

# PROTECTION OF VIRTUAL GOODS THROUGH TOKENIZED TECHNOLOGY

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Real world brands are increasingly looking to NFTs and virtual online presences as the next frontier to market their products.

Nike, Inc. offers a premier example. Nike has taken various steps to protect its intellectual property in the new era of crypto, NFT's and blockchain technology. The American sportswear giant recently filed several new trademark applications with the United States Patent and Trademark office<sup>[1]</sup> and Canadian Intellectual Property Office,<sup>[2]</sup> as well many other international jurisdictions including Mexico, Norway, the United Kingdom, Australia and the European Union.

If granted, these trademarks would theoretically protect the use of Nike's well-known logos including the Nike swoosh, "Just Do It", "Air Jordan", and more, from use by other parties in the category of downloadable virtual goods.<sup>[3]</sup> The global application strategy indicates that Nike intends to sell digital apparel including digital footwear, headwear, bags, sports equipment and eyewear under its main trademarks. In the United States, Nike filed the trademark applications are on an intent-to-use basis, meaning that Nike has a good-faith intention to use the marks in the future in commerce.<sup>[4]</sup> In Canada, there is no longer a use claim required for filing applications.

The series of trademark applications follow the issuance of a patent in 2019, which granted Nike the right to sell digital assets that link real-life goods to unique, virtual tokens.<sup>[5]</sup> According to the patent, a Nike consumer may buy a physical pair of shoes, upon which a digital representation of a shoe is generated, linked with the consumer, and assigned a cryptographic token. The digital shoe and cryptographic token together represent a 'CryptoKick' – an NFT linked to the Ethereum blockchain.<sup>[6]</sup> The consumer can then, among other things, trade or sell the physical or virtual shoe, store the digital shoe in a cryptocurrency wallet, or breed the digital shoe with another digital shoe to create "shoe offspring".<sup>[7]</sup> For further information on the intellectual property rights owned by the purchaser of an NFT, please [click here](#).

The recent trademark and patent applications evidence that Nike is at the forefront of the apparel industry, and is seriously thinking about its future within the ever-growing world of digital products. It is notable that

Nike's Vice President Digital is also an "advisory board" member on a relatively new blockchain, LUKSO.<sup>[8]</sup> This suggests that Nike may also be interested in increasing its footprint in underlying blockchain technologies.

Policing the use of a trademark in the virtual world can be challenging. The trademark applications, if granted, will provide Nike with greater protection against the use of Nike's various logos in an unauthorized manner in the digital space<sup>[9]</sup> and will act as a deterrent to other users who are looking to register the same or similar marks online, including in the blockchain space. The primary caveat here may be that the application of domestic laws can be generally problematic with respect to online and blockchain matters; trademark enforcement may be no different.

Nonetheless, companies are moving towards the sale of virtual goods, NFTs and other blockchain-related ventures. McMillan can assist in protecting rights through trademark registrations, development and minting agreements, securities registrations or exemptions and other spaces where blockchain and online metaverses collide with real-world business.

[1] See United States Patent and Trademark office, Applications no. 97096366, 9709623, and 97096236 (27 October 2021).

[2] See Canadian Trademarks Database, Applications no. 2142318, 2142319, 2142333, 2142335, 2142336, 2142337, and 2142338, (22 October 2021).

[3] *Supra* note 1.

[4] *Ibid.*

[5] United States Patent and Trademark office, [Application no. 11113754](#) (28 May 2019)

[6] *Ibid.*

[7] *Ibid.*

[8] About [LUKSO](#)

[9] Jessica Golden, "[Nike is quietly preparing for the metaverse](#)" (Nov 2, 2021).

by [Kaleigh Zimmerman](#), [Adam Chisolm](#), [Sezen Izer](#) (Articling Student)

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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