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Trademarks in the Metaverse: Rethinking Virtual Property Rights under Indian IP Law

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The metaverse boom is transforming the conventional concept of commerce, engagement and brand recognition.With the blurriness of the boundaries between the physical and digital reality, which is manifested in such trends as virtual fashion, NFT goods, and immersive marketplaces, the concern is whether the current legal frameworks are sufficient to ensure the protection of intellectual property rights. In this paper, a critical analysis of the question of whether the law of trademarks in India, mainly regulated by the Trademarks, 1999 Act, offers adequate protection to brand rights in the metaverse will be discussed. The paper takes a doctrinal and comparative law approach and examines fundamental principles of trademarks, including a (use in the course of trade), (likelihood of confusion), (infringement) and (dilution), in both real and virtual environments. With landmark US and EU cases, such as Hermes, as drawing material. Rothschild, the paper notes how there is an increasing acceptance of the jurisprudence of virtual goods around the world and how India needs to catch up. The paper summarizes that the protection of the trademarks in the Indian law is of a foundation character, but it is not flexible and clear in the environment of the digital and virtual goods. Statutory interpretation and policy reconsideration must undergo a rethinking process to guarantee strong trademark protection in the metaverse.

Keywords: Metaverse, Trademarks, Virtual Goods, Digital Property, Intellectual Property Law, Infringement, NFT

The digital revolution brought by the 21st century has marshalled new realities that go far beyond new modes of communication and commerce. The convergence of augmented reality (AR), virtual reality (VR), and blockchain technologies has resulted in transformative development leading to the rise of the metaverse with an interactive digital environment.[1] The metaverse is now growing into an assiduous arena for economic and social activities and is no longer confined to gaming or niche tech communities.[2] There have been many initiatives taken in India, such as JioMart's virtual storefronts, NFT-based cricket collectables, and many other fashion labels that have launched digital twin apparel signals, resulting in a rapid transition into a new paradigm. The growth of consumers and creators operating in these virtual spaces is increasing at a fast pace, signifying the importance of brand identities and trademark protection; however, these have become more vital and simultaneously more complex.[3] The dawning digital frontier has demonstrated the presence of big fissures within the systems of legal construction that support intellectual property rights (IPR), namely trademarks. The Trademark Act of 1999 was conceived by assuming the goods to be tangible, physical, and affixed marks, but what happens when the goods are virtual, and marks exist only in the form of pixels or smart contracts? The questions of infringement, deceptive similarity, and goodwill arise when, in the metaverse, an avatar can wear a digital Louis Vuitton jacket and buy a virtual can of Coke; these questions are no longer hypothetical; they are now claimant and real. The major problem this article seeks to address is how the Indian trademark law is lacking in responding to the challenges posed by the metaverse. There exists a growing unease with applying the standard legal categories to these technologically flowing realities. In other applicable laws like in the United States (US) and the European Union (EU), enforcement of trademark-related issues in virtual worlds has already commenced, especially in the recent *Hermes* v *Rothschild (MetaBirkins)*[4] NFT case in the US, but Indian law is yet to discuss on the same. As this will not be sustainable in the long run, the Indian courts or the regulatory bodies will soon have to address these

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major questions: Does a trademark under Indian law constitute virtual use? Can there be infringement by a virtual good on a real-world registered trademark? Can there be a pre-emptive registration by a brand for metaverse use? The principal aim of the article is to manoeuvre through questioning the philosophical strains of the Indian trademark law. There are various important terminologies used in trademark law, such as 'distinctiveness,''infringement', 'likelihood of confusion,' and many more that this article will examine in the context of virtual goods and NFT-based assets.

The second question that the article will address is whether the language used in the statutes and the interpretation of traditional Indian IP law are sufficient to regulate the development of virtual platforms or whether there is a need for judiciary or legislative innovation. The third and most important purpose of this article is to propose a normative framework as to how India can rethink and work on virtual trademark rights with the help of comparative references, judicial guidance, and policy reforms. The methodology adopted in this is primarily doctrine and comparative analysis involving in-depth analysis of statutory provisions of Indian statutes, case law, and legal commentary, along with developments made in different jurisdictions like the US and the EU. Another goal of the article is to embrace practice in the industry and policy papers containing trends in trademark registration of virtual goods and metaverse services. The article does not stay solely in the domain of academic abstraction but it grounds to touch on the commercial and real-world technological application cases that are becoming globally evident and therefore the findings are actionable and timely.

Trademarks are not merely marks but are the symbols of goodwill, trust and identity, therefore, this article is not merely theoretical but addresses the blurred boundaries in the metaverse, where an imitation is just a click away, making the integrity of trademarks more vulnerable than ever.[5] India is one of the fastest-growing economies in the world; even in the digital sector, it is now booming. If the laws fail to give trademark protections to users, it will cause commercial confusion and regulatory paralysis. This article charts this uncharted territory and attempts to provide some light on a way forward in which Indian IP law is not merely reactive, but which is also visionary, and which is also in sync with best practices at an international level. India has not undertaken a systematic evaluation of its IP regime that is fit for the virtual world. The existing provisions under the Indian laws fail to recognize virtual goods or blockchain-verified assets. The NICE classification system has recently included terms such as downloadable virtual goods, but the authorities and quotes are yet to address the questions that revolve around the registry ability, infringement, proof of use, and jurisdiction in a metaverse economy.[6] Considering the growing digital world, the law should not merely catch up but also should anticipate.

