Metaverse platform, this Court believes that the platform should not only fulfil the responsibilities of a general network service provider, but also establish an effective intellectual property review mechanism to do preliminary examinations of the copyright of NFT works traded on the platform, such as examining whether the user applying for NFT minting has provided preliminary evidence involving copyright manuscripts, originals, legal publications, copyright registration certificates, certificates issued by certification institutions, etc. to prove that they are copyrighted and have rights related to the copyright. Of course, such review should be evaluated from the perspective of the obligations of network service providers as good managers, and network service providers should be given a certain degree of autonomy in decision-making and review, and can, within the framework of legal provisions, clarify and refine the specific requirements according to their own review needs, types of intellectual property rights, industrial development and other factors. A "general probability" standard should be adopted as a judging standard. In other words, the prima facie evidence should exclude that it obviously cannot prove the existence of copyright and the evidence of the right holder related to copyright rights and interests has the possibility to make a general rational person believe in the existence of rights. At the same time, the platform should build a corresponding infringement prevention mechanism and form an effective screening and identification system to prevent infringement at the source, and if necessary, it may require the minting users to provide a guarantee mechanism to prevent defects in NFT digital works to the greatest extent.

In this case, although Metaverse clearly stipulated in the network service agreement that registered users shall not infringe the intellectual property rights of others, and conducted a certain review after the user uploaded the work, it did not conduct any review on rights before the user uploaded the work, and Metaverse limited the scope of the review to the "National Works Registration Information Publicity System" inquiry on whether there was information on the registration of works to be minted, which did not include offline tangible works and works publicly published and disseminated on the Internet, which was obviously quite limited. Therefore, Metaverse failed to fulfil its corresponding duty of care and should thus bear the corresponding legal responsibility.

On the issue of the Metaverse' liability determination, this Court holds:

First, Article 1195 of the Civil Code of the People's Republic of China stipulates: "If a network user uses network services to commit infringement, the right holder has the right to notify the network service provider to take necessary measures such as deleting, blocking and disconnecting the link"; Article 117 of the Civil Code of the People's Republic of China provides: "If a network service provider knows or should know that a network user has used its network service to infringe upon the rights and interests of other people and fails to take the necessary measures, it shall be jointly and severally liable with the network user", which shows that the principle of fault-based liability applies to the responsibility of network service providers for infringing acts of network users.

Second, Article 9 of the "Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in Civil Dispute Cases Involving Infringement of the Right to Information Network Dissemination" stipulates: "The people's court shall determine whether the network service provider has knowledge of the specific facts of infringement of the right to information network dissemination by the network user, taking into account the following factors: (2) the type of the work, performance, audio and video recording product disseminated, its popularity and the degree of obviousness of the infringing information". In this case, after the minting of the work "Fat Tiger Vaccination", there was a Weibo watermark of "不二马大叔" at the lower right corner of the work, so ordinary Internet users can judge that the work was directly copied from "不二马大叔's" Weibo account, and the accused account "In the column of "Artist Introduction" directly indicated that the artist is "不二马大叔", which shows that the alleged information on infringement was quite obvious. However, the platform did not conduct any review of this to fulfil the necessary duty of care, neither requiring the "... as registered user ..." to provide prima facie evidence that he is the owner of the work involved in the case, nor examining the relationship between the ".. as registered user ..." and the work involved in the case. The registered user "..." did not provide prima facie evidence that he was the owner of the work "Fat Tiger Vaccination", nor did the platform examine the relationship between the registered user of "..." and "不二马大叔" who signed his name on the work in question, nor did it require the registered user of "..." to prove their identity or provide a reasonable explanation. Therefore, the sued Metaverse platform subjectively should have known of the alleged infringement facts and was at fault.

Third, on the premise that the users who uploaded the allegedly infringing works constituted infringement, the sued Metaverse platform, as a new network service provider, failed to fulfil its obligation of to review and knew, or should have known, that the network user infringed on the right of information network dissemination, but failed to take the necessary measures to effectively stop the infringement in time, so it should bear the corresponding responsibility for helping the infringement.

V. Assumption of civil liability

According to Articles 52 and 53 of the Copyright Law, "if one of the following infringement acts is committed, [the infringer] shall, according to the circumstances, bear civil liabilities such as stopping the infringement, eliminating the impact, making apologies, and compensating damages: (1) Reproducing, distributing, performing, projecting, broadcasting, compiling, and disseminating their works to the public through the information network without the permission of the copyright owner, except as otherwise provided in this Law." The Court supports Qice's request of an infringement of its right of information network dissemination and to stop the infringement and compensate for the loss. As for stopping the infringement, Metaverse should immediately delete the NFT digital work of "Fat Tiger Vaccination" published on its "Grand Metaverse" platform, but in view of the fact that the NFT digital work and the data related to the transactions are stored in the blockchain server, usually, the blockchain nodes cannot form a consensus and cannot be deleted, so the "Grand Metaverse" platform can disconnect the infringing NFT digital work on the blockchain and enter the address black hole to achieve the legal effect of stopping the infringement. Since Qice has withdrawn its second, third and fourth claim for "compensation and apology", this Court has granted the request after examination and will not comment on it.

