

**UNITED STATES
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NFTs, Blockchain, Cryptocurrency, & Virtual Goods

Registering Trademarks for Newer Technologies

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United States Patent & Trademark Office

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UNITED STATES
PATENT AND TRADEMARK OFFICE ®

How much would *you* pay for this?



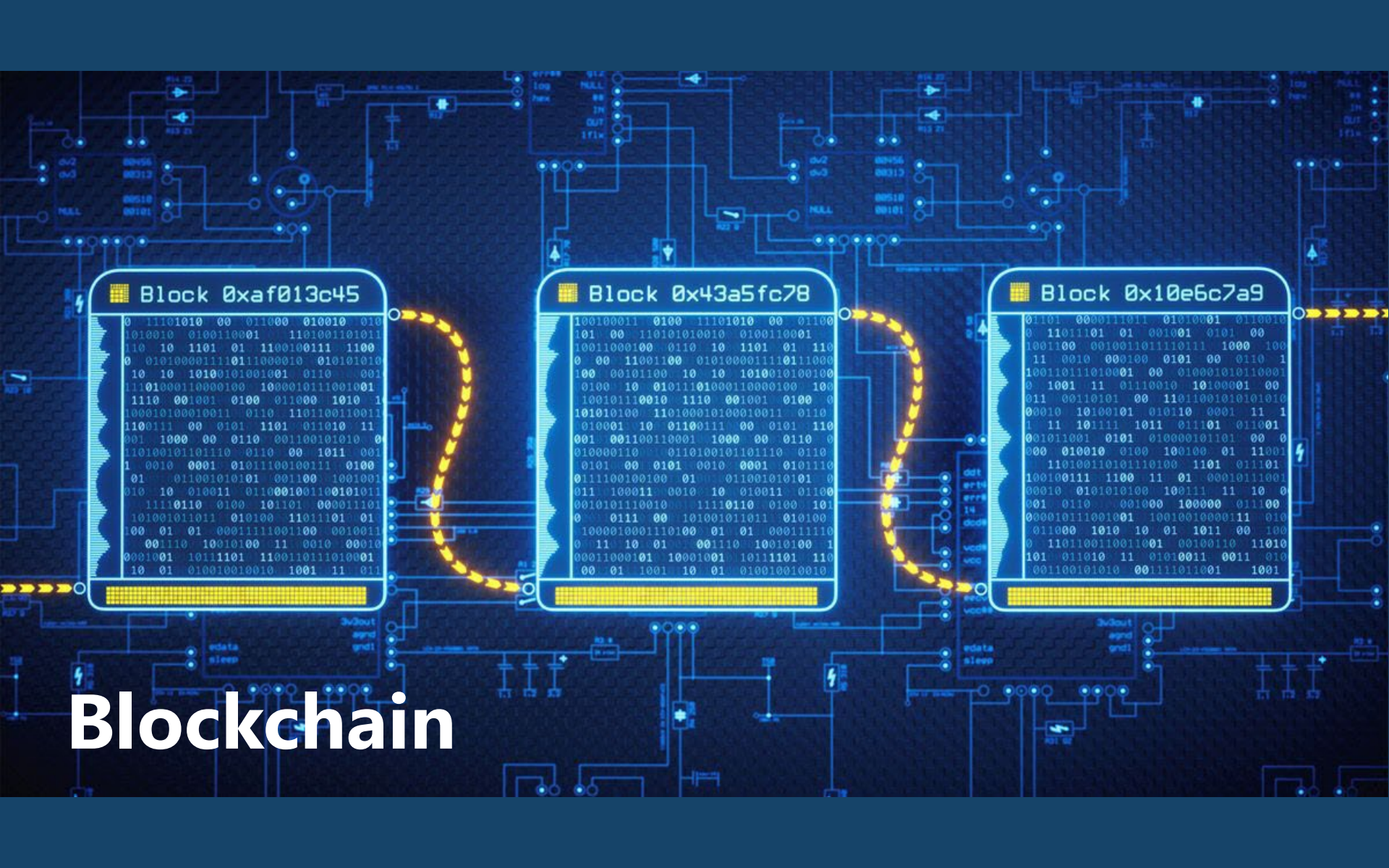
"CryptoPunk 7523" sold for **\$11.7 million** in 2021 at a Sotheby's auction.

