UNITED STATES
PATENT AND TRADEMARK OFFICE

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NFTs, Blockchain, Cryptocurrency, & Virtual Goods

Registering Trademarks for Newer Technologies

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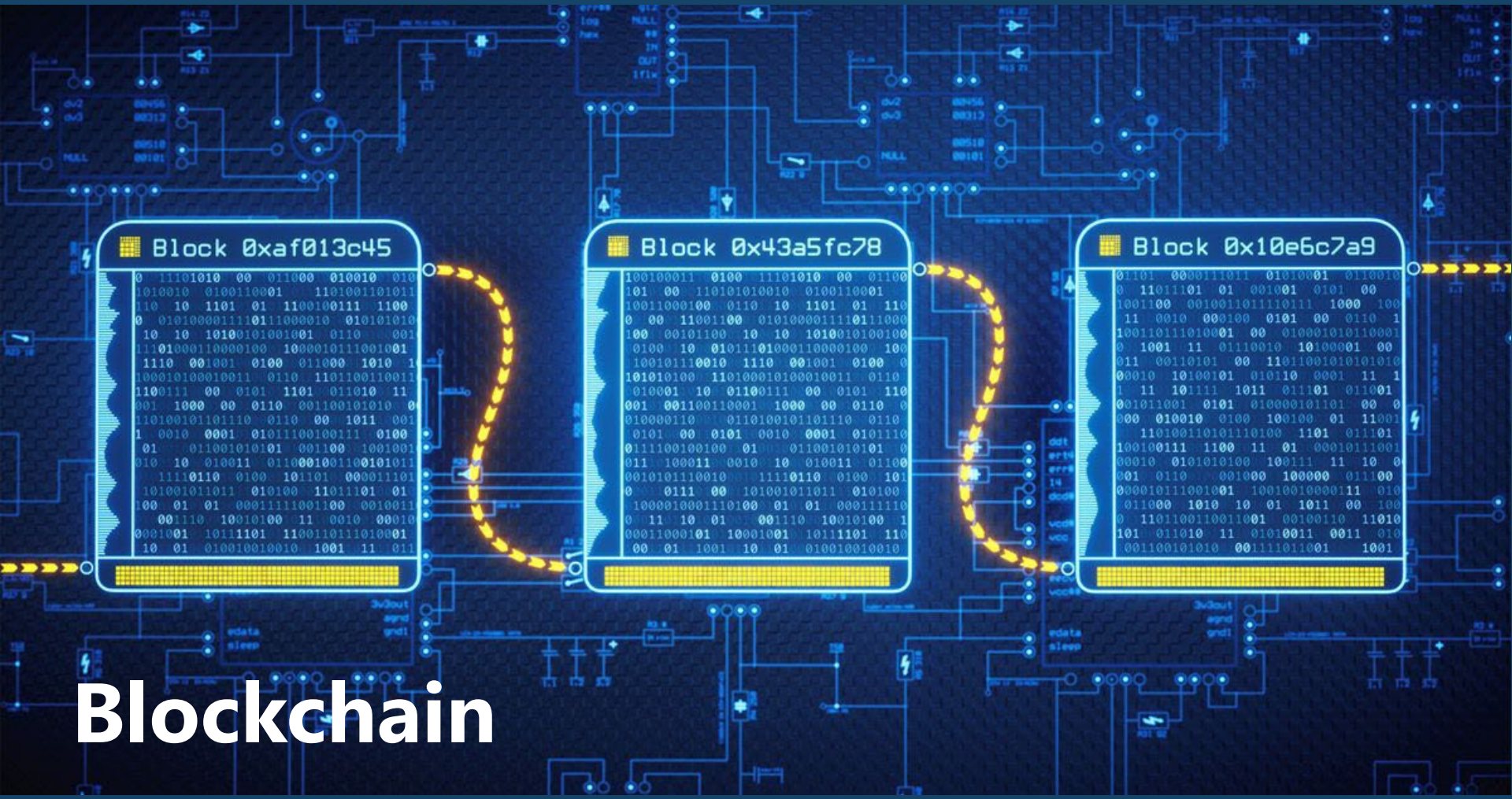
How much would *you* pay for this?