The issue was also picked to be experienced by government reports. In the year 2022 and then in 2024, The Copyright office carried out a joint study with the patents and the Trademark office regarding NFTs. Their primary argument was that new legislation was not necessary immediately, but investigators had to have clear guidelines. The research proposed that in the case of cross-platform movement of digital goods the agencies must clarify how NFTs are to be categorized, how demonstrating usage functions and how justice can be administered. This was among the initial steps that involved solicitation of diverse brands, artists and academicians to culminate in a roadmap policy that the courts can employ in establishing strong precedents.[8]

Europe has already made an even firmer step by releasing guidelines in 2023 by the EUIPO that puts NFTs in Class 9 of the NICE Classification system. This was not a significant legal shift, although it helped businesses clearly understand how to register digital goods marks. This is viewed by many as a clever form of how an IP office can level the confusion created by waiting to have parliaments act instead of relying on instructions. In the example of India, where even the trademark office has not yet reached an unambiguous stance towards NFTs, this action demonstrates the extent to which a major change can be achieved through relative simplicity of administrative practises.[9]

A debate is beginning to be created through court cases also. The best-known one thus far is *Hermes* v *Rothschild* and sometimes referred to as the MetaBirkins case. A jury in the US determined in 2023 that digital "MetaBirkin" bags violated the rights of Hermes. The artist had scolded that it was dull creative remark, however, the NFTs viewed by the court were commercial items with potential to mislead consumers. Today, this case is a frequently conducted debate as it demonstrates how the digital world of expressive art, nevertheless, delineates on infringement when it is sold as a product.[10]

Comparative scholarship has further travelled in the direction of examining how the various countries are addressing them. An article of example was Marking the Metaverse of 2024 which compared the US, the EU, South Korea and Singapore. It discovered that every location is trying a diverse strategy: some are putting the onus of different agencies to provide the direction, others are straining outdated legislation in court, and still others are contemplating a new law. The monolithic information is that the best way is non-existent. Varying systems select various tools depending on its functionality in relation to them.

The investigation is also quite spindly in India. Most of the writings are by law firms, or brief policy papers. The Nishith Desai Associated (2023) report and the note by Vikram and Sood (2022) have made discussions regarding taxation rules, registry roblems and basic risks involved; however, they fail to talk about specific provisions of the Trademarks Act that could have application in the metaverse setting. Thus, although digital market is rampant in India, there is legal learning lagging.[11]

In all these texts there is one thing. This does not imply that trademark law should be discarded, but rather modified. The agencies must also be more explicit in the classification and use of digital; there must be a system of checks and balances, in addition, the courts must reconsider how the aspect of confusion and dilution would be applicable to the avatars and blockchain platforms.

Methodology

The paper analyses the Indian trademark law interpretation by teaching and contrasting how the law addresses issues of the metaverse. The doctrinal approach is quite suitable in this situation as the central assignment is to consider the Trademarks Act, 1999, and other applicable legislation with references to new business trends like the NFTs and virtual goods. It primarily analyses Section 2(zg), and Section 29, which constitute the meaning of use and infringement, and examines how such clauses could be applied in situations where the marks available exist only in digital form. The research major areas of focus rests on the legislations, case laws, registry documents, and they are also supported by the secondary documents like research articles, law reports and policy commentaries.[12]

Simultaneously, the paper takes a comparative approach. The four jurisdictions that were selected to take a closer look at include the United States, European Union, Singapore and South Korea. Each of these has been quicker than India to address the trademark issues related to the metaverse. The US has already generated great case law with the *Hermes* v *being* the most notable. Rothschild decision on MetaBirkins. The EU (via the EUIPO) has published specifications on categorising NFTs within the Nice system. As minor jurisdictions are as contributory and significant as they have accepted digital assets as intangible property, minor jurisdictions have also resolved disputes that include virtual goods and in-game assets. Taken collectively, these jurisdictions give contrasting examples that may prove useful in checking and correcting potential reforms in India.[13]

The paper gathers law materials, policy- and industry-driven materials in a single study. The discussion in the paper is primarily grounded on the statutes, case laws and official guideline; on the other hand, scholarly articles, reports and other documents are considered to provide the broader scope of understanding and criticism. Indian law firm reports, as well as publications by such other bodies as FICCI and NASSCOM are also consulted where the academic literature has not yet developed sufficiently since they provide insight into the way businesses and regulators are already reacting to digital marketplaces. The purpose of the paper is to provide a balanced approach that is both practical and academic in the present situation by means of a combination of the doctrinal approach to research and comparative sources.