What we're unscrambling

- **Blockchain & cryptocurrencies**
- **NFTs (non-fungible tokens)**
- **Virtual goods**



Photo: Brett Jordan via Unsplash



Block 0xaf013c45

```
0 11101010 00 011000 010010 010
1010010 010010001 1101001101011
110 10 1101 01 1100100111 1100
0 0101000011110111000010 010101010
10 10 10100101001001 0110 001
11101000110000100 1000010111001001
1110 001001 0100 011000 1010 1
100010100010011 0110 1101100110011
1100111 00 0101 1101 011010 11
001 1000 00 0110 001100101010 0
110100101101110 0110 00 1011 001
1 0010 0001 01011100100111 0100
01 011001010101 001100 1001001
010 10 010011 0110001001100101011
11110110 0100 101101 000011101
101001010111 010100 11011101 01
100 01 01 00011111001100 0010011
001110 10010100 11 0010 00010
0001001 1011101 1100110111010001
10 01 010010010010 1001 11 011
```

Block 0x43a5fc78

```
100100011 0100 11101010 00 01100
101 00 110101010010 0100110001
10011000100 0110 10 1101 01 110
0 00 11001100 010100001110111000
100 00101100 10 10 1010010100100
0100 10 01011101000110000100 100
100101110010 1110 001001 0100 0
101010100 110100010100010011 0110
010001 10 01100111 00 0101 110
001 001100110001 1000 00 0110 0
010000110 0110100101101110 0110
0101 00 0101 0010 0001 0101110
011100100100 0100 011001010101 0
011 100011 0010 10 010011 01100
0010101110010 01110110 0100 101
000 0111 00 101000101011 010100
1000010001110100 01 01 000111110
00 11 10 01 0001110 10010100 1
00011000101 10001001 10111101 110
00 01 1001 10 01 010010010010
```

Block 0x10e6c7a9

```
01101 000011011 01010001 0110010
0 11011101 01 001001 0101 00
1001100 0010011011110111 1000 100
11 0010 000100 0101 00 0110 1
100110111010001 00 010001010110001
0 1001 11 01110010 10100001 00
011 00110101 00 11011001010101010
00010 10100101 010110 0001 11 1
1 11 101111 1011 011101 011001
001011001 0101 01000010101 00 0
000 010010 0100 100100 01 11001
1101001101110100 1101 011101
100100111 1100 11 01 00010111001
00010 0101010100 100111 11 10 0
001 0110 001000 100000 011100
000010111010101 10010010000111 010
011000 1010 10 01 1011 00 100
0 1101100110011001 001000110 11010
101 011010 11 01010011 0011 010
001100101010 00111011001 1001
```

Blockchain

A ledger of transactions

- **Digital**
- **Encrypted**
 - Each transaction in a “block”
(*think "page"*) is encrypted
- **Distributed**
 - Participants in the blockchain have the data
- **Linked**
 - Every block references the preceding block, making alterations exponentially harder



Photo: Chris Pastrick via Pixabay



In an identification of goods/services

35: Maintaining patient medical records and files using blockchain technology

9: Downloadable software for blockchain-based inventory management

42: Providing user authentication services using blockchain-based software technology for cryptocurrency transactions

36: Blockchain-based payment verification services

What *isn't* a good/service? Blockchain!

Mark in action: a specimen of use

Mark



(no color claim)