"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



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

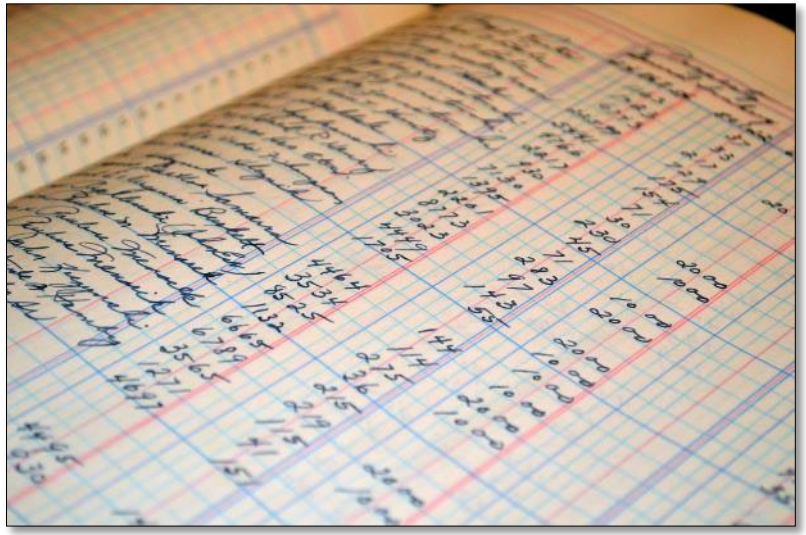
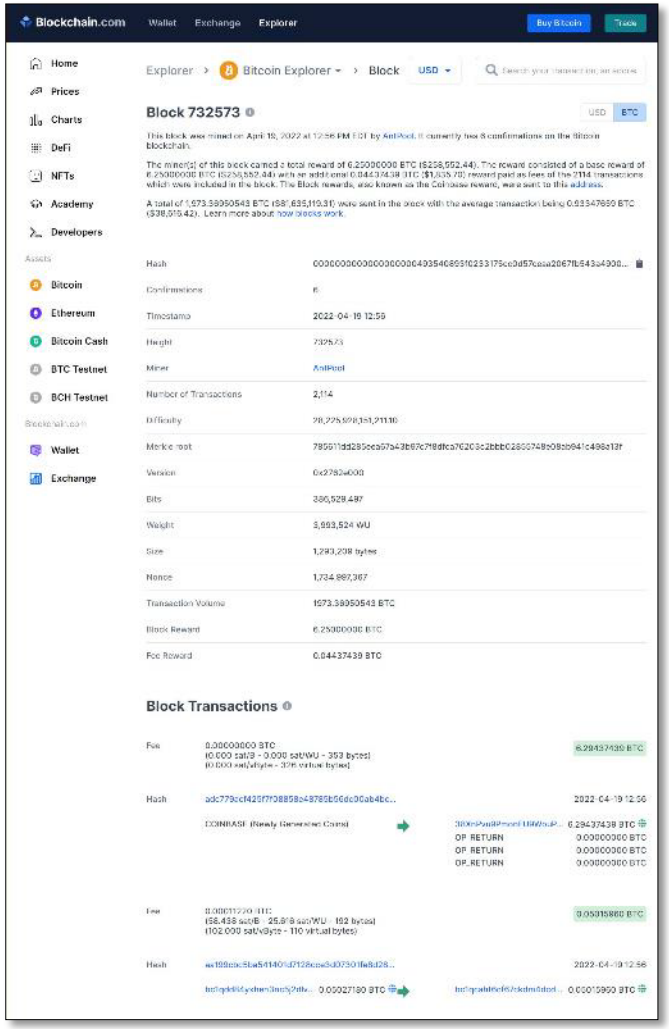


Photo: Chris Pastrick via Pixabay

For all to see

- **Example:** block 732573 on the Bitcoin blockchain
  - 2,114 transactions recorded in the block: $81 million total transaction value, average value of $31k
  - The block's contents—the transactions—can be viewed by anyone, at any time