This approach has obvious weaknesses. The meta financial courts of India have not determined trademarks yet, so domestic case law is scarce to act on. This implies that it would be predominantly analysed using statutory interpretation and foreign experience. The markets are greatly influencing and the technology that will lead to the markets have led to fast transition in this area hence what is considered as a use of confusion may mean the other way round in the future. These constraints are not ignored, yet they also validate the necessity of the comparative and futuristic approach. This is not aimed at giving ultimate solutions but merely to paint a concept that may be applied to Indian law as new controversies unavoidably occur.

Conceptual/ Doctrinal Foundations

The concept of Metaverse was a speculative concept which was only defined in science fiction, however, now it has moved to a complex, multifaceted digital framework. It is now

characterised by a convergence of consistent virtual environments where the users can transact and interact while exercising ownership over digital goods.[14]The combining elements of virtual reality, augmented reality and blockchain technology platforms have created a new landscape for interaction and commerce between humans. In a growing economy like India where digital evolution is occurring at a fast pace, the existence of the metaverse poses challenges concerning the protection of intellectual property rights.[15]

The metaverse comprises two kinds of platforms: centralised and decentralised platforms.[16] Meta's Horizon, Worlds, Roblox, and India'sJioVerse are some of the centralised platforms and are governed by single corporate entities retaining overarching control of user data, policies and asset rules.[17] These platforms tend to have restrictive terms of service since they are licensing the usage of digital assets and does not give complete ownership. Meanwhile, decentralised platforms such as The Sandbox and Decentraland are created based on blockchain technologies and managed by DAOs (Decentralised Autonomous Organisations).[18]These platforms offer more autonomy to the user compared to the current platforms because they could own, trade and monetise the digital assets via smart contracts and cryptocurrencies. This nature of decentralised platforms enables to creation of persistent economies while preserving digital scarcity and asset uniqueness through non-fungible tokens (NFTs).[1]

The sphere of digital assets digital assets in the metaverse is broad; it comprises NFTs, avatar skins, and virtual fashion, and digital real estate.NFTs are unique cryptographic tokens that delineate ownership of digital items; these items can be artworks, music files or even game-based goods.[19] Even public figures like Amitabh Bachchan and Salman Khan in India have ventured into NFT sales which have drawn widespread attention to the idea of digital ownership.[20]International brands like Nike and Gucci have also entered the metaverse, making the virtual fashion world grow rapidly.[21] In India, these trends are revealed digitally through showcases such as the Lakme Fashion Week. The virtual real estate has seen considerable investment across the world, with clothes being sold in millions of dollars' worth of land in the metaverse platforms. The tendencies are gaining ground also in India, but the legislative framework is not yet clear. Also, utility tokens and in-game items in games such as Fortnite, PUBG, and native games such as FAU-G consist of a significant part of digital assets.

Despite the blooming value and far-reaching use of virtual assets, India is yet to develop a consecrated and definitive framework for their recognition and protection.[22] The definition of "goods" is given under Section 2(7) of The Sale of Goods Act, 1930, which includes every kind of movable property but not money and actionable claims.[23] However, this definition is interpreted to apply only to tangible goods. But, in the case of *Tata Consultancy Services* v *State of Andhra Pradesh (2004)*, the definition of goods was expanded as it included software as goods in case it has the capability of being bought and sold. Even though this landmark judgment has opened the door for treating digital assets like NFTs as goods, the matter is not settled. The NFTs can only be found in a blockchain ecosystem since they are designed as unique. It is still a grey area as to whether they are qualified to come under the purview of "movable property" under Indian laws. The ambiguity does not restrict itself to the Sales of Goods Act, of 1930, but also extends to property laws such as the Transfer of Property Act, of 1882, and the Indian Penal Code, of 1860 (now Bhartiya Nyaya Sanhita, 2023), as they recognize only tangible goods, following the notions of corporeal property, leading to doctrinal vacuum in the legal framework.[24] For instance, it gives rise to an important question, such as could an unauthorized transfer of NFT constitute theft under Section 378 of the Indian Penal Code, 1860? India's Penal Code, 1860, defines theft by saying one must dishonestly take away a "movable property," but there is no certainty if intangible assets are included in this definition.

The Information Technology Act, of 2000, was constituted as a progressive statute for including cybersecurity and data protection but failed to conceptualize digital goods as property. Cybersecurity and data protection parts are helpful in cases of hacking or illegal access, except they do not consider the actual ownership of virtual items involved.[25]

Consumer protection is another field that is full of uncertainty. Though the Consumer Protection Act, 2019 explains goods and services, it does not discuss virtual property. Since more Indian users are buying and selling in the metaverse, the fact that the country has no relevant laws leaves them vulnerable to fraud, misrepresentation, and unfair trade.[26] Besides, most metaverse platforms' terms of service agreements have wide disclaimers that make it hard for users to

have enforceable rights. Unfortunately, consumers may lose their money and have no certain solution if their virtual assets are deleted, stolen, or cannot be accessed.