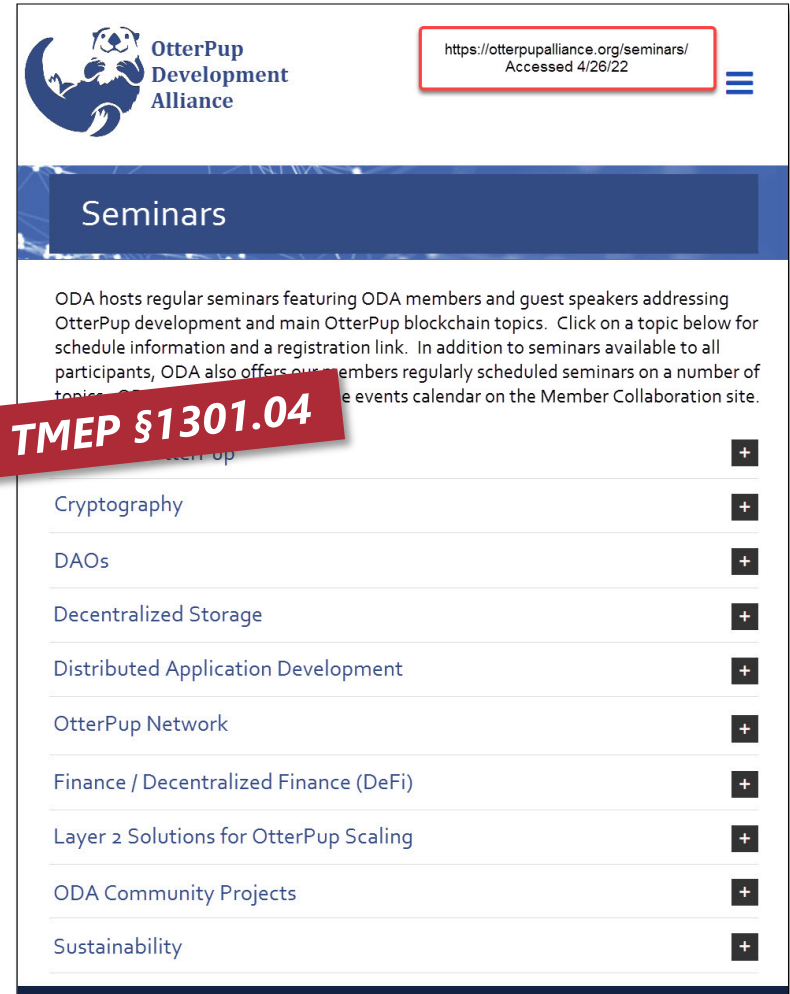
ID

Education services, namely, providing online seminars in the field of blockchain technology, in Class 41

Specimen description

Our seminar overview page

✓ Practice tip: see TMEP §1301.04



The screenshot shows the top of a website for the OtterPup Development Alliance. The header includes the logo on the left, the URL <https://otterpupalliance.org/seminars/> in a red box, and the text "Accessed 4/26/22" on the right. Below the header is a blue navigation bar with the word "Seminars" in white. The main content area has a blue background with white text. It starts with a paragraph: "ODA hosts regular seminars featuring ODA members and guest speakers addressing OtterPup development and main OtterPup blockchain topics. Click on a topic below for schedule information and a registration link. In addition to seminars available to all participants, ODA also offers our members regularly scheduled seminars on a number of topics." Below this is a list of topics, each with a plus sign icon to its right: "Cryptography", "DAOs", "Decentralized Storage", "Distributed Application Development", "OtterPup Network", "Finance / Decentralized Finance (DeFi)", "Layer 2 Solutions for OtterPup Scaling", "ODA Community Projects", and "Sustainability".

Cryptocurrency



Real-world money

- Fiat money
 - Legal tender issued by a government

\$ ¥ £ € ₹



Photo: Giacomo Ghironi via Unsplash

- **Query: what gives “real” money its value?**



Cryptocurrency

- How it started
- Where its value comes from
- Crypto coins vs. crypto tokens

Crypto coins

- The core reason for a particular blockchain's existence
- Intended to be exchanged anywhere, like money
- *E.g., Bitcoin, Dogecoin*

Crypto tokens

- Assets built on an already existing blockchain, for use on that blockchain
- Can be cryptocurrency when used as a medium of exchange, *e.g., Ether (a.k.a. Ethereum)*
- Other kinds of crypto tokens represent, *e.g., physical objects or user rights*

In an identification of goods/services

42: Rental of computer hardware
for **cryptocurrency** mining

9: **Cryptocurrency**
hardware wallets

36: **Cryptocurrency**
exchange services

41: Providing online virtual reality
game services featuring **crypto tokens**
for use in virtual worlds

45: Providing legal information in the
field of **cryptocurrency**

42: Electronic storage of
cryptocurrency for others

What *isn't* a good/service? **Cryptocurrency!**

Mark in action: a specimen of use

Mark

AVARICIOUS (std. char.)

ID

Providing online non-downloadable software for use as a cryptocurrency wallet, in Class 42