Screenshot of Blockchain.com

In an identification of goods/services

9: Downloadable software for **blockchain-based** inventory management

35: Maintaining patient medical records and files **using blockchain technology**

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***

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

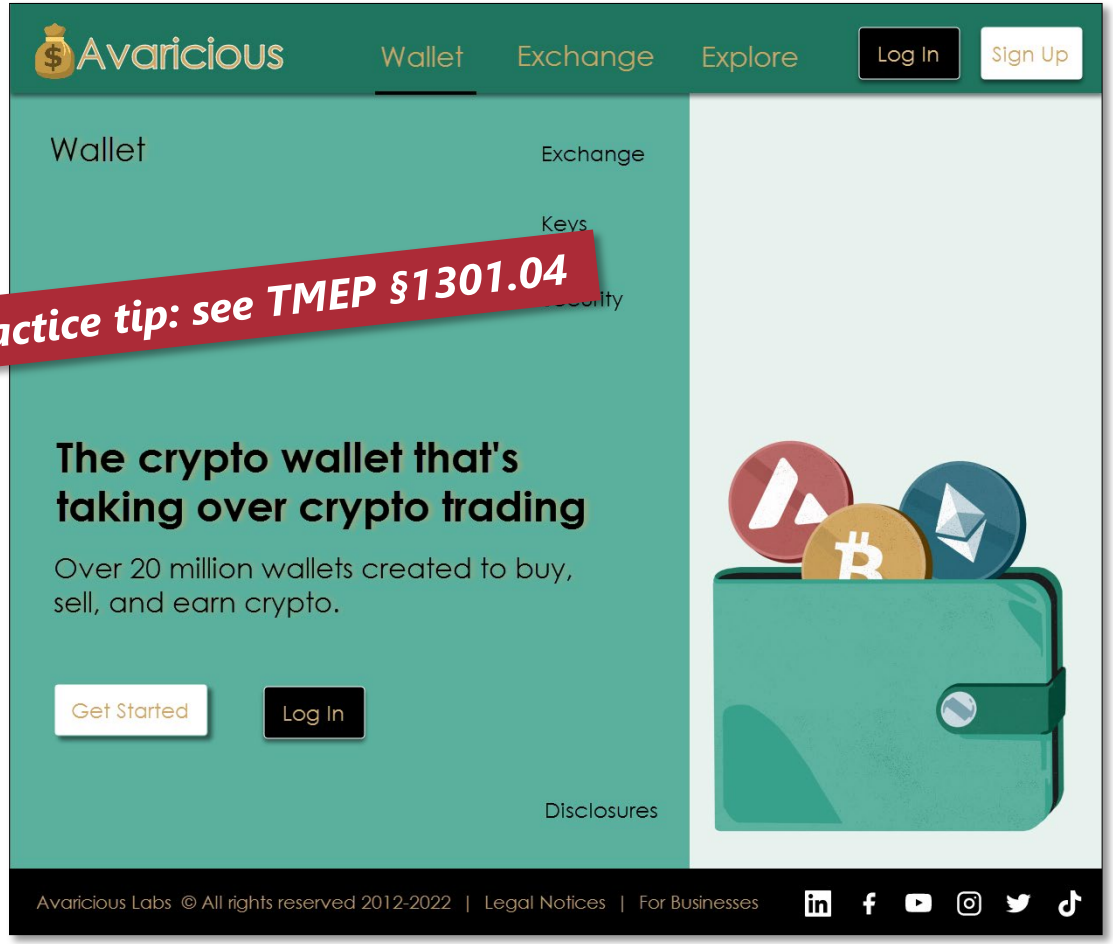
AVARICIOUS (std. char.)

