

UNITED STATES
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NFT's, blockchain, cryptocurrency and virtual goods

Registering trademarks for newer technologies

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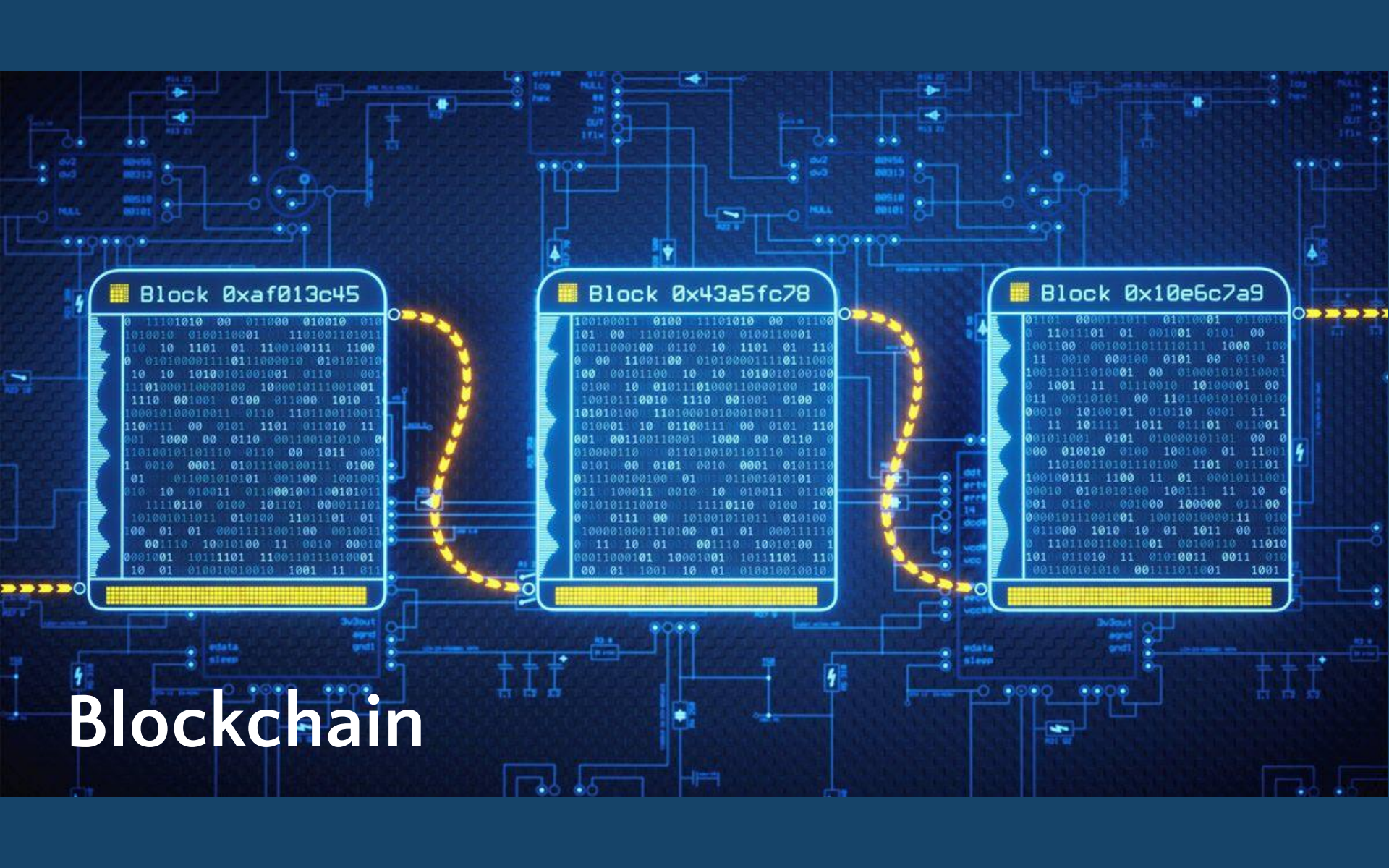
UNITED STATES
PATENT AND TRADEMARK OFFICE ®

What we're unscrambling

- Blockchain and cryptocurrencies
- NFTs (non-fungible tokens)
- Virtual worlds and goods



Photo: Brett Jordan via Unsplash



Block 0xaf013c45

```
0 11101010 00 011000 010010 010
1010010 0100110001 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
101001011011 010100 11011101 01
100 01 01 00011111001100 0010011
001110 10010100 11 0010 00010
0001001 1011101 110011011010001
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 01 01 0110010101 0
011 100011 0010 10 010011 01100
0010101110010 011110110 0100 101
0 0111 00 10100101011 010100
1000010001110100 01 01 000111110
0 11 10 01 001110 10010100 1
00011000101 10001001 10111101 110
00 01 1001 10 01 010010010010
```

Block 0x10e6c7a9

```
01101 0000111011 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 010100 0001 11 1
1 11 101111 1011 011101 011001
001011001 0101 01000010101 00 0
000 010010 0100 100100 01 11001
110100110101110100 1101 011101
100100111 1100 11 01 00010111001
00010 0101010100 100111 11 10 0
001 0110 001000 100000 011100
000010111001001 10010010000111 010
011000 1010 10 01 1011 00 100
0 1101100110011001 00100110 11010
101 011010 11 01010011 0011 010
001100101010 001111011001 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

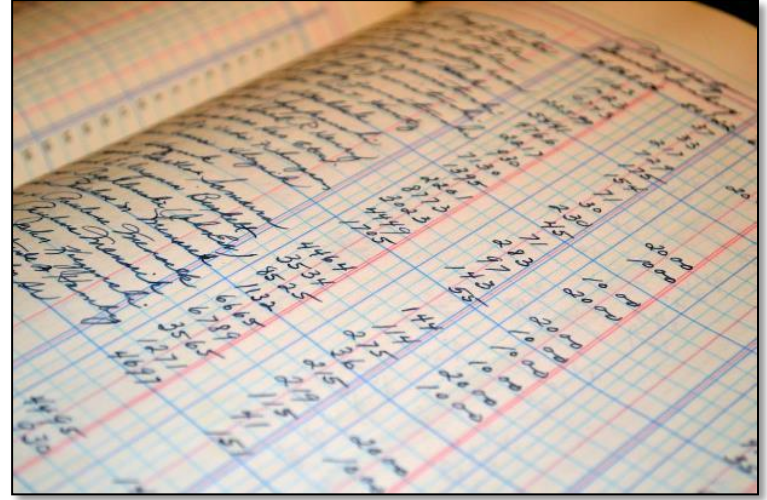
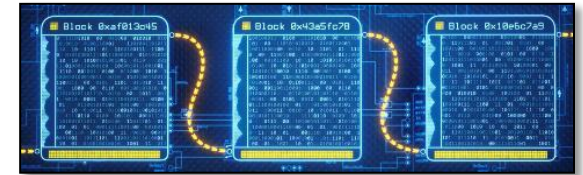