Specimen description

Login screen captured 4/25/22 from our website, www.avaricious.com

✓ Practice tip: see TMEP §1301.04

Avaricious Labs © All rights reserved 2012-2022 | Legal Notices | For Businesses

Takeaways

Blockchain

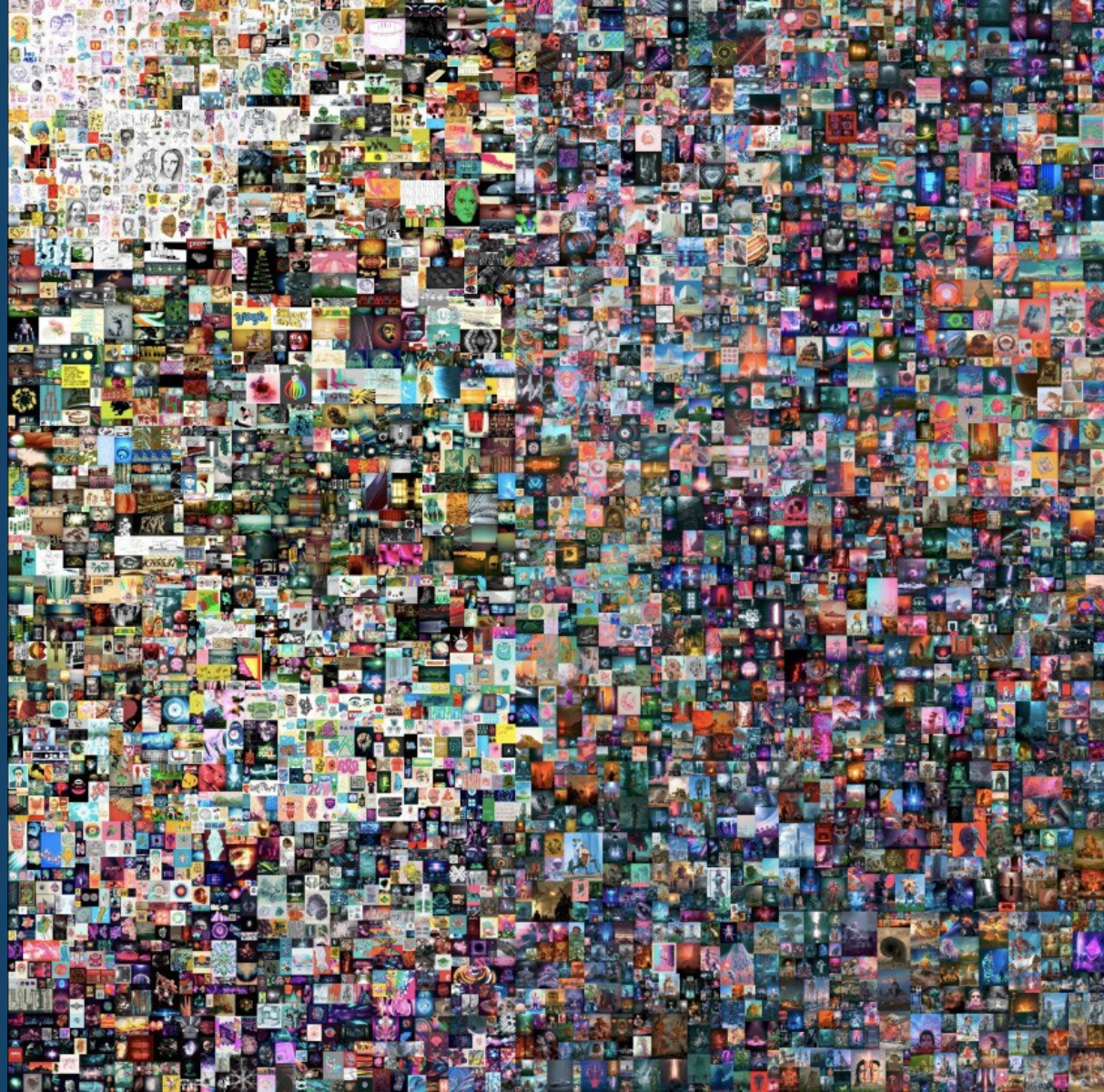
- A ledger of transactions that's *digital, distributed, and encrypted*
- Not a good or service
- Typically a **feature** of goods or services, or **means of rendering** services
- Can be mentioned as part of the **field** or **subject matter** of otherwise definite services
- Can be mentioned when describing the **function of software** goods/services

Cryptocurrency

- A fungible digital asset existing on, and tracked on, a blockchain
- Not a good or service
- Can be mentioned as part of the **field** or **subject matter** of otherwise definite services
- Can be mentioned when describing the **function** of software goods/services
- Financial services must be **definite** and limited to Class 36

Beeple's *Everydays*:
The First 5000 Days

NFTs



NFT = unique token

- “Non-fungible token”
- **Authenticates** a physical or digital good, recording all transfers of its ownership
- **Located on a blockchain, thus viewable** by anyone with internet access



