

Is Palworld Illegally Infringing Pokémon's Trademarks and Copyrights?

A photograph of a modern building with a curved facade and large glass windows, showing a reflection of the sky.

2 MIN READ

February 2, 2024, 9:22 AM

Did Nintendo finally release a Pokémon videogame with guns? Oh, wait, it's not Pokémon at all – it's Palworld, a game released by Pocket Pair, a different Japanese videogame company.

If you missed it, Palworld was released on January 19 and had sold over 12 million copies on Steam as of January 31. On its way to this impressive number, the game sold 5 million copies in the first 72 hours – a record – and achieved the second-highest number of concurrent players on Steam in the platform's history with a whopping 2,101,867 concurrent players.

While this kind of success is normally something to get excited about, videogame connoisseurs and Pokémon loyalists have taken to social media to criticize Palworld as a copy of Nintendo's Pokémon. In fact, searching Google for "Pokémon with guns" yields hundreds of videos about Palworld. All of this has caught the attention of The Pokémon Company, who released a statement, albeit not specifically mentioning Palworld or Pocket Pair, on January 25 stating that the company "ha[s] not granted any permission for the use of Pokémon intellectual property or assets in that game."

The question becomes: Is Palworld doing anything wrong? Nintendo has of yet not launched a formal suit against Pocket Pair, but it is clear that Palworld raises interesting copyright and trademark questions.

In the realm of copyright, the first and obvious question is whether there is substantial similarity between Palworld's and Pokémon's monsters. Images like the below, comparing Palworld's "Boltmane" to Pokémon's "Luxray," have flooded social media with side-by-side comparisons:

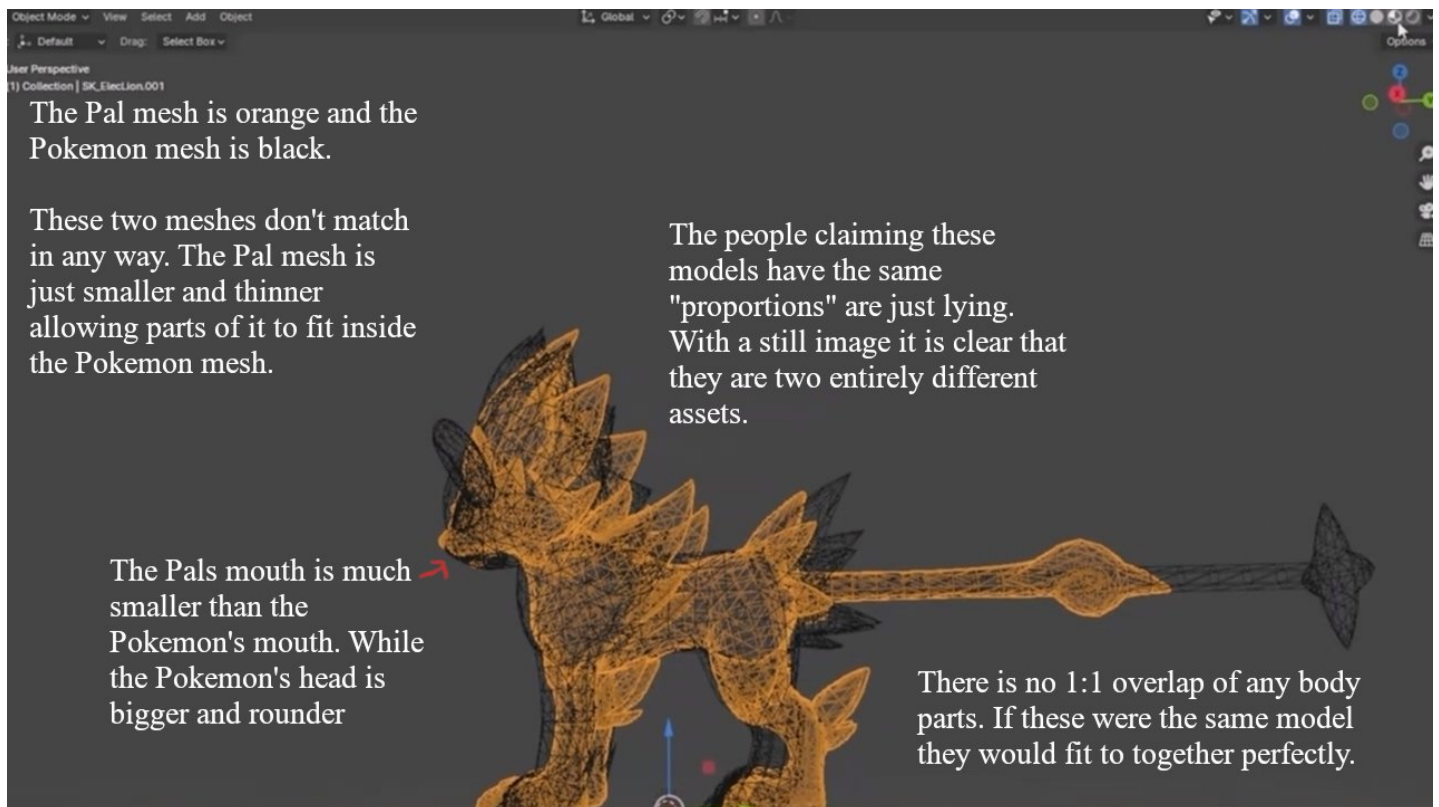


Photo taken from X user @MetalDragonKid.

Under copyright law, there may be infringement if there is “substantial similarity” between a copyrighted work and an accused work. There is no bright-line rule for determining substantial similarity, however, and courts may consider things like the “total concept and feel” of the two works, and the level of creativity involved in the copyrighted work. So that the Palworld monster pictured above is not an exact Pokémon replica does not necessarily mean that it is not infringing. And while @MetalDragonKid in the above X post appears to strongly believe that the two monsters are “entirely different,” others may look at the same comparison and see substantial similarity.

Another interesting angle is trademark protection. Nintendo has established the Pokémon brand and characters over decades of publishing videogames, movies, and other content. Children have always been the target audience for Pokémon, and Nintendo has therefore never included guns in the Pokémon world. That Palworld *does* include guns may give rise to a trademark tarnishment argument. Under trademark law, it is sufficient that an accused work illicit a likelihood of confusion in the average consumer as to the source of the work. Here, the similarity between the games is such that Palworld is frequently identified as “Pokémon with guns” in the gaming community – a fact that might be used to indicate consumer confusion – and the addition of guns could be argued to tarnish and dilute the reputation Nintendo has created for the Pokémon brand.

Stay tuned for further developments!



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