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Trademark Protection for Virtual Goods: Navigating Emerging Legal Challenges in the Metaverse

1. Introduction

With the expansion into simulated platforms following the sophistication of digital technologies, the way goods are created, marketed, and consumed has been greatly transformed. One notable development is the rise of virtual goods, which are digital items that exist and are traded within online platforms, gaming environments, and emerging virtual worlds. These goods include virtual clothing, avatar accessories, digital artwork, and other downloadable assets that consumers can purchase and use in digital environments. As businesses increasingly establish their presence in these spaces, the need to protect brand identity within virtual markets has become more important.[2]

Traditionally, trademark law was designed to protect brands associated with tangible goods and services. However, the growth of digital commerce has created new challenges for trademark systems that were not originally designed to address intangible products existing in virtual environments. As a result, many brand owners are now seeking trademark protection for virtual goods to prevent unauthorized use of their marks in digital marketplaces. International bodies such as the World Intellectual

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2 G Elias, 'Navigating the Metaverse: Trademark Infringements and its Legal Implications' available at <https://www.gelias.com/images/Newsletter/Navigating_The_Metaverse> accessed on March 8th 2026.

Property Organization have recognized the growing importance of adapting intellectual property frameworks to keep pace with technological developments.

Despite the benefits of trademark protection for virtual goods, businesses and trademark owners may encounter several legal and practical challenges. These challenges stem largely from the evolving nature of digital markets and the limitations of traditional trademark systems when applied to virtual environments.

2. Trademark Rights and Ownership in the Metaverse[3]

When an individual purchases a physical item such as clothing, electronics, or a car, they obtain full control over that item, they may modify it, resell it, gift it, or even destroy it. This reflects the doctrine of exhaustion of rights, under which a trademark owner's control over a product is generally exhausted once it has been lawfully sold.

By contrast, the position with virtual goods is more nuanced. In digital environments, what is transferred to the user is often not full ownership in the traditional sense, but a limited right of use governed by contractual terms. As a result, the extent of control a user may exercise over virtual items is typically restricted, and the trademark owner may retain a degree of continuing control over how those items are used or accessed.

In the context of the metaverse, video games like Fortnite offer a helpful comparison. In Fortnite, players buy virtual items like skins or cosmetics for their avatars. These items are "owned" by the players, provided they continue to engage with the game. However, this "ownership" is not the same as full, unrestricted ownership, as it is tied to ongoing participation through licensing fees.

3. Registration under the NICE Classification

Under Nigerian law, a trademark must be registered in respect of particular goods or classes of goods.[4] Consequently, the protection offered to a proprietor (i.e., the owner of the trademark) is ordinarily limited to only the classes of goods with respect to which the trademark was registered. Nigeria makes use of the NICE Classification which contains 45 classes of trademark registration under its latest edition,[5] although Nigeria still uses the 9th edition of the publication.

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3 Chadchaand Chadha IP Lawfirm, 'From Reality to Virtuality: Trademark Challenges and Protection in the Metaverse', available at <https://www.lexology.com/library/detail.aspx?g=67eea1f1-1008-40a7-b0c4-a8f0518edc6faccesse> on March 8th 2026.

4 Aelex, 'The Metaverse – Considering Trademarks and Brand Protection for Virtual Goods & Services'
available at <https://www.aelex.com/the-metaverse-considering-trademarks-and-brand-protection-for-virtual-goods-services/#_ftn8> accessed on March 8th 2026.

5 NICE CLASSIFICATION 11th edition, available at <Nice Classification> accessed on March, 8th 2026.

Even though there is no precise class dealing with the Metaverse, brand protection in the Metaverse may be obtained under Class 9 of the NICE Classification particularly as a "recorded and downloadable media." This is because the concept of the Metaverse, as proposed, involves an online 3D universe. This class generally covers computer software and digital products that can be downloaded or accessed within online platforms. Consequently, products offered in the Metaverse are often presented as digital renditions of real-world items, typically created through three-dimensional (3D) modelling and other immersive media technologies. These digital representations allow users to interact with virtual goods such as clothing, accessories, or collectibles within virtual environments, gaming platforms, or other immersive digital spaces.[6]

Furthermore, any person seeking to register a trademark for use in the virtual environment or the Metaverse may consider filing applications under other specific classes within the Nice Classification system, depending on the nature of the virtual goods or services being offered. Since virtual goods are essentially digital assets, they are commonly registered under classes that cover downloadable digital products, software, and online services;

Class 35 – provision of advertising services via the internet;

Class 36 – provision of financial services via the internet;

Class 38 – Telecommunications services; chat room services; portal services; e-mail services; providing user access to the Internet; radio and television broadcasting.