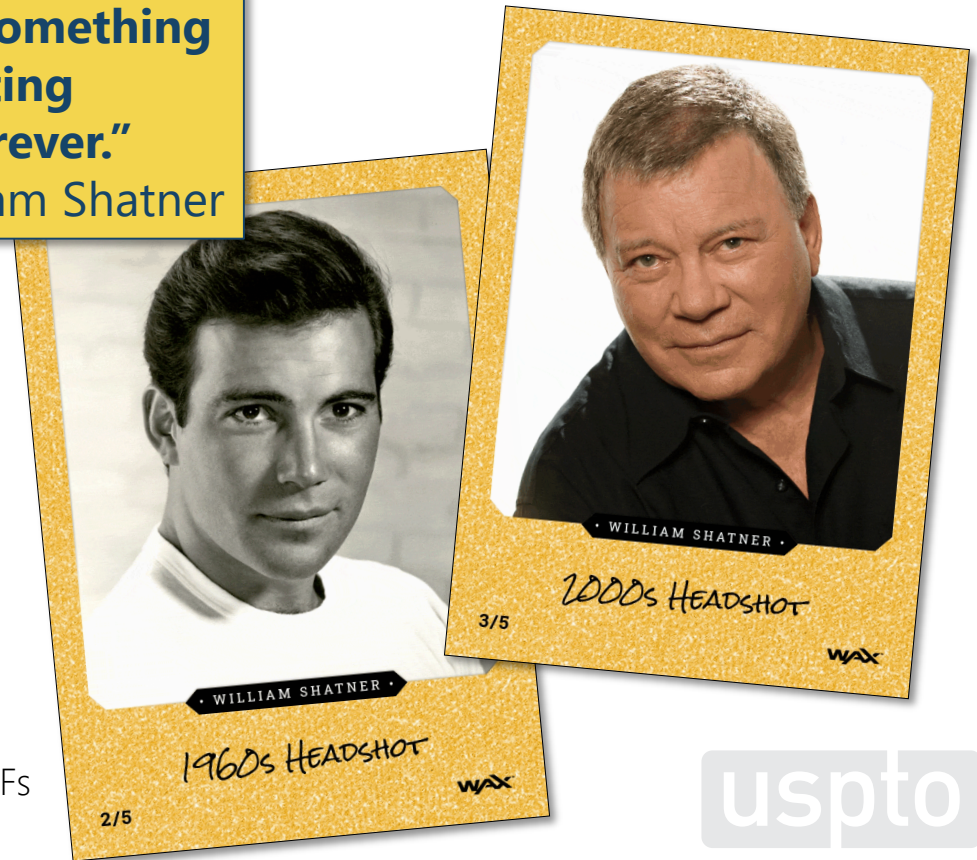
The William Shatner effect

“There is a saying that putting something online is forever. I disagree. Putting something on a blockchain is forever.”

-William Shatner

- How NFTs took off
- NFTs & art
- Other uses

Images of digital GIFs
from on.wax.io



When NFT = “not-fun troubles”

- **Vernacular use**

- People may say “NFT” to mean the unique asset *and* the non-fungible token that purports to authenticate it
- “Non-fungible token” or “NFT” is *not* an acceptable identification of goods or services



Publicity still from *Inside Out*, Disney/Pixar

- **Evolving technology**

- Standards exist for creating NFTs, but not every NFT complies
- Some NFTs may confer benefits in addition to mere authentication; burden is on the applicant to clearly explain the nature of its goods/services



In an identification of goods/services

9: Downloadable image files containing {indicate subject matter or field, e.g., trading cards, artwork, memes, sneakers, etc.} **authenticated by non-fungible tokens (NFTs)**

9: Digital collectibles in the nature of downloadable multimedia files containing artwork in the field of {indicate field or subject matter of file} **authenticated by non-fungible tokens (NFTs)**

25: Sneakers authenticated by non-fungible tokens (NFTs)

35: Provision of an online marketplace for buyers and sellers of downloadable digital art images, authenticated by non-fungible tokens (NFTs)

What *aren't* goods/services? **NFTs!**

Mark in action: a specimen of use

Mark

CRYPTOPURSLEYS (std. char.)