Studying how international law addresses and solves similar problems is beneficial. Different courts in the United States have given conflicting rulings about virtual property. In *Bragg* v *Linden Research (2017),* a second-life user, brought an action against the platform, claiming that it had stolen his virtual property.[27]As a result, people began to question the authority granted to owner-governing contracts and ownership rules in virtual worlds. Classifying NFTs and virtual assets for taxation by the Internal Revenue Service suggests that digital ownership is getting more formalized. GDPR in Europe views avatars and metadata related to a person's online activities as part of their identity, so it provides them with certain legal rights regarding their online presence.[28] But so far, questions about who controls digital assets have not been decided. Singapore and South Korea have decided to treat digital currencies as a type of intangible property in their laws and, thus, review them through their financial systems.[29] There are cases in South Korean courts where in-game items were the target of theft. The cases produced significant legal precedents regarding the recognition of games as serious industries.

Contrary to China, India is generally not involved in discussing these issues, despite having one of the fastest-growing digital markets. The fact that millions of Indians are using NFTs or taking part in decentralized finance and metaverse activities means the lack of a clear legal system is becoming more unacceptable. Governments should recognize in their laws that digital goods should be regarded as real property that can be owned and dealt with legally.

While making a conceptual framework for digital property, Indian lawmakers must acknowledge three vital differences. First, we need to tell the difference between the use of something and its ownership. Most often, rights are included in Terms of Service, which hinder the control and ability to transfer a user's creations. In addition to authority, ownership gives someone the ability to transfer, keep out others, and benefit from the ownership. They are generally included in NFTs with the help of smart contracts.[30] Next, it should be noted that custodial ownership and sovereign ownership are not the same thing. In a centralized platform, the assets are placed with the platform as the main custodian. Users on decentralized platforms are given the same sovereign ownership of their assets as in the real world. Next, Indian legislation should create a means to recognize the differences between items such as consumables, collectables, and utility tools when it comes to their legal status.

These gaps might be remedied by changing the Sale of Goods Act or creating a Digital Property Rights Act. It is important for the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), and the Ministry of Electronics and Information Technology (MeitY) to join forces to promote consistency. Digital assets must be viewed as a kind of property since Article 300A of the Indian Constitution ensures the protection of property rights.[31]

Doctrinal Analysis: Secction 2(ZG) and "USE"

Analysing the term "Use" in Virtual Spaces

Trademarks are mainly protected based on the idea of "use." Section 2(zg) of the Trademarks Act, 1999 states in Indian law that a trademark is a graphic symbol that distinguishes one person's goods or services from those of another.[32] Even though the term seems wide in scope, it was made to fit an offline, physical marketplace. Because of the metaverse and other innovations, the digital revolution now questions the old definition differently than before. How can one have a use when there is no business place, no packaging, no product to affix the mark on? Does that mean Nike's brand has been used 'in the course of trade' in India when an avatar buys a jacket with the Nike logo inside a virtual mall?

In this discussion, Section 2(zg) takes on special importance since it is combined with Sections 2(m) and 2(b), which explain the meanings of "mark" and "use."[33] The courts in India usually understand "use" to mean use that affects the land or issues that appear in a physical area. It gets tricky to define these terms in the metaverse because goods are digital and most experiences happen through visual, interactive, or auditory senses.[34]Although a virtual 3D t-shirt with a luxury brand does not have the usual graphic form, it still provides the same benefits linked to brand origin, reputation, and goodwill for buyers. For this reason, "use" should be defined in a way that includes showing the brand in virtual shops, joining brand logos to NFTs, and using words or hand gestures to display a brand in the XR (Extended Realities) world.

Limitations of Section 2(ZG)

According to section 2(zg), graphic representation is required for a mark to be given protection. Although the definition "graphical" covers 2D options, it is inadequate for the latest, nontraditional marks that move or change, for example, holograms, audio parts, or interactive customer manoeuvres.[35] Currently, Indian law does not allow for registering these new types of trademarks, even though they are playing a bigger role in the metaverse.

Additionally, the idea behind "distinguishing goods or services" is that a trademark shows where a product or service comes from. Even so, if virtual goods are used on multiple platforms and can be changed by users (e.g., in games when users modify their avatars), it might be hard to tell their source.[36] Brands can be modified, given a new style, or reproduced as different versions. An example is a Gucci handbag NFT, which could be reminted to look different than the original; does the act of reminting fall within "use" or represent "expressive, transformative art?" The fuzzy line between employers and independent workers affects the usual understanding of the Section 2(zg) standard.

Expressive Use v *Functional Use on NFT platforms*

There is much concern over whether using a mark in digital ways, for either purpose, results in trademark protection or violates someone else's rights. Unusual forms of trademark usage, such as having a brand design, may allow the mark to be regarded as free speech protected by the law. Nevertheless, whenever NFTs are exchanged online for profit, they are more commercial than artistic.