Class 42 – provides for protecting marks involving scientific and technological services and the creation, maintenance and hosting of websites.

4. Real-World Examples of Trademark Protection for Virtual Goods

The growth of virtual markets has encouraged major brands to extend their trademark strategies into digital environments. For instance, **Gucci** has pursued trademark registrations covering virtual clothing and digital accessories. The brand launched digital initiatives within gaming and virtual platforms, allowing users to purchase and display virtual items bearing the Gucci mark. These steps reflect an understanding that brand identity now extends beyond physical products into immersive digital experiences.

Similarly, **Nike** has actively explored trademark protection for virtual goods. The company filed trademark applications covering digital sneakers and virtual apparel,

6 *Ibid*.

signaling an intention to protect its brand in both physical and digital markets. Nike applied for NIKE, JUST DO IT, JORDAN, AIR JORDAN, the Nike swoosh logo design mark, the Jordan silhouette logo, and combinations thereof, covering various virtual goods and services. Nike's strategy demonstrates how traditional consumer brands are adapting to the virtual economy, where digital products can carry significant commercial and reputational value.

Another prominent example is **Adidas**, which has also sought trademark protection for virtual merchandise and digital representations of its products. By registering trademarks that extend to virtual environments, Adidas aims to prevent unauthorised parties from creating digital items that could confuse consumers or dilute the brand's reputation.

Other notable brands that have filed for protection include:[7]

i. American Express – applied for their mark to cover virtual payment cards, financial services NFTs and virtual concierge services;

ii. Jay-Z – applied for JAY-Z, covering music, clothing, and jewelry goods for use in online virtual worlds;

iii. Walmart – applied for the WALMART mark to cover virtual goods such as electronics, toys, decorations, sporting goods, and personal care products;

iv. The Brooklyn Nets – applied for NETAVERSE, covering broadcast entertainment services and clothing goods related to the NBA team;

v. Skechers – applications for SKECHERS, covering footwear, clothing, and backpacks for use in online virtual worlds.

vi. BMW registered its logo for use with NFTs (non-fungible tokens), virtual goods, and environments;

vii. Mercedes filed trademark applications covering the Metaverse and NFTs within a month of BMW, showing that the competition has moved online.

These examples illustrate a broader trend: leading global brands recognise that intellectual property protection in the digital space is essential. Virtual goods may not exist in physical form, but they function as commercial products within online

[7] One World Intellectual Property, 'Metaverse and Trademarks from the Real World to the Virtual World' available at <https://oneworldip.com/metaverse-and-trademarks-from-the-real-world-to-the-virtual-world> accessed on March 8th, 2026.

ecosystems. Without adequate trademark protection, third parties could exploit well-known brand marks in virtual marketplaces, creating consumer confusion and undermining brand value.

5. Navigating Emerging Legal Challenges in the Metaverse

To effectively safeguard their brands, companies must adopt proactive strategies, including registering trademarks across relevant classes, monitoring virtual marketplaces for infringement, and ensuring compliance with applicable intellectual property regulations. By taking these measures, businesses can better position themselves to protect their trademarks and maintain brand integrity in the rapidly developing digital economy.

5.1 Enforcement Challenges for Trademark Protection of Virtual Goods

Enforcing trademark rights in relation to virtual goods presents significant difficulties because digital environments differ fundamentally from traditional markets. While trademarks are territorial in nature enforceable within the jurisdiction where they are registered, virtual marketplaces operate across borders, often outside the direct reach of national enforcement mechanisms. This creates several practical and legal obstacles for brand owners.