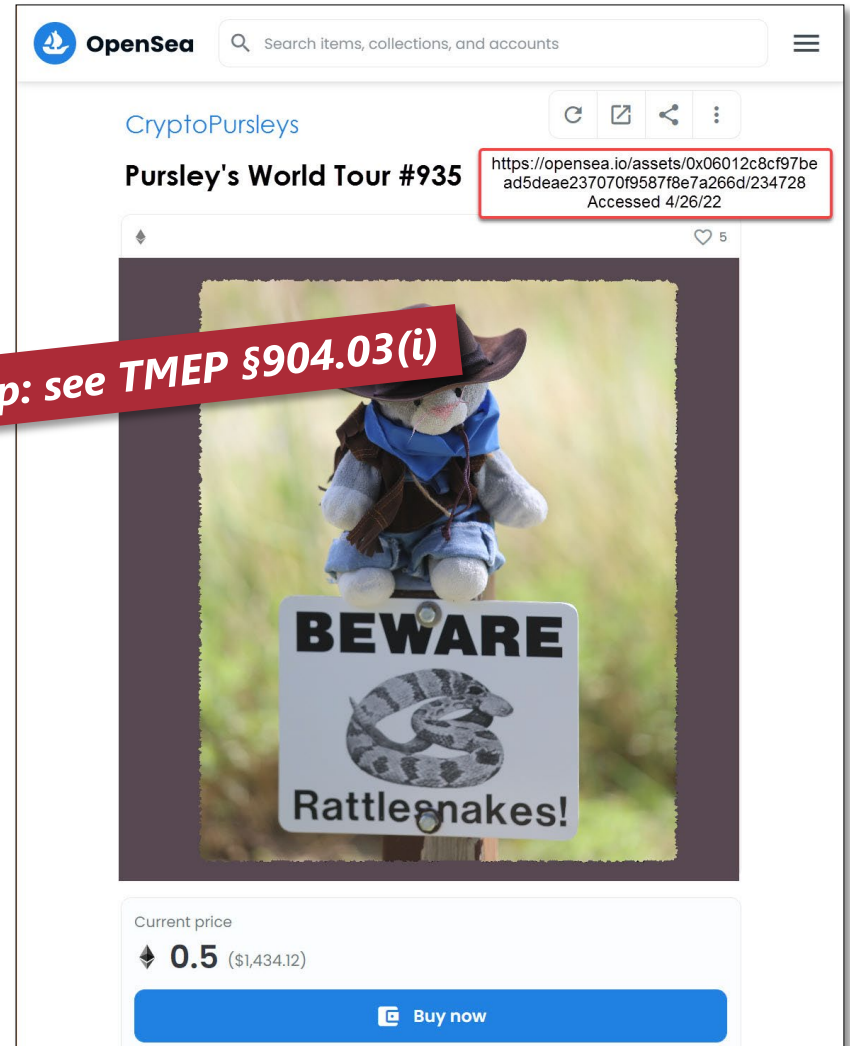
ID

Downloadable image files containing photographs of plush toys authenticated by non-fungible tokens (NFTs), in Class 9

Specimen description

NFT #935, from a series of 1000, for sale on OpenSea; upon purchase, the buyer can download the image

✓ Practice tip: see TMEP §904.03(i)



Takeaways

NFT

- Locked to a specific digital or physical asset
- Exists on, and tracked on, a blockchain
- Not a good or service
- Usual function is only to provide **authentication** of digital or physical assets
- ID must specify the nature of the **goods being authenticated**, or the services involving NFTs



Screenshot of Decentraland,
courtesy of *The Sun*

Virtual living

Virtual worlds

- What we do there
 - Playing & socializing
 - Shopping
 - Working
- How we get there
 - Virtual reality (VR)
 - Augmented reality (AR)
 - Screen & keyboard
- Avatars