Regarding the compensation for damages, according to Article 54 of the Copyright Law, "If a copyright or copyright-related right is infringed, the infringer shall pay compensation in accordance with the actual loss suffered by the right holder or the illegal income of the infringer; if the actual loss of the right holder or the illegal income of the infringer is difficult to calculate, compensation may be paid by reference to the royalty of the right. Where the infringement of copyright or copyright-related rights is intentional and the circumstances are serious, compensation shall be paid at least twice or five times the amount determined in accordance with the above method. If it is difficult to calculate the actual loss of the right holder, the illegal income of the infringer or the royalty of the right, the people's court shall, according to the circumstances of the infringement, award compensation of not less than five hundred Yuan but not more than five million Yuan. The amount of compensation shall also include the reasonable expenses paid by the right holder to stop the infringement." This Court is of the view that every transaction of the accused NFT works is recorded on the blockchain in a non-tamperable manner, which ensures the traceability, security, transparency and authenticity of the identity of the buyers and sellers of the work. The whole process can be traced back to the source, and every transaction fee is recorded on the blockchain, so the infringing profits in the transaction of NFT digital works can usually be identified. In this case, the work "Fat Tiger Vaccination" was sold for 899 Yuan and was only traded once, so the infringement profit in this case should be within the sale amount of 899 Yuan. However, since both parties failed to prove the profit amount of the transaction, it was still impossible to determine the actual profit of the infringer, and Qice failed to provide evidence to prove the actual loss caused by the infringement. Therefore, the Court adopted the statutory compensation method, and determines that the amount of the transaction of the infringing

work, the fees charged by Metaverse, the forensic fees and other reasonable costs incurred by Qice to stop the infringement, is 4,000 Yuan.

In summary, in accordance with Articles 1195 and 119 of the Civil Code of the People's Republic of China, Articles 3, 10, 11, 52, 53 and 54 of the Copyright Law of the People's Republic of China, the Supreme People's Court on the Trial of Infringement on Information Network, Article 9 of the Provisions on Several Issues on the Application of Law in Civil Disputes over the Right of Communication, Articles 4, 9 and 11 of the Interpretation of the Supreme People's Court on Several Issues on the Application of Law in Civil Disputes over Copyright, and Article 67 of the Civil Procedure Law of the People's Republic of China the judgment is as follows:

1. The defendant Metaverse shall immediately stop its infringing behaviour in relation to the plaintiff Shenzhen Qicedie Cultural Creativity Co. Ltd.'s art work "Fat Tiger Vaccination" information network dissemination rights.
2. The defendant Metaverse shall compensate the plaintiff Shenzhen Qicedie Cultural Creativity Co. Ltd. for its economic losses and reasonable expenses in the amount of 4,000 yuan within ten days of the effective date of this judgment.
3. All other claims of the plaintiff Shenzhen Qicedie Cultural Creativity Co. Ltd. are rejected.

If the obligation to pay money is not fulfilled within the period specified in this judgment, the interest for the period of delayed performance shall be doubled in accordance with the provisions of Article 260 of the Civil Procedure Law of the People's Republic of China. The case acceptance fee of 2,300 Yuan shall be borne by the plaintiff Shenzhen Qicedie Cultural Creativity Co. Ltd. in the amount of 1,104 Yuan, by the defendant Metaverse in the amount of 1,196 Yuan.

The plaintiff Shenzhen Qicedie Cultural Creativity Co. Ltd. applied to this Court for a refund within 15 days of the date when this judgment comes into effect; the defendant Metaverse, shall pay the court the legal fees it should bear within seven days from the date when this judgment comes into effect.

If a party does not accept this judgment, it may appeal to the Hangzhou Intermediate People's Court of Zhejiang Province within fifteen days of the date of service of the judgment by submitting an appeal letter to the Court and filing a copy according to the number of opposing parties; it may also submit a letter of appeal online to the Hangzhou Intermediate People's Court of Zhejiang Province within fifteen days of the date of service of the judgment. If an appeal is filed in a property case, the case acceptance fee shall be paid in advance according to the appeal request against the first instance judgment. If the appeal fee is not paid within seven days of the day after the receipt of the Notice of Payment of Appeal Fee, the appeal shall be automatically withdrawn. The account name, bank and designated account number of Hangzhou Intermediate People's Court of Zhejiang Province are shown in the Notice of Payment of Appeal Fees.