5.2 Unclear Legal Frameworks

One of the primary challenges associated with trademark protection for virtual goods is the absence of clear and consistent legal frameworks in many jurisdictions. Trademark laws in most countries were developed at a time when commerce largely involved physical products and services. Consequently, these laws do not always explicitly address how trademarks should apply to purely digital items such as virtual clothing, digital collectibles, or avatar accessories.

Because virtual goods are a relatively recent phenomenon, courts and trademark offices are still determining how existing legal principles should be applied to them. In some jurisdictions, trademark authorities have begun accepting applications that specifically cover virtual goods, often categorizing them as downloadable digital products. For example, trademark offices such as the United States Patent and Trademark Office, the European Union Intellectual Property Office, the UK Intellectual Property Office, and the China National Intellectual Property Administration have issued guidance notes or accepted trademark applications relating to virtual goods and

services in digital environments.[8] In many cases, these offices classify such goods under Class 9, which covers downloadable digital files and software.

However, despite these developments, there is still a lack of uniform global standards regarding the treatment and classification of virtual goods. This inconsistency can create uncertainty for businesses seeking trademark protection across multiple jurisdictions, particularly where digital markets operate globally while trademark rights remain territorially limited.

5.3 **Classification Difficulties**

A primary challenge in trademarking virtual goods lies in classification. Trademark systems traditionally categorize marks according to goods or services in the Nice Classification, which was designed for physical products. Virtual goods do not always fit neatly into these categories.

In many jurisdictions, virtual goods are placed in Class 9, which covers downloadable digital products such as software and digital files. However, this classification may not adequately capture the full scope of virtual assets being developed, including in-game items, avatar skins, or digital collectibles. This can create uncertainty for businesses attempting to determine the appropriate class for protection, potentially leaving gaps in coverage that could be exploited by third parties.[9]

5.4 **Unauthorised Use of Trademarks**

The Metaverse is particularly vulnerable to unauthorised use of trademarks, counterfeiting, and misrepresentation. With avatars donning branded goods and services, deciphering the legal implications of these virtual products becomes a unique challenge.

In the case of *Hermès International v Mason Rothschild*,[10] Hermes sued the defendant for trademark infringement, dilution, and cybersquatting before the United States District Court for the Southern District of New York. Rothschild, a self-described fashion entrepreneur, created a digital art collection called “MetaBirkins,” using Hermès’ iconic “Birkin” trademark. He sold non-fungible tokens (NFTs) associated with the collection, initially featuring a digital image of a foetus in a transparent Birkin handbag. Hermès,

8 Georgina Hey, Isobel Taylor, ‘Trade Marks in the Virtual World: Is your Business Well Meta-Versed in Emerging Technology?’ available at <https://www.nortonrosefulbright.com/en/knowledge/publications/a7c50ebd/trade-marks-in-the-virtual-world> accessed on 8th March 2026.

9 *Ibid*.

10 No. 22-CV-384-JSR, 2023 WL 1458126 (S.D.N.Y. Feb. 2, 2023).

renowned for its luxury leather goods, including the Birkin handbag, claimed that Rothschild's project misled consumers and infringed on its trademark rights.[11]

Similarly, in *Nike, Inc. v. Stockx LLC,*[12] Nike filed a lawsuit against StockX for trademark infringement related to StockX's sale of NFTs representing Nike's trademarked sneakers stored in StockX's "vault." The dispute expanded to include challenges to the authenticity of products on StockX. Nike revealed that a collector bought 38 pairs of sneakers from StockX, later discovering they were counterfeit. Nike sued StockX for using its trademarks in Non-Fungible Tokens (NFTs) and raised concerns about fake products.

5.5 **Risk of Consumer Confusion**

Unauthorized use of well-known brand marks in virtual marketplaces can create significant consumer confusion. Digital products bearing established trademarks sold or distributed without the brand owner's consent may lead consumers to believe the items are officially affiliated with the brand.

Such confusion can harm the brand's reputation and dilute its trademark value, undermining years of brand-building efforts. It also raises the question of whether traditional trademark remedies are sufficient to protect digital consumers from misleading associations.

5.6 **Proving Trademark Use**

In many jurisdictions, maintaining a trademark registration requires demonstrating actual use of the mark in commerce. For virtual goods, proving use can be legally complex. Questions arise, such as whether offering digital items for download, displaying a mark within a virtual storefront, or licensing the mark in online environments constitutes sufficient "use."

