

Metaverse, is the virtual-reality space in which users interact via computer-generated environment, something similar to what already exists on gaming platforms. It is a simulated digital environment that encompasses a network of 3D virtual worlds focused on social connection. Non-fungible tokens and their underlying technology have surged the market value of digital assets. From gaming to art and e-commerce, every industry has started to enter the metaverse sphere to explore the endless opportunities it has to offer.

There prevails a dual mindset of companies, where few are eager and contemplating offering goods and services to the public in the metaverse and few that rather wait it out and fully understand the implications that is to come by trading in the digital virtual market. While this battle is ongoing on one side, leading brands such as AJIO, WALMART, VOGUE, etc. have entered the virtual market and furthermore applied for trademark protection in India under Classes 9, 35 and 42. The classification of goods and services under the NICE Classification ranges from classes 1 to 34 for goods and 35 to 45 for services. Although, the underlying nature of goods/ services becomes secondary in this context and channel of distribution takes precedence. Thus, applications are being filed with relevant descriptions under class 9 - 'downloadable virtual goods, namely computer programs', class 35 – retail store services featuring virtual goods and class 42 – on-line non downloadable virtual goods and NFTs, respectively. Additionally, companies apply under class 36 for financial services, including digital tokens, for facilitating trade in the virtual marketplace. Based on the noticeable pattern, it is safe to assume that a separate bracketed category of 'virtual goods' and 'digital collectibles' has emerged.

The term 'digital product' has been used in commercial law but the term itself is not defined, leaving it open to interpretation.

- Policy regarding Foreign Direct Investment use the said term in the definition of 'E-commerce', which reads 'E-commerce means buying and selling of goods and services including digital products over digital & electronic network'. The rules further capture the definition of 'Marketplace based model of e-commerce' – that recognizes the platform that facilitates digital sale of goods and services.
- Consumer Protection (E-Commerce) Rules, 2020 provides rules regulating all goods and services bought or sold over digital or electronic network including digital products, including all models of e-commerce acting as a facilitator.

However, the Finance Act, 2022 defines 'virtual digital asset' as

(a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or

representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;

(b) a non-fungible token or any other token of similar nature, by whatever name called;

(c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify:

Provided that the Central Government may, by notification in the Official Gazette, exclude any digital asset from the definition of virtual digital asset subject to such conditions as may be specified therein.

Explanation.— For the purposes of this clause,—

(a) “non-fungible token” means such digital asset as the Central Government may, by notification in the Official Gazette, specify;

(b) the expressions “currency”, “foreign currency” and “Indian currency” shall have the same meanings as respectively assigned to them in clauses (h), (m) and (q) of section 2 of the Foreign Exchange Management Act, 1999.’

With advancement in technology and widening the marketplace horizon demands appropriate legislations, robust policies and other terms and licenses governing the transaction of goods and services in the metaverse and the limited rights that flow with it. Inevitably, the present invasion poses challenges to the trademark sphere such as, unauthorised use of trademarks, ownership, rights, jurisdiction, etc. If the trademark issues in the metaverse are handled without care, it may cause dilution and bring harm to the goodwill and reputation of the trademark owner accrued in the conventional market. By filing a trademark application under the aforesaid relevant classes, an entity should be able to enforce its rights in the metaverse as well.

We are hopeful that, as trademark offices and relevant forums receive applications/ disputes of such nature and are prosecuted/ adjudicated upon, a series of reasonably accepted standard practice is developed over a period of time which will act as a guideline and eventually find its place in respective legislation. This will encourage companies to come forward and join the digital virtual market.

## **CONTACT DETAILS:**

**Lynn Lazaro**, Partner

[lynn.lazaro@bgl.kochhar.com](mailto:lynn.lazaro@bgl.kochhar.com)

**Aparna Venkat**, Associate

[aparna.venkat@bgl.kochhar.com](mailto:aparna.venkat@bgl.kochhar.com)