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*

Takeaways

Blockchain

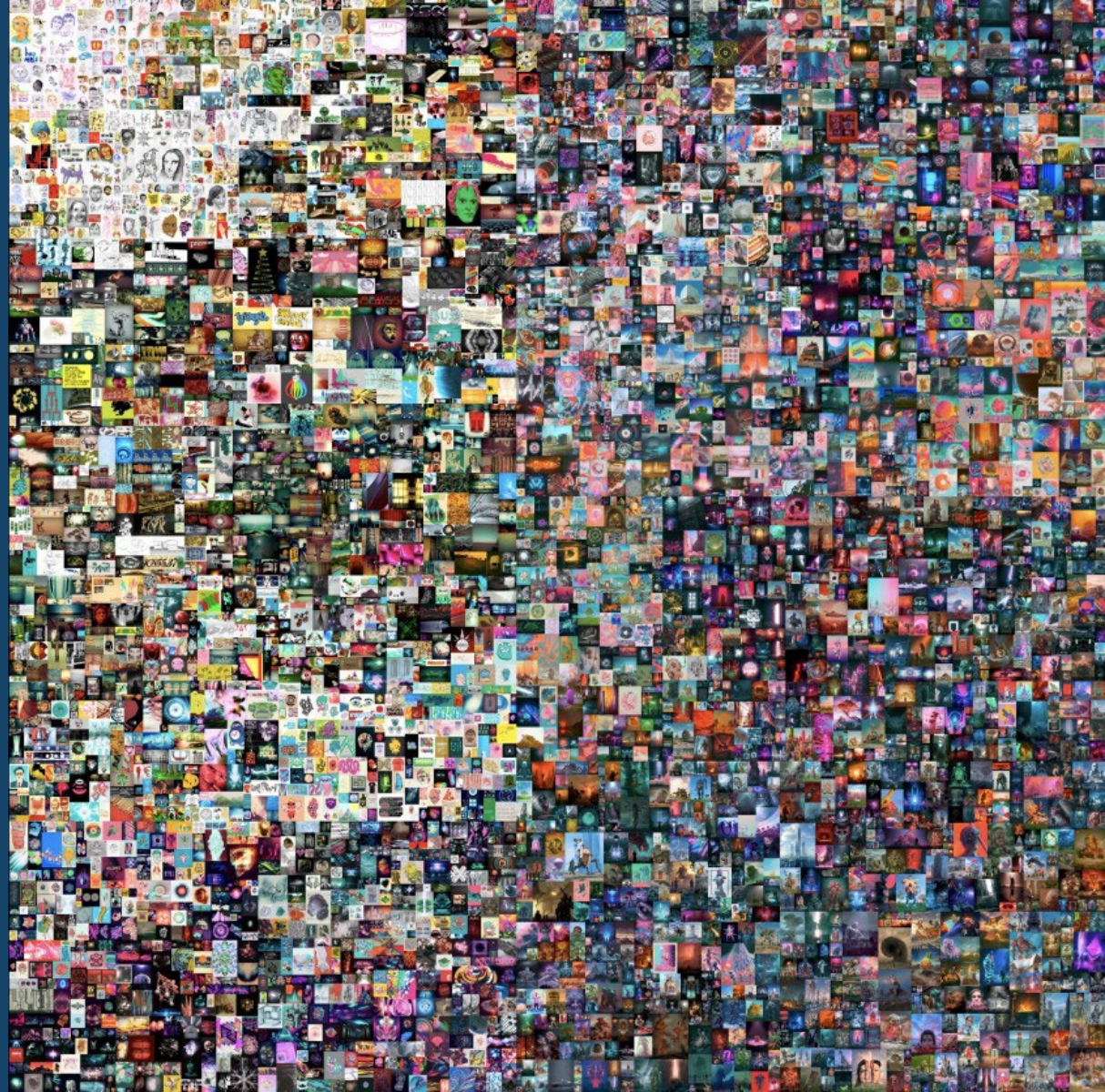
- A ledger of transactions that's *digital*, *distributed*, and *encrypted*
- Not a good or service
- Typically a **feature** of goods or services, or **means of rendering** services
- Can be mentioned as part of the **field** or **subject matter** of otherwise definite services
- Can be mentioned when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