In *Hermès Int'l* v *Rothschild (MetaBirkins case),* the United States case straightly dealt with this issue. Rothschild created pieces of NFT art that looked like Hermès' Birkin bags, describing them as works of artistic commentary.[37] The court opposed this view, deciding that selling NFTs under those brand names was confusing for consumers and, therefore, a form of trademark infringement.[38]As a result, the case showed that expressive use can still be seen as trademark use if the digital asset concerned has commercial value.

In India, it becomes difficult because there is no comparable judicial decision available. Section 2(zg) does not describe the expressive use of a trademark differently from its functional use, and it does not mention using marks online.[39]As a result, NFTs and digital products with brand names aren't covered by any clear regulations. The absence of judicial explanations or clear laws may make it hard for the law to tell apart fair use, satire, and commercial infringement in trademark cases related to the metaverse in India.

EUIPO and USPTO Initiatives

As a result of more trademark applications for virtual products, both the European Union Intellectual Property Office (EUIPO) and the United States Patent and Trademark Office (USPTO) have acted. According to the EUIPO, in its 2023 guidelines, virtual goods and NFTs will be assigned to Class 9, specifically called "downloadable digital files that are authenticated by non-fungible tokens."[40] In addition, it explained that virtual items are different from real-life products and therefore require separate protection.

The USPTO has also advised that digital goods sold through blockchain, as well as others requiring trademarks, can be registered if the applicant shows use in commerce. The "use" mentioned here is showing them on sites like OpenSea, placing them into virtual worlds, and offering them for purchase on marketplaces.[41]

On the other hand, India has not yet clarified the issue through its trademark registration mechanism. Even though Classes 9 and 41 in the NICE Classification covers digital files and virtual entertainment services in the metaverse, however in India, there is still no official policy or interpretive circular to explain how to register trademarks for metaverse-related uses.[42] Since Indian IP law does not deal with virtual products, less protection abroad may lead Indian companies and creators to avoid applying for rights in virtual commerce, exposing them to legal problems in other countries.

Infringement, Dilution and Enforcement under Section 29

The analysis of infringement in the virtual spaces

The main section dealing with the legal contours of trademark infringement in India is Section 29 of the Trademarks Act, 1999. A registered trademark is said to be infringed when someone other than the registered owner uses an identical or very similar mark to the registered mark in selling similar goods or services.[43] Even though the scope of this provision is broad, it was designed with standard, tangible, product-based trading situations in mind. Such assumptions no longer hold in the metaverse.[44] The

products are digital, the connections happen through avatars, and trading sites exist in online environments everywhere. Consequently, people may need to reinterpret meaning-rich ideas such as "use in the course of trade," "at risk of confusion," and "deceptive similarity" in each unique case.

The Difference between Direct and Indirect Infringement

The metaverse allows unprecedented forms of trademark use that may comprise direct or indirect infringement, more often in ways that can challenge the conventional enforcement archetype. When a third party mints, creates or sells NFTs that bear registered brand logos or product designs without getting them authorised from the original trademark owner would amount to direct infringement.[45] Such infringement leads not only to the commercialisation of unauthorised use of protected marks but also attributes false credibility to an unaffiliated digital asset. Conversely, indirect infringement can take place in user-created multi-faceted scenarios.For instance, a popular VR game can authorise avatars to put on virtual fashion items that are designed and uploaded by third-party users and could imitate real-world brand aesthetics.[46] In such situations, where there may be no obvious commercial transaction the display, simulation or aesthetic borrowing may be unauthorised, in immersive and persistent worlds, this may lead to a misrepresentation of the consumer. By involving the users into the pretended interactions and the virtual versions of the branded products, a certain sense of authenticity and affiliation with the brand can be established to the point where the clone brand appears to be the original brand to an average user.[47]

Despite all these realities and emerging trends, the Indian laws have not been successful in clarifying whether these depictions associated with blockchain tokens fall under the purview of "use in the course of trade" provided under section 29(1).[48] Due to a lack of administrative clarifications and, the absence of precedents and registry guidance, there has been significant doctrinal uncertainty, especially with the interpretation of statutory language and its extension to purely virtual or symbolic application.

Basis of Confusion in Avatar-Based Commerce

The underpinning element of infringement is the likelihood of confusion amongst the consumers as per Section 29 of the Trademarks Act, 1999. Usually, the courts have used parameters like phonetic, visual or structural similarity while evaluating confusion while drawing upon the yardstick of "average consumer with imperfect recollection."[49] However, the question of confusion becomes more stratified and distinctive on metaverse platforms. Since metaverse users interact through avatars, usually under pseudonyms the goods being purchased and sold are inherently digitally styled, animated and customisable. The rules under which these transactions occur are visually immersive, but they resemble physical marketplaces. As an illustration, in 2022, the luxury brand Gucci partnered with the Roblox platform to sell a virtual replica of the Dionysus bag at an approximate price of 6$ that was subsequently resold at 4,000$ that exceeds the price of the real-life variant.[50]These illustrations establish that consumers are willing to impute real economic value to digital visualisation of branded goods creating confusion about the authenticity of the brand and its originality.