Screenshot of *Horizon Workrooms*, Meta



Screenshot of
Roblox, Roblox
Corporation

uspto®

Basic avatar

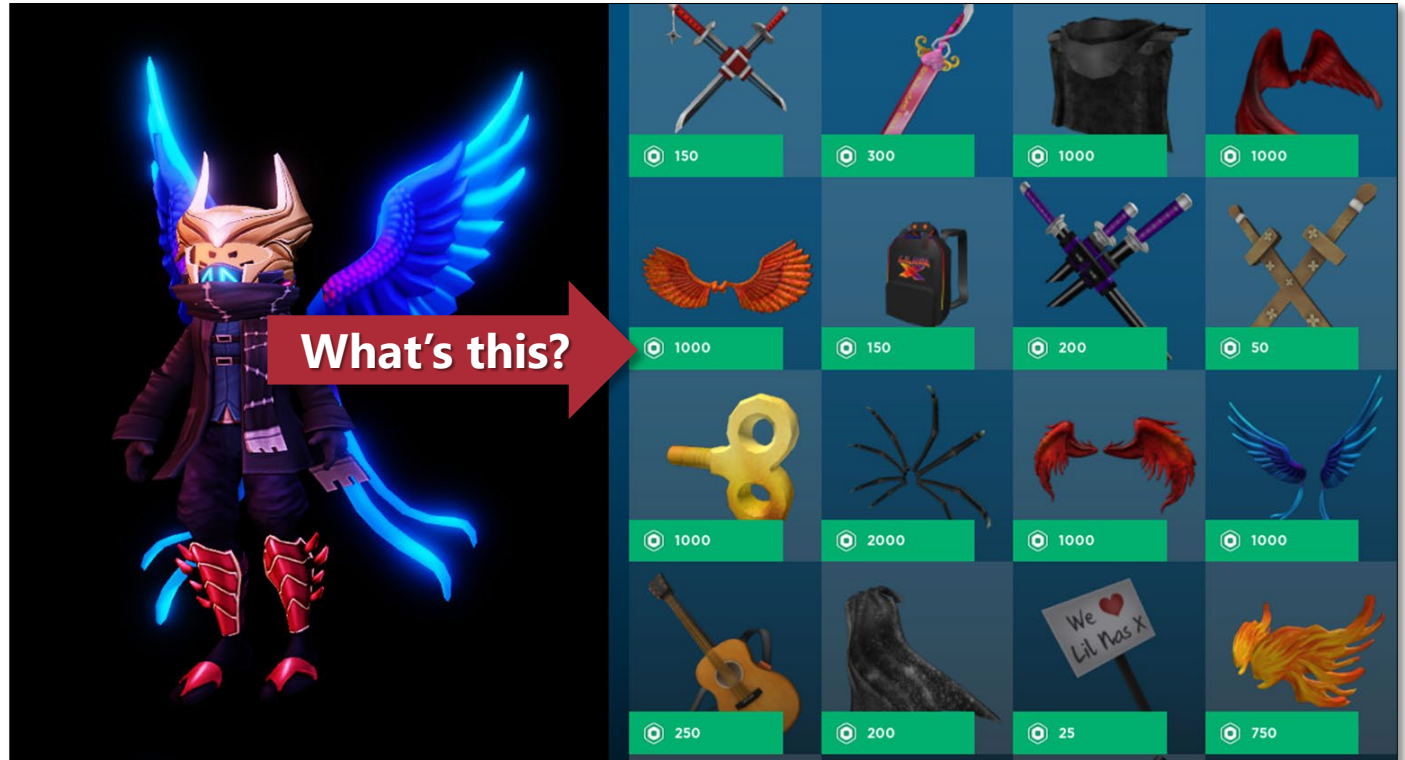
- Where avatars are used
- Adding on



Screenshot of a standard-issue player avatar in *Roblox*,
Roblox Corporation

Virtual goods

- Why?
- How?



Screenshot of avatar-enhancement interface within *Roblox*,
Roblox Corporation



Suiting up

- Virtual goods that resemble their real-world counterparts
- Use of trademarks



RTFKT X Nike Dunk Genesis Cryptokicks sneaker.
Image courtesy of fibre2fashion.com



In an identification of goods/services

9: Downloadable virtual goods in the nature of image files of {specify type, e.g., sunglasses, jewelry, etc.} for use in online virtual worlds

42: Computer programming of virtual goods for use in virtual worlds

42: Graphic design of virtual goods for use in virtual worlds

9: Downloadable computer game software featuring virtual goods, namely, {indicate goods, e.g., furniture, jewelry, sunglasses, etc.} for use in online virtual worlds

41: Entertainment services, namely, providing online, non-downloadable virtual {indicate, e.g., furniture, etc.} for use in virtual environments created for entertainment purposes

Mark in action: a specimen of use

Mark

JAX (std. char.)

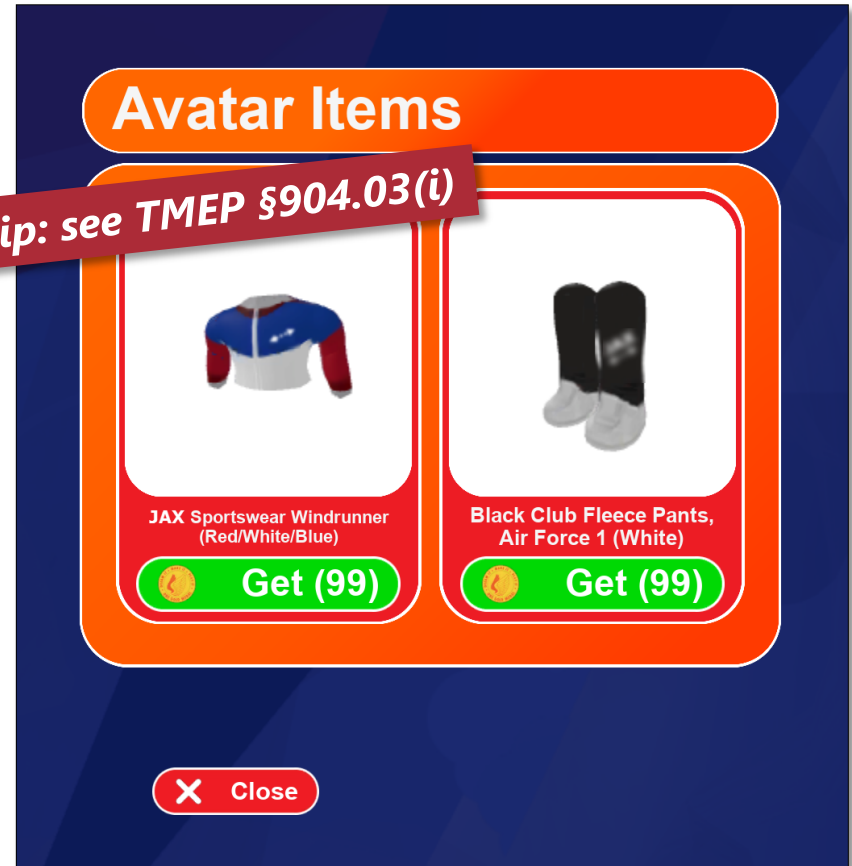
ID

Downloadable virtual goods in the nature of image files of shirts, pants, and shoes for use in online virtual worlds, in Class 9