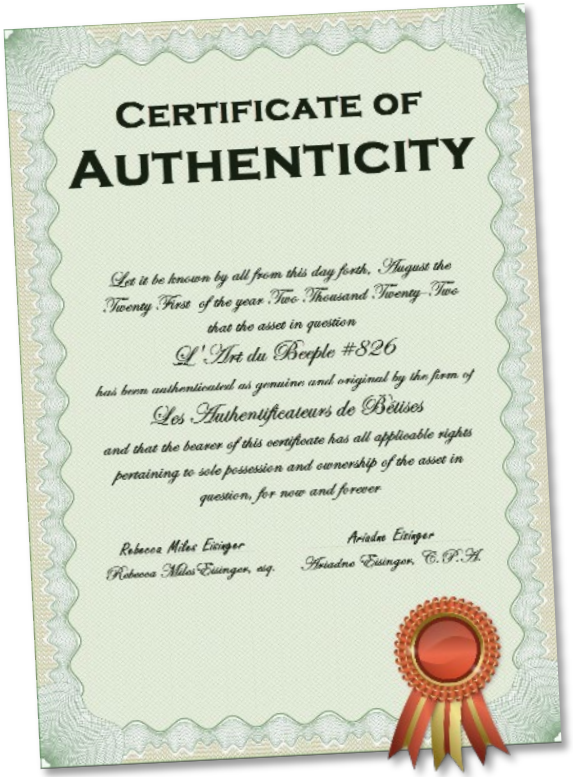
Beeple's *Everydays: The First 5000 Days*

NFTs



NFT = unique token

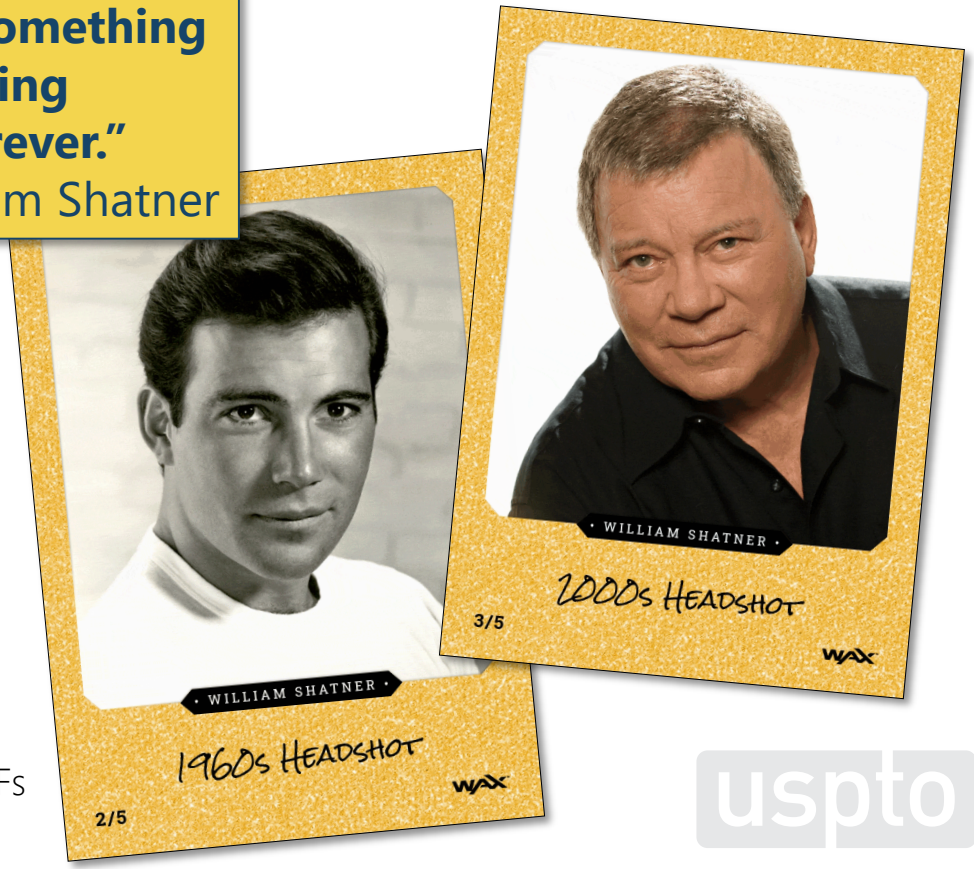
- **“Non-fungible token”**
- **Authenticates** a physical or digital good, recording all transfers of its ownership
- **Located on a blockchain, thus viewable** by anyone with internet access



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.)