Another instance or a hypothetical situation could be a digital luxury brand marked with a Louis Vuitton logo being sold in a virtual boutique in a user-generated environment on a metaverse platform could appear legitimate to the user despite being an unauthorised production. The users know nothing about the complexities of licensing, less so when it imitates the real-world brand aesthetics. In cases where a good such as a luxury bag is priced in cryptocurrency and is traded within a gaming interface, the possibility of the user assuming the bag to be affiliated or endorsed with the original real-world brand is high. These situations give rise to exacerbated confusion due to limited regulatory oversight with a high degree of visual fidelity.

It all comes down to the interpretation of the terminologies used in laws, so the challenge here is doctrinal. The question is whether the courts should apply a traditional approach while testing the confusion or if is there a need for a reframing of standards, perhaps provisions that can incorporate user interface context, the architecture of the platforms and the role played by digital brandings. As the avatar-commerce emerges, the necessity of the redefinition of the evidentiary thresholds by the courts also emerges.

Trademark Dilution and Analysis of Section 29

The Trademarks Act, 1999 in section 29(4) gives protection to well-known trademarks by limiting their use by other persons that may dilute their distinctiveness or injure repetition, although the infringing use may or may not be in the same

category of the market.[51] This provision becomes very important in virtual environments where goods and their contexts are consistently evolving. That use of trademarks is subjected to digital appropriation for cultural relevance, speculative trading and visibility like minting NFTs by using famous brand identifiers often results in dilution.[52] The concept of dilution by blurring is when well-known or iconic marks are replicated in digital goods weakening their singular brand association. As an example, applying "Amul" NFT to a fantasy gaming platform as a health booster would disperse the meaning of its mark outside the conventional dairy perception.Conversely, the idea of tarnishment is an issue where the marks are applied to sexually explicit or violence VR experiences, although the use may not be commercial but can dissolve consumer confidence and brand recognition.

The Delhi High Court was more instructive in their landmark judgement of *ITC Ltd.* v *Philips Morris Products SA* (2010). The court ruled that even if the use of the mark is misleadingly similar to that of the plaintiff and it is applied to non-similar goods, it would be an infringement, but only when the mark of the plaintiff is a well-known mark.[53]The tested decision does not yet concern digital platforms, but the logic can be sensibly extended to digital assets or metaverse platforms.Another concern is the minting of NFTs, this is basically the use of marks under the disguise of 'art'. One such instance is the recent case of *Hindustan Unilever Ltd.* v *Gujarat Cooperative Milk Marketing Federation Ltd.* (2020), the Bombay High Court reiterated in this case that even trademarks that have used parodic depictions can result in actionable dilution if they end up affecting the distinctiveness or identity of the original brand.[54] Hindustan Unilever Limited in this case contended that the advertisements by Amul contain a parodied tagline of its product and visual layout. The court, however, in this case, did not grant an injunction, but it acknowledged the sensitivity of reputational impact, this idea is relevant to the matter versus platforms where fan-made creations, speculative, Digital art and parody are frequently borrowed from well-known brands. Moreover, this idea reinforces that digital misappropriation of trademarks in NFTs or virtual fashion may also constitute an infringement or dilution under Section 29(4) under the purview of artistic freedom or parody, thus, leading to undermining of a brand goodwill or a cause of consumer confusion.Similarly, the court in the judgment of *Toyota Jidosha Kabushiki Kaisha* v *Prius Auto Industries Ltd.* (2018) observed and recognized reputation-based dilution and transborder reputation.[55]

Intermediary Liability and Jurisdictional Challenges

In its nature, the metaverse feeds off of decentralization, pseudonymity, and user-created content, thereby extensively complicating the issue of attributing legal responsibility to trademark infringement. One fundamental question is whether the responsibility to pay compensation in case of infringement of virtual content should be imposed on the platform, where the infringement occurs, e.g., Decentraland, Roblox, or The Sandbox, or on the creator of the individual content item. Platform liability, in the context of traditional internet law, has been dealt with by safe harbour provisions in the Information Technology Act, 2000, specifically, Section 79, which exempts intermediaries located in India from liability of third-party content when they act as mere conduits and observe due diligence.[56] However, those principles are adapted to the passive websites and social media, but not the really immersive, blockchain-powered environments executed on smart contracts and decentralized governance. With the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, an attempt has been made to make platforms as accountable as possible, by demanding the appointment of grievance officers, responding to takedown notices within set timelines, and establishing content moderation policies. Even though these rules are meant to broaden the scope of accountability to a greater range of digital services, their applicability to decentralized virtual worlds is relatively untested. Decentralized platforms can lack any party that is in control, something that can create problems regarding who the Indian law calls the intermediary.[57] On platforms managed by DAOs, content policies and enforcement are decided democratically or algorithmically, as opposed to being decided by a centralized management, making it unclear who to hold responsible in a court of law.

