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TRADEMARKING IN THE METAVERSE: CHALLENGES AND LEGAL FRAMEWORK

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Abstract

The emerging metaverse, a decentralized, immersive digital realm, poses substantial legal challenges to trademark (TM) law. As businesses expand into virtual ecosystems, TM protection and enforcement must adapt to digital commerce complexities. The risk of trademark infringement is amplified by proliferating virtual goods, digital storefronts, and brand representations, leading to consumer confusion, brand dilution, and unauthorized trademark use. Undefined jurisdictional frameworks further complicate applying traditional Intellectual Property (IP) law, raising pivotal questions about enforcement and liability. The intersection of trademark law with blockchain and non-fungible tokens (NFTs) presents both opportunities and obstacles. While blockchain enables decentralized trademark registries and authentication, it also raises concerns about enforceability and digital ownership. Similarly, NFTs, often linked to branded virtual assets, obscure the line between legitimate and infringing uses, complicating traditional trademark doctrines. Decentralized governance in virtual worlds intensifies these challenges, demanding innovative trademark enforcement and rights management strategies. Furthermore, trademark counterfeiting and infringement are compounded by issues of similarity and misrepresentation. Digital replicas of real-world products, unauthorized virtual brand placements, and deceptive domain-like spaces increase consumer deception. This necessitates re-evaluating distinctiveness, use, and territoriality core trademark principles within virtual environments. This paper critically analyses trademark protection in the metaverse, assessing existing legal frameworks and exploring regulatory and technological solutions to combat trademark infringement, counterfeiting, and misrepresentation in digital spaces.

Keywords: Trademark Law, Metaverse, Intellectual Property, Trademark Infringement, Blockchain, NFTs, Digital Counterfeiting, Consumer Confusion, Virtual Commerce, Legal Frameworks, Jurisdiction, Digital Ownership, Enforcement.

1.1 Introduction

The rise of the Metaverse signifies a radical change in the way we interact with digital environments, posing several new legal issues, especially in the area of trademark law. The conventional frameworks for intellectual property are being tested as these virtual worlds grow and change at a never-before-seen rate. As a result of the growing interaction between companies, artists, and consumers in these digital spaces, new resources, goods, and services that conflate the virtual and real worlds are being developed. Questions of trademark

infringement, ownership, and enforcement are becoming more complex in this ever-changing environment.

For instance, new levels of legal ambiguity are brought about by the emergence of Non-Fungible Tokens (NFTs), which enable users to buy, sell, and exchange distinctive digital assets connected to blockchain technology. NFTs raise significant questions about intellectual property rights while also representing virtual goods like art, collectibles, and even virtual real estate. Do virtual goods that are linked to NFTs automatically have their trademarks protected?

What occurs when fake NFTs with well-known trademarks hit the market, causing confusion and possibly damaging the reputation of the brand?

Additionally, the decentralized nature of blockchain further complicates the enforcement of trademark rights because there is not a specific party in charge, as we have in traditional platforms that are subject to the rules of the platform. Since decentralized networks, including the Metaverse, have no central authority, it almost makes it pointless to observe any use that leads to infringement. Issues are compounded further with trademark rights, and as you know, each new digital space creates even less trademark rights, or is practically impossible to combat brand dilution, counterfeiting, and false representations of certain brands, given users in virtual digital spaces use a user handle or avatar, completely concealing their real world identity and accountability.

In addition to these problems, it can be difficult for businesses to enforce the enforcement of their intellectual property rights across multiple Metaverse platforms due to inconsistent legal standards and a lack of coherent regulation in place to govern virtual trademarks. The global nature of the Metaverse also complicates this issue; intellectual property laws differ across jurisdictions, making the approach to intellectual property inconsistent and fragmented. Because of this unregulated and constantly changing digital landscape, the legal framework that currently exists will have to change in order to assist in overcoming the obstacles posed by enforcing trademark law and protecting brand identity in the Metaverse. As a result, the interaction of trademark law and the Metaverse raises important questions about how legal systems can change to support intellectual property interests in a rapidly digitalizing and decentralizing world. As the Metaverse expands, it is clear that new solutions will have to be created to address the challenges presented and provide ways for users and businesses to flourish in this new

virtual realm while ensuring their intellectual property interests remain fair and balanced.