Photo: Chris Pastrick via Pixabay



Sample identifications (IDs) featuring “blockchain technology”

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!**

Blockchain technology: A closer look

Class	Acceptable IDs	Acceptable IDs incorporating “blockchain technology”
9	Downloadable software for inventory management	Downloadable software for blockchain-based inventory management
35	Compiling indexes of information	Compiling indexes of information using blockchain technology
36	Payment verification services	Blockchain-based payment verification services
36	Cryptocurrency exchange services	Cryptocurrency exchange services featuring blockchain technology

These identifications are acceptable without the mention of blockchain.

Mark in action:

A specimen of use

Mark



(no color claim)

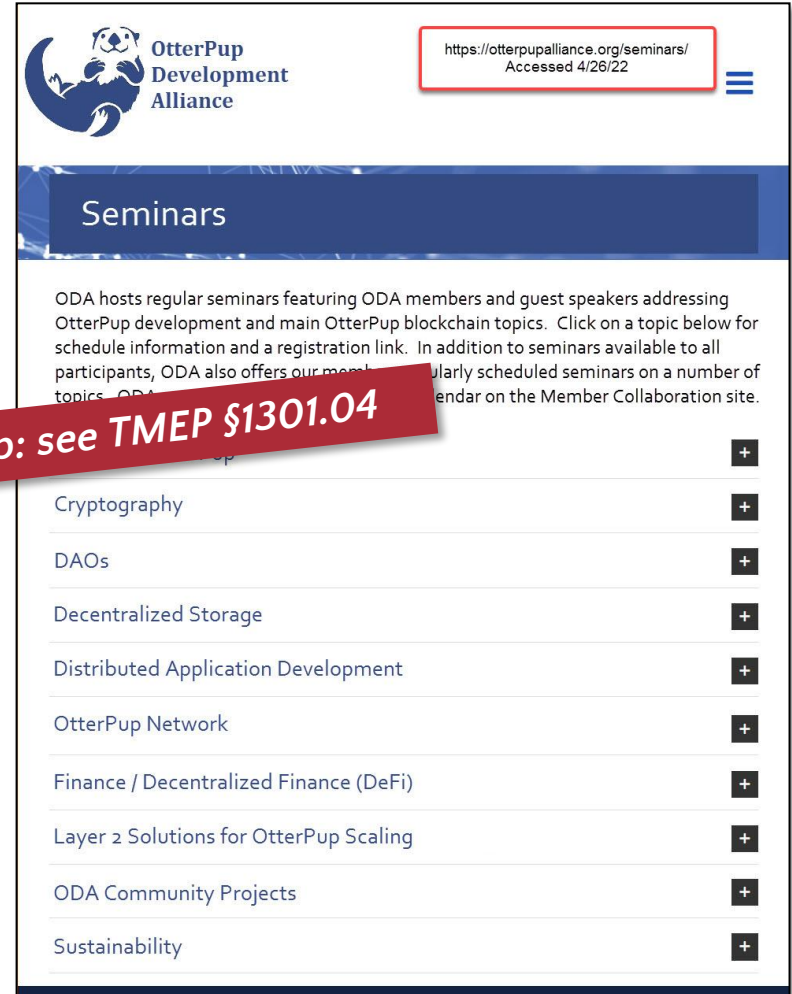
ID

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

Specimen description

Our seminar overview page

✓ Practice tip: see TMEP \$1301.04



The screenshot shows the OtterPup Development Alliance website. At the top left is the logo, and at the top right is a URL bar showing <https://otterpupalliance.org/seminars/> with the text "Accessed 4/26/22". Below the header is a blue banner with the word "Seminars". The main content area contains a paragraph about ODA seminars and a list of topics, each with a plus icon to its right. The topics listed are: Cryptography, DAOs, Decentralized Storage, Distributed Application Development, OtterPup Network, Finance / Decentralized Finance (DeFi), Layer 2 Solutions for OtterPup Scaling, ODA Community Projects, and Sustainability.