Specimen description

Popup screen within the game Roblox, offering our virtual goods for download: [roblox.com/jax](https://www.roblox.com/jax), accessed 6/21/22

✓ Practice tip: see TMEP §904.03(i)



Virtual Goods & Section 2(d)

- Likelihood-of-confusion refusals are based on:
 - Evidence of commercial relatedness between the real & virtual goods
 - Similarity of the marks
- Because virtual goods are an emerging technology, the USPTO is monitoring market & legal developments in the field



Photo: Billetto Editorial via Unsplash

DIOR
ATELIER OF DREAMS

Miss Dior

Mashup: real goods in a virtual store

Back to Start

Return to Ground Floor

Examples of online retail store services

...in a virtual environment,
featuring real goods



A virtual shopping experience: screenshot of Cost Plus World Market's virtual holiday store

...rendered in a virtual world,
featuring virtual goods



Screenshot of Roblox "Nikeland" store

In an identification of goods/services

35: Online retail store services rendered in a virtual environment featuring physical goods, namely, {specify type, e.g., furniture, jewelry, sunglasses, etc.}

35: Online retail store services rendered in a virtual environment featuring virtual goods, namely, {specify type, e.g., furniture, jewelry, sunglasses, etc.}

35: Online retail store services featuring virtual goods, namely, {specify type, e.g., furniture, jewelry, sunglasses, etc.} for use in online virtual worlds

Mark in action: a specimen of use

Mark

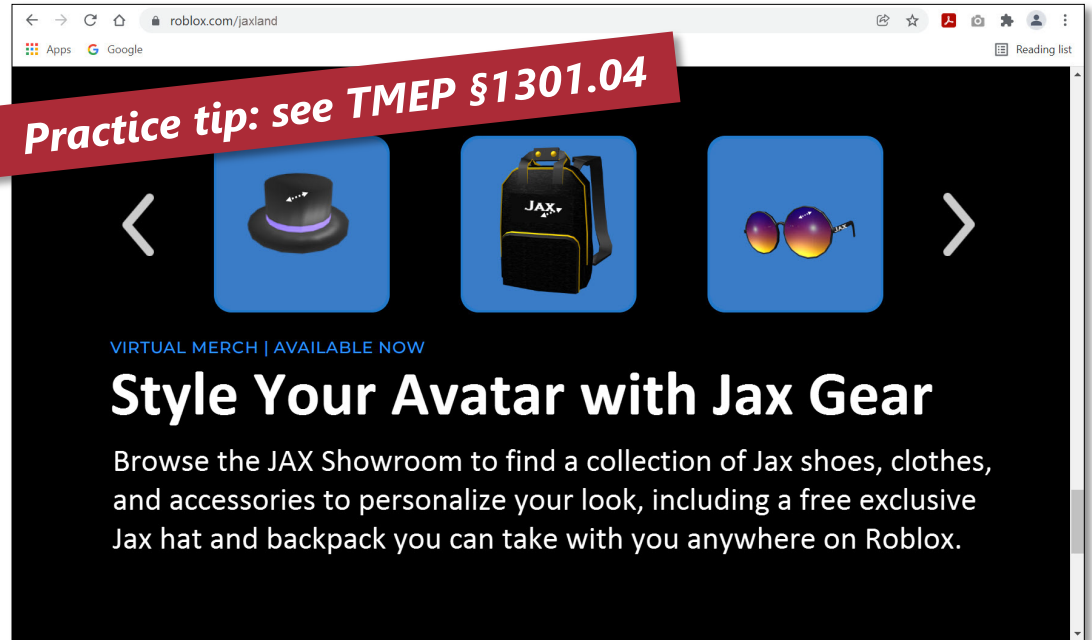
JAX (std. char.)

ID

Online retail store services rendered in a virtual environment featuring virtual hats, jewelry, and handbags, in Class 35

Specimen description

Popup screen within an online game, accessed 6/21/22



Takeaways

Virtual goods

- Virtual objects for use in virtual worlds, especially by avatars
- If accurate, the ID can specify virtual goods (with requisite details) as:
 - downloadable image files in Class 9, **or**
 - a Class 41 entertainment service activity
- Indicate the type of virtual goods, *e.g.*, sunglasses, food, etc. (**tip**: avoid indefinite term "accessories")

Virtual retail

- Common scenarios:
 - Online retail store services that feature **real goods** within a virtual shopping environment
 - Online retail store services that feature **virtual goods**, offered entirely within a virtual world (*e.g.*, an online game)
- Indicate the nature of the virtual and/or real goods to enable §2(d) analysis
- Avoid indefinite term "accessories"



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