This uncertainty can create additional barriers for businesses seeking to protect their marks and prevent challenges from competitors or third parties.

5.7 **Platform Governance Issues**

Finally, many virtual goods are traded within private platforms, such as gaming ecosystems or digital marketplaces. Enforcement of trademark rights in these contexts often depends on the platform's internal policies rather than formal legal systems.

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[11] De Penning and De penning, 'Trademark in Metaverse' available at <https://depenning.com/blog/trademarks-in-metaverse/> accessed on March 8th 2026.

[12] No. 1:2022cv00983 - Document 338 (S.D.N.Y. 2025).

While platforms may have mechanisms to address infringement, such as takedown requests or account suspensions, these remedies may not align fully with national trademark laws. Brand owners must therefore navigate both the legal system and platform-specific governance structures to safeguard their rights effectively.

6. Strategies for Protecting Trademarks in the Metaverse[13]

Given the emerging challenges associated with trademark protection in virtual environments, businesses must adopt proactive strategies to safeguard their brands in both physical and digital markets.

6.1 Register Multi-Class Trademarks

Businesses should consider registering their trademarks across multiple classes to cover both physical products and virtual goods or services offered in the Metaverse. In particular, companies may seek protection not only for their traditional goods but also for digital products under relevant classes such as Class 9, as well as technological and platform-related services under Class 42. Registering multi-class trademarks broadens the scope of protection and enables businesses to defend their brand identity across both physical and virtual environments, thereby reducing the likelihood of infringement and potential litigation.

6.2 Establish Clear Terms of Service

Developers and operators of Metaverse platforms should incorporate comprehensive trademark protection provisions within their Terms of Service agreements. These provisions should clearly outline the permitted use of intellectual property within the platform and specify the consequences of trademark misuse. Well-defined guidelines can help prevent unauthorized use of trademarks and provide a structured mechanism for addressing violations.

6.3 Continuous Intellectual Property Monitoring

Businesses should invest in systems that enable continuous monitoring and management of their intellectual property within virtual environments. Regular monitoring of digital marketplaces, gaming platforms, and other virtual spaces allows companies to detect potential infringements at an early stage. Early identification of

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[13] Davidson Uturu, Agboola Dosunmo, 'The Metaverse – Considering Trademarks and Brand Protection for Virtual Goods & Services' available at <https://www.mondaq.com/nigeria/trademark/the-metaverse-> accessed on March 8th 2026.

unauthorized uses can help businesses take timely action to protect their brand reputation and maintain control over their trademarks.

6.4 **Proactive Trademark Enforcement**

Effective trademark protection in the Metaverse requires active enforcement of intellectual property rights. Businesses should be prepared to respond promptly to instances of infringement by issuing cease-and-desist notices or pursuing appropriate legal remedies. Taking swift action against infringing parties helps preserve brand integrity and deters further unauthorized use of the trademark within virtual spaces.

By employing these measures, businesses can effectively navigate the complexities of trademark protection in the Metaverse, reduce legal disputes, and ensure their digital brand assets are safeguarded.

7. Conclusion

In conclusion, the emergence and growth of the Metaverse presents a paradigm shift in the realm of trademark protection. With its vast potential and complex challenges, a robust legal framework is essential. As the Metaverse continues to evolve, legal dynamics surrounding trademark protection will see unprecedented growth. Brands must adapt through multiclass registration, extending real-world trademarks, and proactive policing. It is imperative for brand owners and legal practitioners to remain vigilant and adapt to the ever-changing landscape of this virtual frontier to protect and uphold the integrity of trademarks effectively. The Metaverse offers opportunities and challenges, and it is incumbent upon stakeholders to navigate these complexities while safeguarding their intellectual property rights.

While the Metaverse presents significant commercial opportunities for businesses to engage with consumers in innovative ways, it also introduces new risks relating to brand misuse and infringement. Consequently, stakeholders including businesses, legal practitioners, regulators, and platform developers must work collectively to navigate these complexities and ensure that intellectual property rights remain adequately protected within the expanding digital ecosystem.

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