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
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
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
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
Cryptocurrency
Real-world money

• Fiat money
  – Legal tender issued by a government

$ ¥ £ € ₹

• 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 TMED §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”

• **Authenticate**s 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

• 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**
CRYPTOPURSLEY (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

![OpenSea screenshot](https://opensea.io/assets/0x06012c8cf97bed5deae237070f987f8e7a2660d2347285333.jpg)
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
Virtual living

Screenshot of Decentraland, courtesy of The Sun
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
Basic avatar

• Where avatars are used
• Adding on
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
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
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
Mashup: real goods in a virtual 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

Practice tip: see TMEP §1301.04
### 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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