Even on platforms that seem to be more organized, such as Roblox or Horizon Worlds by Meta, trademark rights are not easily enforced. The individuals involved in infringing material have

aliases, and the digital products they produce, including NFTs, are purchased and sold worldwide in real time.[58] Such NFTs live on decentralized blockchain databases, enabling them to travel nearly across digital borders in real-time. Within such a liquid, nameless environment, the traditional instruments of trademark protection seem quaint all of a sudden: sending a cease-and-desist letter or reaching out for an injunction. When the infringer, the buyer, the platform, and even the server can be situated in different countries, it becomes utterly impossible to understand which court has jurisdiction to intervene.

In the metaverse, takedown mechanisms, which are already well-established in the context of conventional online environments, are much less useful. On centralized platforms like YouTube or Instagram it can take companies several minutes to remove offending material.[59] However, this is not the case in decentralized systems, which are driven by blockchain. When an NFT with a logo of a brand is created and placed on a decentralized marketplace, such as OpenSea, it is nearly impossible to remove it.[60] The blockchain does not forget and there is no single authority to press delete. This is a genuine challenge to brand owners because Indian trademark law is based on remedies such as injunctions and takedown orders, which are not always well suited to this new digital reality.

In India, the DPIIT deals with trademark law and MeitY deals with digital platforms and online intermediaries.[61] The metaverse does not, however, divide legal categories so cleanly. It has all gotten mixed up with trademark contraventions, user-generated content, and platform regulations. Unless there is a visible coordination between these two regulatory bodies, enforcement is haphazard, inconsistent, and confusing to all concerned.

Trademark Registration for Virtual Goods: The Way Forward

The way people interact, trade and express their identity is entirely reshaped by the metaverse. Not only that, but it has also redefined the term ‘goods’ under the trademark law requiring radical transformation. In a world where avatars are wearing virtual fashion, NFT-based artwork is traded by the users and well-known brands are hosting virtual storefronts within simulated environments, this has created an immense challenge to the traditional understanding of what goods can be owned, sold and protected under the regime of Intellectual Property Rights.[62]The most debatable question now is not whether such virtual goods can be owned or sold, but whether the Indian law is equipped with sufficient provisions to meaningfully protect them.

The Nice Classification (NCL) is an international classification of goods and services which was established by the Nice Agreement in 1957, this classification has evolved over the period and now includes digital goods and services.[63] Class 9 is dedicated to downloadable virtual goods, NFTs, whereas class 41 is for entertainment in virtual environments, however, the implementation of these updates remains patchy under the Indian trademark classification.[64] Even though these classifications are technically available, the Indian trademark registry has still not provided procedural clarity, meaning that the applications referencing digital goods are subject to inconsistent scrutiny, delay and outright rejection. This is due to the lack of standardised guidance and procedural clarity on the classifications, representation and proof of use.The difficulty increases due to the non-conventionality of trademarks in virtual spaces as the identity of a brand is not restricted to a logo or a slogan, it is the entire product that can be replicated in 3D forms, holographic emblem or a branded sound sequence creating a brand specific environment.[65] The Indian law shows reluctance in accepting such modes of expression even when they practically have the same source-identifying use as the traditional trademarks. There are some provisions in the Trademarks Act, 1999 such as Section 2(1) (zb)that provide for the registration of shapes and packaging, however, there is no clear, jurist, prudence, or administrative policy, supporting such registration of interactive and sensory trademarks on virtual platforms.

Internationally, the jurisdictions are moving at a fast pace. The USPTO and UKIPO have taken steps to issue proper guidelines for trademark registration of virtual goods. Major companies such as Nike and Meta have already filed applications to protect their name and identity by expresslyincluding protection for NFTs, virtual marketplaces and downloadable content.[66] Moreover, these jurisdictions also recognise sounds, motions, and multimedia marks as registerable, which provides comprehensive protection to the brands in both physical and virtual domains.[67]The development of these jurisdictions allows the provision of proactive approach with the reduction of the threat of costly litigation and

stimulates the strategic registration of intellectual property. However, India is lagging; despite adhering to NCL which provides for inclusion of virtual goods under its classification, India fails to provide for interpretive guidelines under Rule 34 of the Trademarks Rules, 2017. The applicants are dissuadedas there is a lack of transparent guidelines, leading to inconsistent outcomes, while putting Indian brands at a disadvantage in protecting their identities in the ever-growing virtual economy. Also, the lack of official intellectual property protection is proving to be particularly problematic as the Indian creators and start-ups involved in international Web3 applications and NFT marketplaces can be appropriated and diluted with no means of recourse.

To eradicate such gaps, the Indian Trademark Registry must surpass the passive recognition and provide the proactive procedural guidelines. It may involve issuing an official circular explaining the way virtual goods and services are to be classified, the type of evidentiary standards that would be accepted to establish use in the digital world, and the way non-conventional marks, such as sounds, holograms or gestures, are to be depicted.[68] The Registry may also establish a fast-track system/procedure to handle filings covering digital goods with a dedicated examination group that is trained in emerging technologies and digital business.