Topic	Action
Cryptography	+
DAOs	+
Decentralized Storage	+
Distributed Application Development	+
OtterPup Network	+
Finance / Decentralized Finance (DeFi)	+
Layer 2 Solutions for OtterPup Scaling	+
ODA Community Projects	+
Sustainability	+

Knowledge check: Blockchain

Is this ID acceptable?

NO

Downloadable blockchain software

YES

“Downloadable computer software for accessing, reading, and tracking information in the field of {indicate subject matter, e.g., financial transactions} on a blockchain,” in Class 9

TMEP section 1402.03(d)



Knowledge check: Blockchain

Is this ID acceptable?

NO

Blockchain services, namely, providing a digital token for use by members of an online community via a global computer network

TMEP section 1402.03(d)



Knowledge check: Blockchain

NO

Blockchain services, namely, providing a digital token for use by members of an online community via a global computer network

YES

“Provision of an online marketplace, using blockchain technology, for buyers and sellers of downloadable digital art images authenticated by non-fungible tokens (NFTs),” in Class 35

YES

“Cryptocurrency exchange services featuring blockchain technology,” in Class 36



Cryptocurrency



Cryptocurrency

- The source of its value
- More than just Bitcoin: Crypto coins and crypto tokens
- Not “tokens of value” (deleted from ID Manual)

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
- Many uses: can represent monetary value or an object, or grant access/privileges
- *E.g.*, Ether (a.k.a. Ethereum) is used to pay for transactions and computation time on the Ethereum platform

Sample IDs featuring “cryptocurrency”

9: Cryptocurrency
hardware wallets

9: Downloadable computer software for managing
and verifying cryptocurrency transactions on a
blockchain

36: Cryptocurrency
exchange services

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

42: Electronic storage of
cryptocurrency for others

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

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

Financial services related to cryptocurrency

Class	Acceptable IDs	Acceptable IDs incorporating “cryptocurrency”
36	Financial securities exchange services	Cryptocurrency exchange services
36	Processing of credit card payments	Cryptocurrency payment processing
36	Electronic financial trading services	Cryptocurrency trading services
36	Financial investment brokerage	Financial brokerage services for cryptocurrency trading

Financial services involving cryptocurrency are analogous to financial services involving money.

Software and hardware related to cryptocurrency

Class	Acceptable IDs	Acceptable IDs incorporating “cryptocurrency”
9	Computer hardware	Cryptocurrency hardware wallets
9	Downloadable computer software for managing and verifying financial transactions	Downloadable computer software for managing and verifying cryptocurrency transactions on a blockchain
42	Providing on-line non-downloadable computer software for managing and verifying financial transactions	Providing on-line non-downloadable computer software for managing and verifying cryptocurrency transactions on a blockchain

Cryptocurrency may be relevant when describing the function of computer software and hardware goods or services.

Advisory, information, and consultation services related to cryptocurrency

Class	Acceptable IDs	Acceptable IDs incorporating “cryptocurrency”
36	Financial consultancy	Financial consultation in the field of cryptocurrency
45	Legal information services	Legal information services in the field of cryptocurrency

Cryptocurrency is not an acceptable subject matter of advisory, information, or consultation services on its own.

TMEP §§1401.02(a), 1402.11(b), and 1402.11(e).

ID Manual changes related to cryptocurrency: Financial services

Deleted

“Financial services, namely, providing a virtual currency for use by members of an on-line community via a global computer network,” in Class 36



“Downloadable virtual reality game software featuring crypto tokens for use in online virtual worlds,” in Class 9



“Providing online virtual reality game services featuring crypto tokens for use in virtual worlds,” in Class 41

TMEP 1401.10 et seq.