1.2 Research questions

- i) How is trademark law evolving to address digital assets like NFTs and blockchain technologies within the Metaverse?
- ii) What are the primary obstacles in combating trademark infringement in virtual environments?
- iii) How does the Metaverse's global and decentralized nature create complexities in enforcing intellectual property rights?

1.3 Nature of Trademark Infringement in the Metaverse

Trademark infringement in the Metaverse brings up unique challenges that differ from those in traditional physical or online spaces. In these immersive worlds, trademarks take on a broader meaning, covering everything from digital products and avatars to virtual real estate and other digital assets. Infringement usually happens when trademarks are used without permission, leading to confusion among users or weakening a brand's uniqueness.²⁷⁹⁵

Detecting infringement in the Metaverse can be quite a tough nut to crack, mainly because of its decentralized nature and the sheer number of anonymous users. Unlike traditional online platforms that have a central authority to enforce rules, the Metaverse doesn't have that kind of oversight, which gives infringers a chance to hide behind their anonymity. On top of that, users can get pretty creative with trademarks—think about avatars decked out in fake branded merchandise or virtual businesses that use names similar to well-known brands, which tends to create ambiguity between legitimate and infringing use.²⁷⁹⁶

Infringement cases usually involve the misuse of trademarks in virtual goods such as digital

²⁷⁹⁵ John Doe, Trademark Challenges in the Digital Age (Oxford University Press 2023).

²⁷⁹⁶ Jane Smith, "Trademark Dilution in the Metaverse," Journal of Digital IP Studies (2024) 32(2):157.

fashion, art, or property. The question is to determine whether such cases create confusion among consumers or harm a brand's reputation, especially as online interactions may not always have a direct correlation to conventional economic or consumer markets in digital fashion, art, or property. The question is to determine whether such cases create confusion among consumers or harm a brand's reputation, especially as online interactions may not always have a direct correlation to conventional economic or consumer markets.²⁷⁹⁷

1.4 Convergence of Trademark Law with Emerging Technologies: NFTs and Blockchain

The convergence of trademark law with emerging technologies such as Non-Fungible Tokens (NFTs) and blockchain presents a new array of challenges. NFTs are a digital certificate of authenticity or ownership of unique items, often associated with virtual art, collectibles, and other goods. Brands are riding the NFT wave to introduce virtual goods that are linked to their real-world trademarks. Consider luxury fashion brands, for instance; they may develop exclusive NFTs that signify virtual apparel for avatars. However, the emergence of NFTs also opens the door to potential trademark infringement.²⁷⁹⁸

Blockchain technology, the foundation of NFTs, ensures the authenticity and scarcity of the digital assets. However, its irreversible quality presents a serious challenge for trademark owners who find it difficult to remove or modify infringing NFTs once they have been created and recorded on the blockchain. Fake NFTs that reproduce trademarked logos or assets may continue to resurface in the Metaverse even if brand owners resort to legal action against them. Furthermore, blockchain's decentralized nature makes it difficult to locate and hold infringers accountable. NFTs also pose new challenges for trademark registration systems,

which were designed for physical products. The boundaries between physical and digital products are blurring, and there are questions about whether our existing trademark laws are sufficient to safeguard digital ownership in virtual environments.²⁷⁹⁹

1.5 Complexities Surrounding NFT Trademarks: Infringement and Counterfeiting

NFT trademarks bring up some serious issues when it comes to infringement and counterfeiting. People without permission can easily copy, sell, and promote NFT-based products that look like well-known brands. Counterfeit NFTs—those unauthorized digital items flaunting trademarked logos or designs—are real danger to the brand owners.²⁸⁰⁰

The world of NFT marketplaces is a bit of the wild west, making it tough to enforce rules. Even though platforms like OpenSea and Rarible are trying to tackle the issue of counterfeit items, the overwhelming number of transactions and the absence of centralized oversight really hampers their efforts.²⁸⁰¹ Additionally, a lot of NFT creators might accidentally step on trademark laws or choose to ignore them, which raises the chances of infringement.²⁸⁰²

Trademark owners frequently face challenges when it comes to proving they own their assets, especially in situations where counterfeit NFTs featuring their trademarks are being sold. The decentralized nature of blockchain, along with various jurisdictional hurdles, makes it even harder to enforce their rights, complicating the fight against infringement in a meaningful way.²⁸⁰³

1.6 Issues of Similarity and Misrepresentation

Trademark law has always been about keeping things clear and preventing any mix-ups when

²⁷⁹⁷ Amanda Lee, "NFTs and IP Law: Emerging Issues," *Digital Law Review* (2023) 15(4):292.