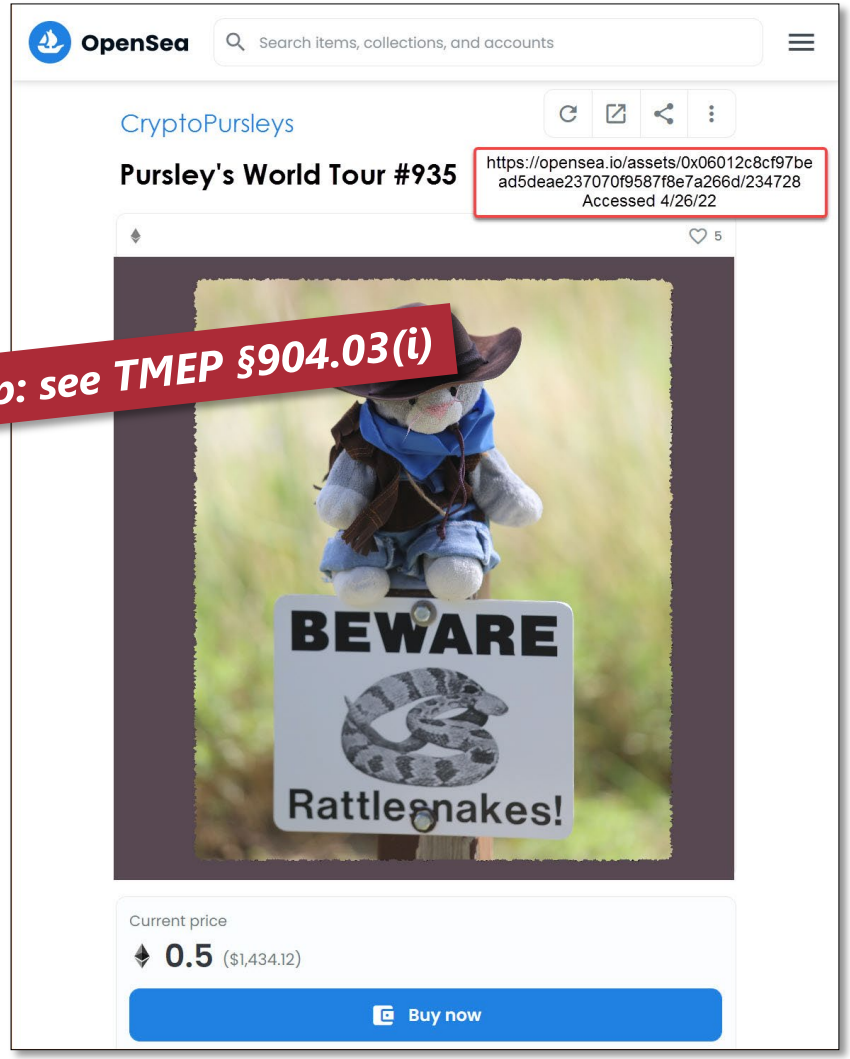
ID

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 *Roblox*, Roblox Corporation