ID Manual changes related to cryptocurrency: On-line communities

Deleted

“Financial services, namely, providing electronic transfer of a virtual currency for use by members of an on-line community via a global computer network,” in Class 36



“Electronic transfer of virtual currencies,” in Class 36

TMEP 1401.10 et seq.



ID Manual changes related to cryptocurrency: Tokens of value

Deleted “Issuance of tokens of value,” in Class 36



“Issuing pre-paid vouchers exchangeable for goods or services,” in Class 36



“Issuing pre-paid vouchers exchangeable for {indicate goods or services, e.g., clothing, restaurant services,” in Class 36

TMEP 1401.10 et seq.



Mark in action: A specimen of use

Mark

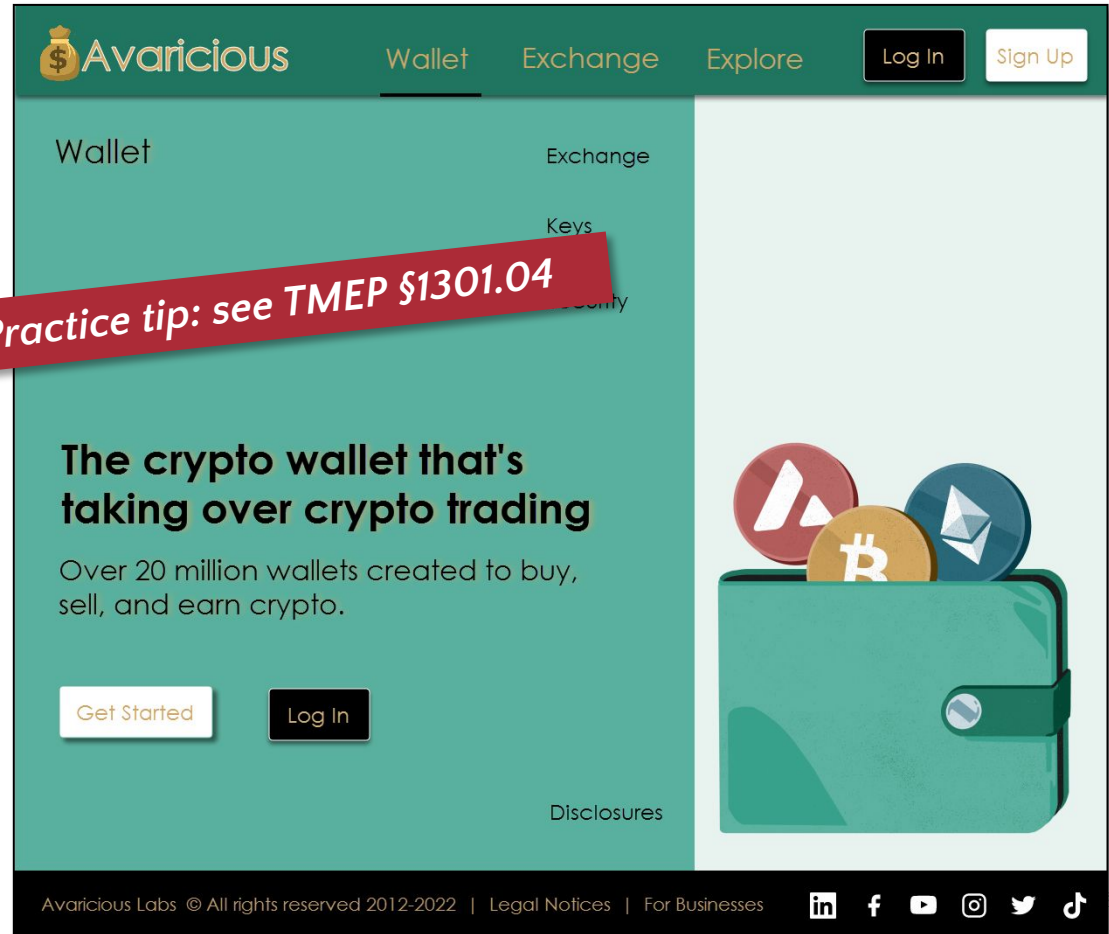
AVARICIOUS (std. char.)