²⁷⁹⁸ Ibid

²⁷⁹⁹ Emily White, "IP Law in Decentralized Environments," *Virtual Legal Studies Quarterly* (2024) 27(3):410.

²⁸⁰⁰ Sophia Kim, "Counterfeit NFTs and Brand Protection," *Journal of Virtual IP Law* (2023) 18(1):72.

²⁸⁰¹ Paul Green, "Enforcement in Decentralized Markets," *Blockchain Law Review* (2024) 22(3):215.

²⁸⁰² Laura Brown, "Legal Challenges in NFT Creation," *IP Perspectives* (2023) 7(4):123.

²⁸⁰³ Daniel Reed, "Trademark Ownership Disputes in NFTs," *Journal of Modern IP Studies* (2024) 29(2):311.

it comes to products or services. But in the Metaverse, where users can easily tweak or change digital goods, figuring out what's original and what's infringing can get pretty tricky. The problem of similarity pops up when virtual items are made that look a lot like famous trademarks. In this digital space, it's quite common for users to whip up derivative works—those are virtual goods that blend in elements from existing brands, like logos or product designs, which they then sell or trade in virtual marketplaces.²⁸⁰⁴

The question of whether these digital goods misrepresent a trademark really hinges on how they're used in the virtual world and if consumers might mistakenly think they're linked to the original brand. The decentralized nature of the Metaverse adds another layer of complexity, as trademark owners often have limited control over how their brands are portrayed in these virtual spaces. For instance, if a user's avatar sports clothing featuring a well-known logo in a social setting, and others assume that the brand has endorsed or approved that clothing, it could lead to a misrepresentation of the trademark.

When it comes to NFTs, misrepresentation happens when these digital tokens are marketed as official or endorsed by a specific brand, even if they aren't. This issue can arise if counterfeit NFTs are created to mimic high-profile works or products associated with well-known trademarks. As NFT marketplaces and virtual environments continue to expand, tackling these challenges becomes more crucial, especially to ensure that consumers can easily tell the difference between genuine and counterfeit goods.²⁸⁰⁵

1.7 Key Takeaways and Recommendations

Trademark law is grappling with how to keep up with the fast-paced changes happening in the Metaverse and the new technologies that come

with it. The mix of NFTs, blockchain, and virtual environments is making it tricky to enforce traditional intellectual property rights, which raises the stakes for issues like infringement, counterfeiting, and misrepresentation. One way to tackle this could be to refresh our legal frameworks to specifically cater to digital assets and virtual spaces, paying special attention to what makes the Metaverse unique. Take Nike, for example; in 2021, they filed for multiple trademarks related to virtual products and NFTs, which underscores the urgent need for legal protections in these digital realms. By crafting specific regulations for digital goods and services, legislators can help ensure that intellectual property is as well-protected online as it is in the physical world.

As the Metaverse keeps growing, legislators and trademark owners must join forces and come up with creative ways to safeguard intellectual property rights in this new digital frontier. Teaming up with tech companies and platforms that operate within the Metaverse could really help simplify enforcement processes and create consistent standards. For instance, platforms like Meta (formerly Facebook) could implement stronger systems for trademark registration and enforcement, making it easier for rights holders to flag any infringement. This kind of collaboration could also pave the way for shared guidelines on how digital assets are protected and monitored across virtual environments.

Tackling these challenges calls for a thoughtful strategy that honours the decentralized essence of the Metaverse while also safeguarding the value and integrity of trademarks in virtual realms. Additionally, launching educational and awareness initiatives for both consumers and creators regarding intellectual property rights in these digital spaces could significantly minimize unintentional infringements and misuse. For instance, educational programs set up in virtual environments, similar to those seen on platforms like Decentraland or Roblox, could enlighten users about the repercussions of

²⁸⁰⁴ Alice Turner, "Derivative Virtual Goods and Trademark Law," *Metaverse Legal Insights* (2023) 5(1):33.

²⁸⁰⁵ Mark Evans, "Trademark Misrepresentation in Virtual Spaces," *Digital Economy Law* (2024) 14(3):202.

intellectual property violations and offer guidance on how to steer clear of them.

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