Screenshot of *Horizon Workrooms*, Meta

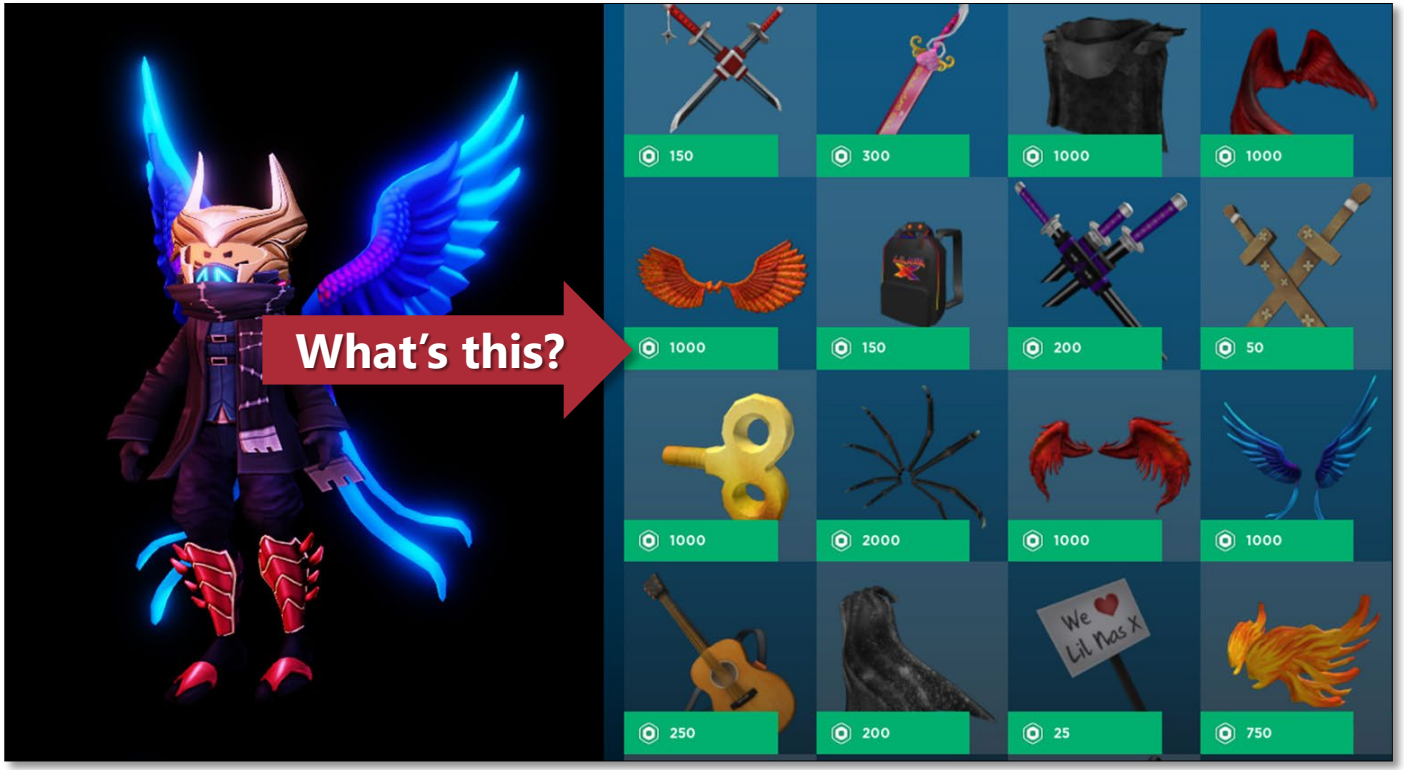
Basic avatar

- 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.)