ID

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

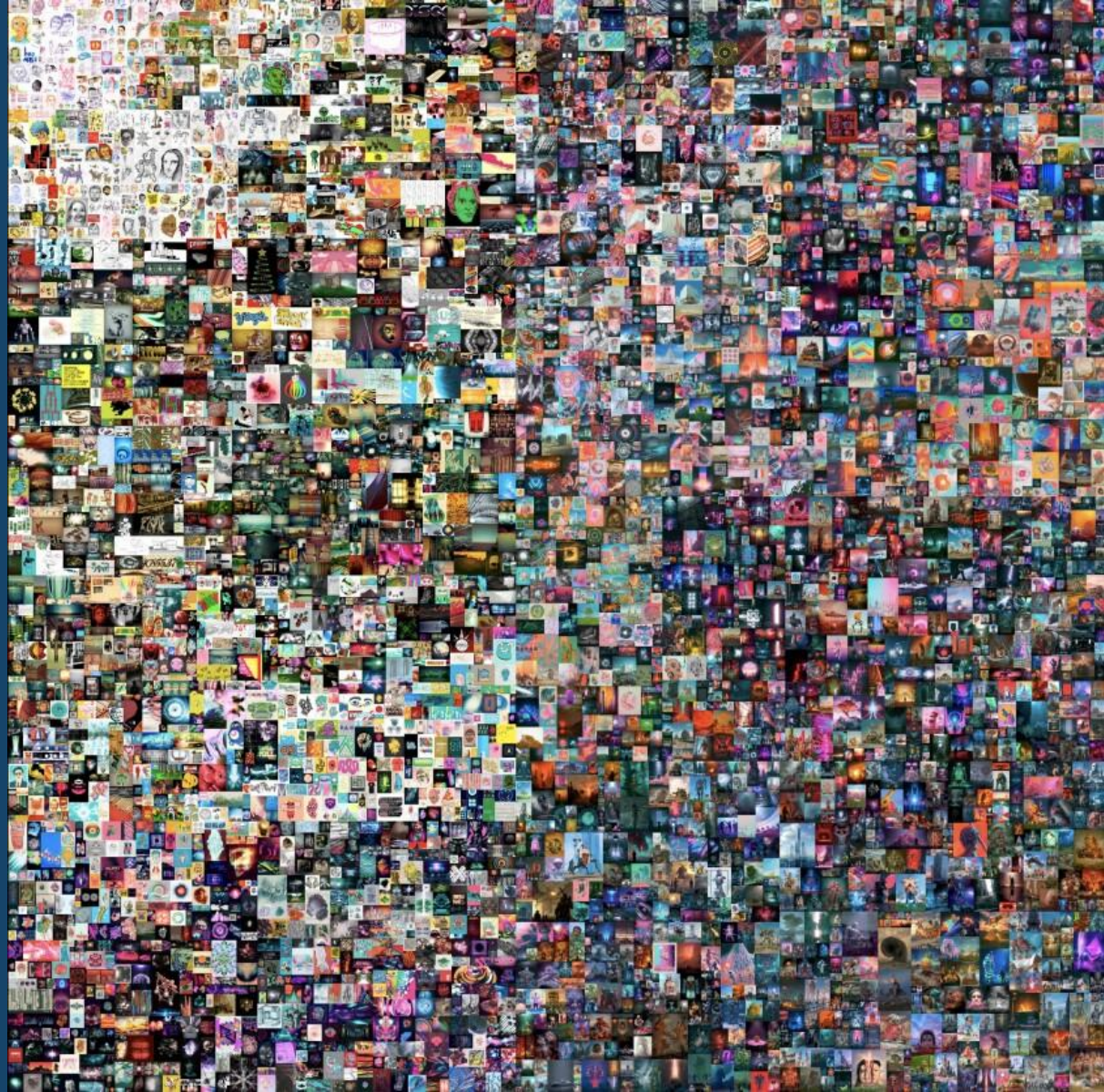
Specimen description

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



Beeple's *Everydays*:
The First 5000 Days

NFTs



NFT = Non-fungible token

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



Sample IDs featuring “NFTs”

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**
(NFT's)

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

Specify the items authenticated by non-fungible tokens.

IDs featuring NFTs: A closer look

Class	Acceptable IDs	Acceptable IDs incorporating “authenticated by NFTs”
9	Downloadable image files containing {indicate content or subject matter}	Downloadable image files containing {indicate subject matter or field, e.g., trading cards, artwork, memes, sneakers, etc.} authenticated by non-fungible tokens (NFTs)
9	Downloadable music files	Downloadable music files authenticated by non-fungible tokens (NFTs)
42	On-line retail store services featuring {indicate field or type of goods}	Online retail store services featuring downloadable digital {indicate type of downloadable digital goods, e.g., art images, music, video clips, etc.} authenticated by non-fungible tokens (NFTs)

Acceptable without mention of “authenticated by NFTs.”

IDs featuring NFTs: Crypto or digital collectibles

<u>NOT</u> Acceptable IDs	Acceptable ID (definite and properly classified)
Downloadable crypto collectibles authenticated by NFTs	Crypto collectibles in the nature of downloadable image files of {indicate subject matter, e.g., trading cards, sneakers, etc.} authenticated by non-fungible tokens (NFTs) in Class 9
Downloadable digital collectibles authenticated by NFTs	Digital collectibles in the nature of downloadable audio recordings in the field of {specify subject matter, e.g., music, poetry, etc.} authenticated by non-fungible tokens (NFTs) in Class 9

Indicate the type of item and field/subject matter.

Knowledge check: NFTs

Is this ID acceptable?