From a policy perspective, DPIIT and the Registry also need to start a process of public consultation with the stakeholders in the digital fashion, gaming, blockchainstartups and creative industries to gain a better insight into how trademarks are utilized in practice within virtual contexts. This would lead to an evidence-based reform approach and make sure that future regulations take into consideration the nature of modern trade. Indian trademark law could be stuck with an obsolete ontology of goods and services when commerce shifts to platforms that are no longer tied to geography, materiality, and the old forms of ownership. The metaverse is not an online duplicate of the real world- it is an alternate economic and cultural environment that has its logic of branding, reputation, and value.[69] To remain globally competitive in the knowledge economy, India must ensure that its trademark regime is transformed to help it acquire brand identities in these new frontiers.

To drive significant change, there are several proactive measures that can be looked at. The Trademark Registry could start by posting an advisory notice that specifically deals with metaverse classification and the acceptable representations of digital goods.[70] This would bring instant clarity to both the applicants and examiners. Second, Sections 2 and 29 of the Trademarks Act, 1999 must be amended specifically to add the concepts of digital goods and virtual use as valid contexts of trademarks. Such statutory acknowledgement not only would update the Indian IP law into the modern world but also give legal cover to judicial interpretation. Third, the government ought to come up with clear guidelines on the licensing of trademarks utilized in the metaverse platforms to avoid controversies regarding the scope and enforceability.

In addition, it can be viewed that industry bodies like FICCI (Federation of Indian Chambers of Commerce and Industry) and NASSCOM (National Association of Software and Service Companies) can also help in conducting awareness campaigns, stakeholder meets, and IP literacy campaigns designed to startups and digital creators.[71] Lastly, and assuming prudence in ordering such litigation, pilot litigation, possibly via a test case funded by DPIIT or an educational establishment, may be beneficial in creating a binding precedent and establishing the Indian courts' approach to virtual trademark conflict.[72] A combination of these steps would represent a decisive break with reactive adaptation and a move to strategic foresight, meaning that the Indian trademark law will finally be able to embrace the technological realities of the future.

Conclusion

The increasing transformation of digital technologies has expanded the possibilities of how people interact, trade, and communicate, with that, the trademark laws need transformation to be applicable. The present article has discussed how the Indian trademark regime, notably the Trademarks Act, of 1999, is ill-equipped to handle the prospects of the metaverse: where commodities are no longer tangible, with avatar-mediated interfaces, and where notions of branding are undergoing a tremendous change.Having conducted a doctrinal analysis of the main provisions, including Sections 2(zg) and 29, the article has concluded that although the law does offer a basis upon which to protect trademarks, it is ill-suited to deal with virtual goods, NFTs, and metaverse-based services. Such terms as "use in the course of trade" or "the likelihood of confusion," which were initially developed with physical goods in mind, are no longer

comprehensive concerning the brand's operations in immersive metaverse space.[73]

The currently used classification system, as part of the NICE system, has been amended internationally to suit the digital goods (Class 9) and virtual entertainment (Class 41). Nonetheless, the updates are unevenly applied in practice in India. It is not established how to classify or depict the trademarks related to virtual goods, how to treat non-conventional marks like holograms or gestures, or how to establish digital use. Such ambiguity causes uncertainty to the applicants and inconsistency in examination results as well as possible difficulties in enforcement. Meanwhile, international territories like the United States and the European Union have been more active. They have provided explicit instruction on NFT-related filings, approved non-traditional marks to be used in the digital space, and, in certain instances, provided judgment on cases of trademark infringement in the metaverse. A similar move by other countries indicates the necessity of India doing the same not only to create certainty among local applicants but also to protect Indian brands in the foreign digital markets. To fill these gaps, there are several viable measures which can be undertaken. An advisory may be issued by the Trademark Registry to make virtual goods and services classification and procedural necessities clear. It is possible to introduce amendments to the Trademarks Act to add references to digital goods and virtual use. More definitive licensing principles can also be useful to control the usage of trademarks in the digital environment and blockchain.Moreover, trade associations such as FICCI and NASSCOM could facilitate this change by conducting awareness drives and seminars that target startups, developers and lawyers dealing with virtual goods. Litigation or judicial references Pilot litigation or reference by courts may also allow them to start interpreting the law about the new digital realities, establishing helpful precedents in future cases.

Jurisdiction and enforcement problems must be addressed too. The anonymity and decentralization of the metaverse will mean that it is hard to target infringers, and standard solutions such as takedown notices or injunctions could be challenging to enforce on blockchain-based networks. It will also be desirable to coordinate the activities of the DPIIT (IP policy) and MeitY (regulation of digital platforms) to maintain a coherent enforcement approach across some common areas of law. To conclude, the metaverse is not a transitory or secondary phenomenon. It is emerging as a major area of business, culture and communication. With the increase in the number of Indian users participating in virtual transactions, with Indian business entities extending their operations to digital spaces, the trademark law needs to change in tandem with these developments.Through targeted reforms, enhanced guidance and enhanced coordination, the Indian trademark system can change in accordance with new challenges and aid innovation as well as uphold the rights of trademark proprietors. Implementing these changes at this time will make the IP law of India responsive, inclusive, and effective in the continued digital transformation.

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