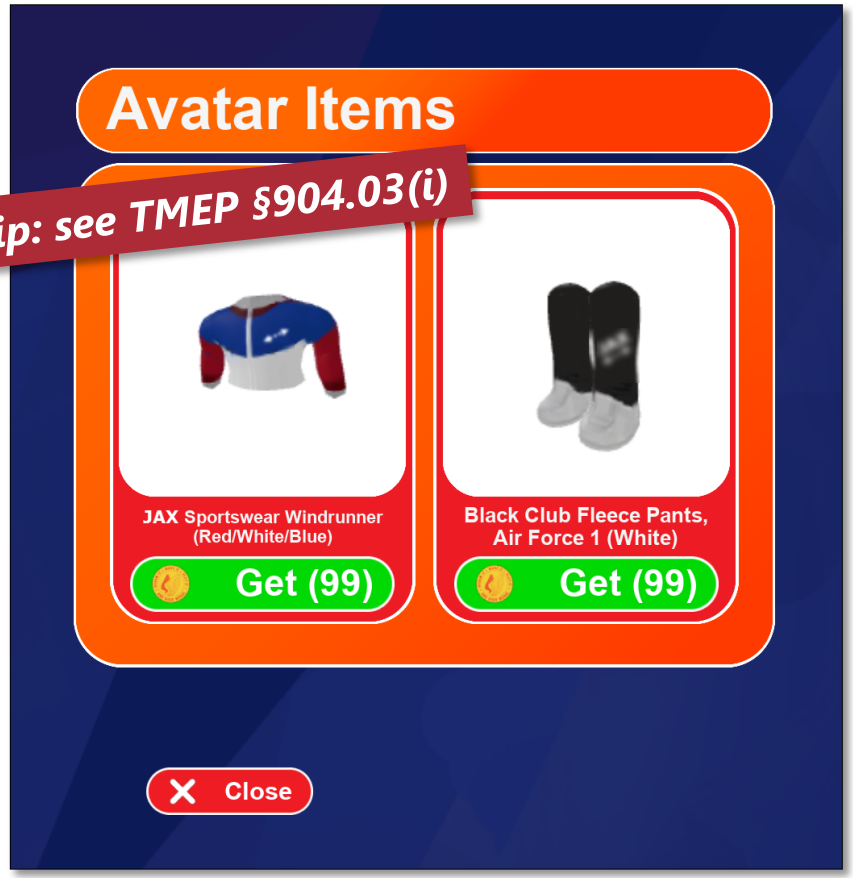
ID

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, 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

Mashup: real goods in a virtual store

Screenshot of Harrod's virtual Dior Beauty store

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

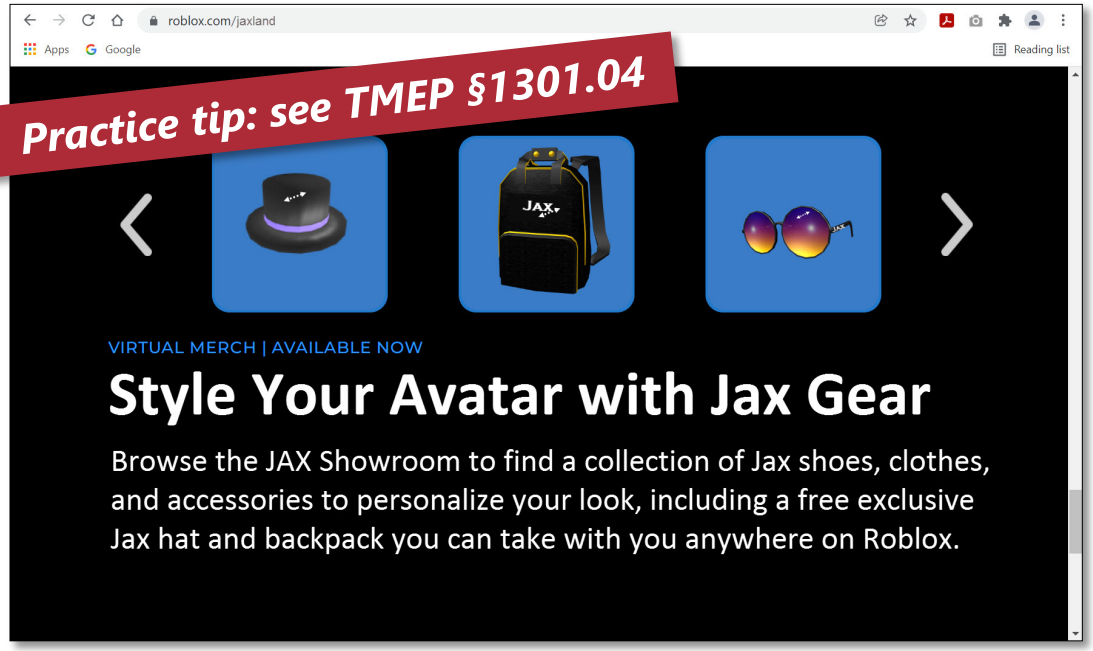
JAX (std. char.)

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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