NO

Retail store services featuring NFTs

YES

“Retail store services featuring downloadable digital art images authenticated by NFTs,” in Class 35

Knowledge check: NFTs

Is this ID acceptable?

NO

Downloadable image files of accessories authenticated by non-fungible tokens (NFTs)

YES

Downloadable image files of clothing accessories, namely, {specify type, e.g., sunglasses, jewelry, etc.} authenticated by non-fungible tokens (NFTs) in Class 9



Mark in action:

A specimen of use

Mark

CRYPTOPURSLEYS (std. char.)

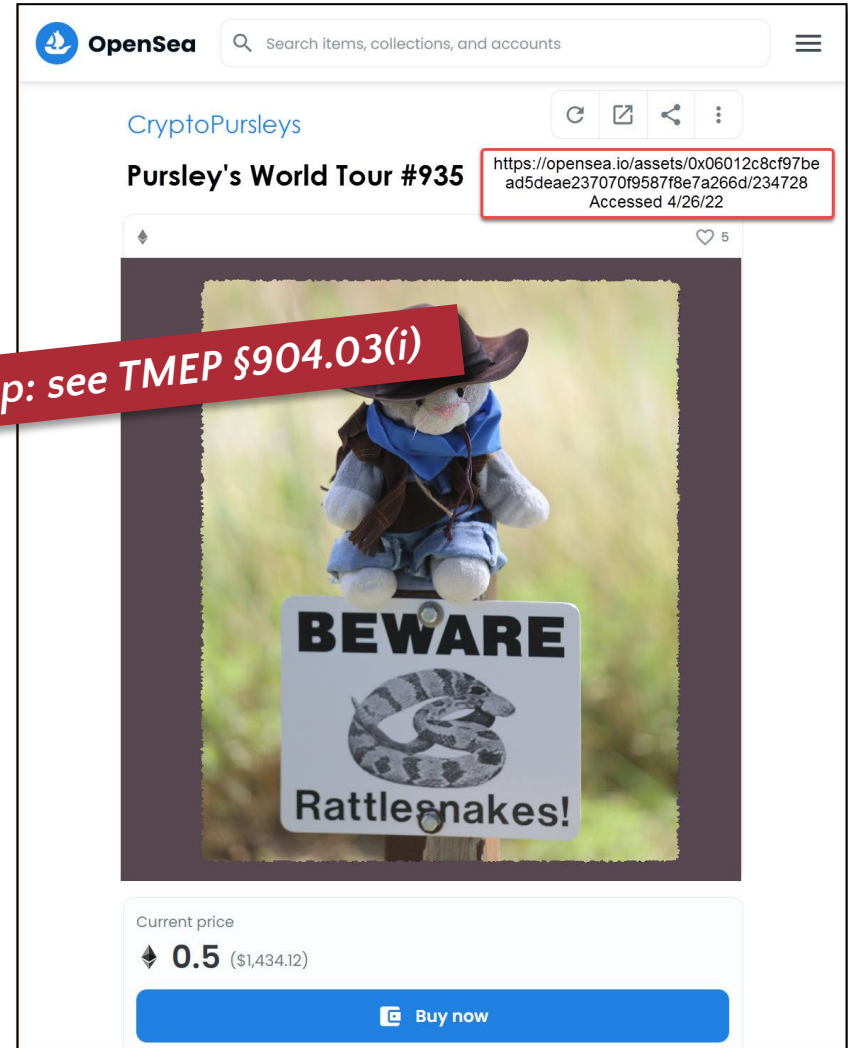
ID

Downloadable image files containing artwork authenticated by non-fungible tokens (NFTs), in Class 9

Specimen description

NFT #936, from a series of 1000, for sale on OpenSea; upon purchase, the buyer can download the image

✓ Practice tip: see TMEP §904.03(i)





Screenshot of Decentraland,
courtesy of *The Sun*

Virtual living

Virtual worlds

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

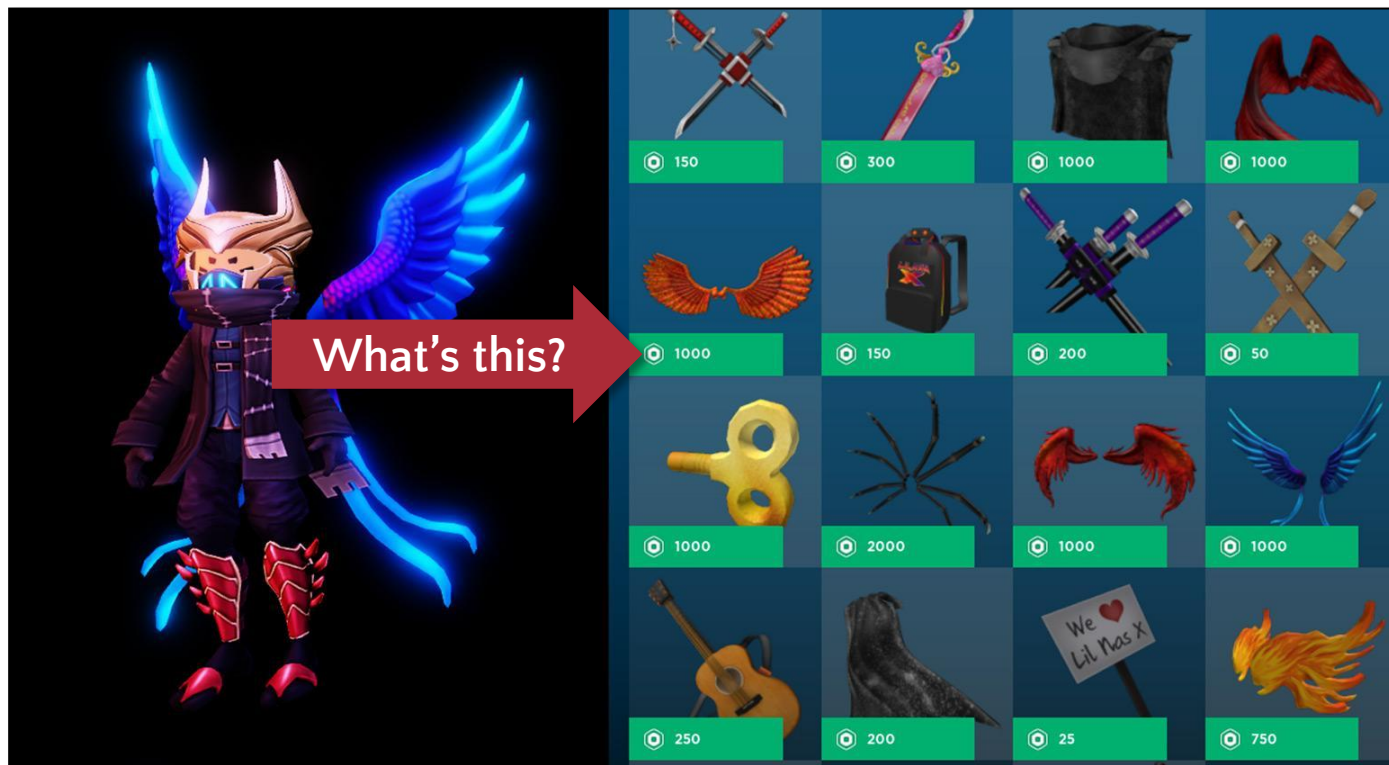
Screenshot of *Horizon Workrooms*, Meta



Screenshot of
Roblox, Roblox
Corporation

Virtual goods

- Why?
- How?



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

Sample IDs featuring “virtual goods”

9: Downloadable **virtual goods** in the nature of image files of {specify type, e.g., sunglasses, jewelry, etc.} for use in online 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 goods** {indicate, e.g., furniture, etc.} for use in virtual environments created for entertainment purposes

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

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

IDs featuring “virtual goods”

Class	Acceptable ID
9	Downloadable virtual goods in the nature of image files of clothing accessories , namely, {specify type, e.g., sunglasses, jewelry, etc.} for use in online virtual worlds
9	Downloadable virtual goods in the nature of image files of combat game accessories , namely, {specify type, e.g., swords, explosives, etc.} for use in online virtual worlds
42	Downloadable computer game software featuring virtual goods , namely, {indicate goods, e.g., furniture, jewelry, sunglasses, etc.} for use in online virtual worlds

Type of virtual goods must be sufficiently identified.

Knowledge check: Virtual goods

Is this ID acceptable?

NO

Downloadable virtual goods, namely, image files featuring images for use in online virtual worlds

YES

Downloadable virtual goods, namely, **images files of clothing** for use in online virtual worlds in Class 9

Knowledge check: Virtual goods

Is this ID acceptable?

NO

Downloadable virtual goods in the nature of image files of accessories for use in online virtual worlds

YES

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



Mark in action: A specimen of use

Mark

JAX (std. char.)

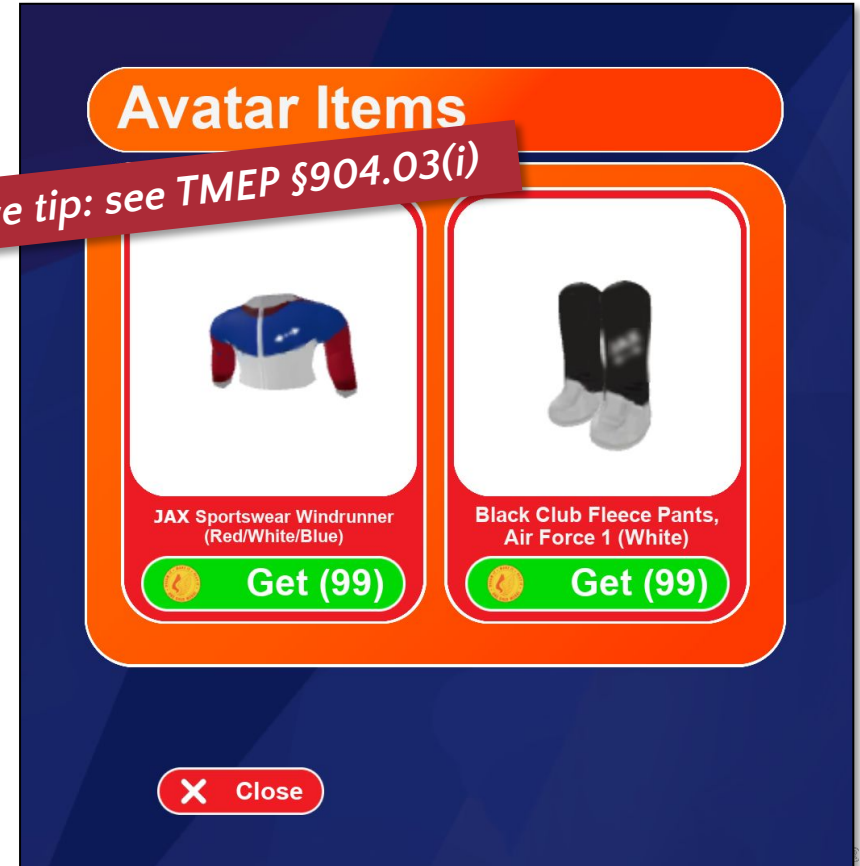
ID

Downloadable image files containing virtual goods in the nature of shirts, pants, and shoes for use in 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 and section 2(d)

- Likelihood of confusion refusals are based on:
 - Evidence of commercial relatedness between the real and virtual goods
 - Similarity of the marks
- Emerging technology:
 - USPTO is monitoring market and 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

Screenshot of Harrod's virtual Dior Beauty store

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

Sample IDs for virtual stores

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

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

Mark in action: A specimen of use

Mark

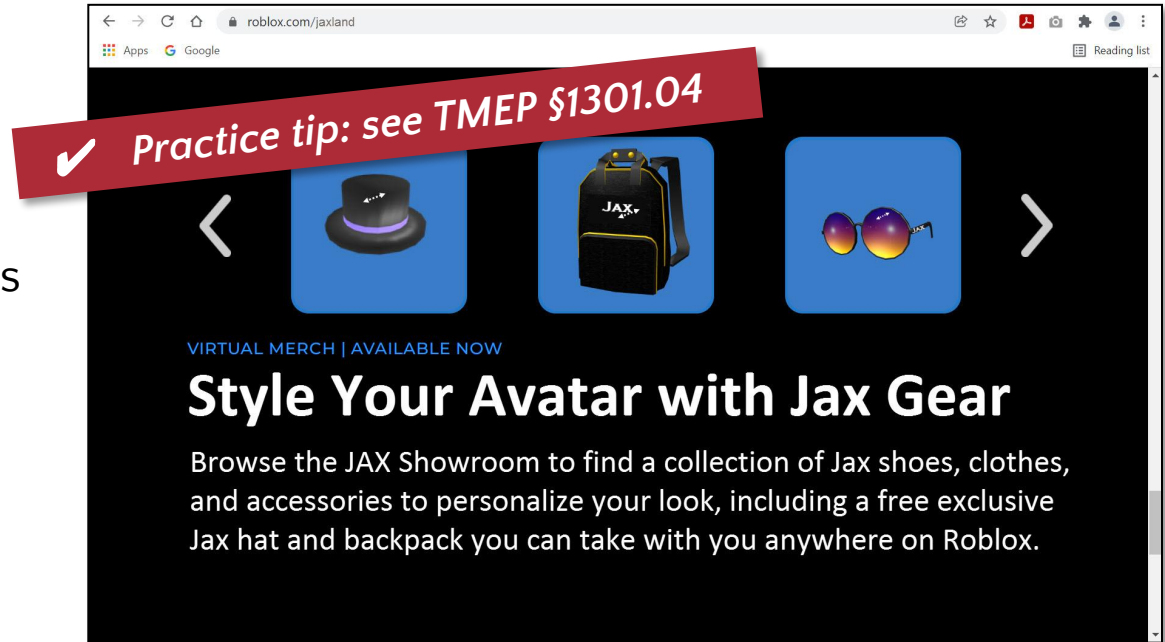
JAX (std. char.)

ID

On-line 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



General ID reminders

- Remember:
 - Identifications may not be amended to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended.
 - §44 and §66(a) applications are also limited by the scope of the goods and/or services in the foreign registration and international registration.
 - The classification of goods and/or services in applications filed under §66(a) cannot be changed from the class assigned by the International Bureau.

TMEP §1402.06 et seq., TMEP §1402.01(c), and §1904.02(b).



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