46.02

Designated Goods and Designated Services Related to Virtual Environments and Non-Fungible Tokens (NFTs)

The following describes the handling of designated goods and designated services related to virtual environments and non-fungible tokens (NFTs).

1. Virtual goods and services that deal with them
(1) Indications that are acceptable as designated goods or designated services
A. Virtual goods displaying products [1] defined by the Trademark Act
   In this manual, the term "virtual goods" refers[2] to "digital data for displaying the shape of goods or the like in virtual environments." An example of "virtual goods" includes "virtual clothing," which refers to "digital data for displaying the shape of clothing in virtual environments."
   However, the term "virtual goods" is unclear and too broad as a description of designated goods, due to the ambiguity surrounding the shape of the goods or the like it refers to. Moreover, even if "virtual clothing" is considered to be an imitation of "clothing," it is not a term commonly known to the general public and remains unclear as a description of the designated goods.
   Therefore, when "virtual goods" are described as designated goods in Japan, the term "downloadable" should be added at the beginning to clarify that they are digital data, and they should be described as Class 9 "downloadable virtual ○○" (Note).
(Note) In principle, "○○" are indications that are acceptable as designated goods, such as products listed in the "Examination Guidelines for Similar Goods and Services." However, as an exception, intangible goods like "computer programs" are acceptable as indications for designated goods, but cannot be described in the "○○" part because they are not visible and do not meet the definition of virtual goods, which is "for displaying the shape of goods or the like".

   Below are examples of indications that are acceptable as designated goods for "virtual goods" and designated services handling "virtual goods" and similar group codes[3].

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[1] In the "lexical interpretation" of Article 2 of the Trademark Act in the "Article-by-Article Explanation of the Industrial Property Act (Industrial Property Law) [22nd Edition]," "goods" are defined as "objects that can be the subject of commercial transactions, especially personal property."
[2] Virtual environments refer to "a virtual three-dimensional space built on the Internet where many people can participate and where participants can act freely." Source: Project 2020 to Promote the Overseas Development of Content (Research and Analysis Project on the Future Potential and Issues of Virtual Environments), page 4
https://www.meti.go.jp/policy/mono_info_service/contents/downloadfiles/report/kasou-houkoku.pdf
[3] The classes, indications, and similar group codes may be changed in the future in accordance with changes in the international classification, and the like (the same applies below).

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> - Class 9 "Downloadable virtual clothing" (NCL entry) [4]11C01 24E02 26D01
> - Class 35 "Online retail services for downloadable virtual clothing" (NCL entry) 11C01 24E02 26D01 35K08 35K15 35K99
> - Class 41 "Providing online images for displaying clothing in virtual environments" 41E02
> - Class 42 "Providing computer programs on data networks for displaying clothing in virtual environments" 42X11

B. Others

The term "avatar" used in virtual environments (an original character[5] that acts as a user's alter ego and has various experiences in a virtual environment on the Internet, such as chatting or walking) should be described as <u>Class 9 "downloadable avatars."</u> The description of "downloadable virtual avatars" is also acceptable.

(2) Indications that are unclear as designated goods or designated services

A. Cases where the "○○" part is unclear

If "virtual goods" are described as designated goods, as in (1) above, they should be described as Class 9 "downloadable virtual ○○." However, if "○○" cannot be used alone as designated goods, it should be treated as an unclear indication as designated goods.

Below are examples of indications where "○○" alone are unclear as designated goods or designated services handling "virtual goods."

> - Class 9 "Downloadable virtual <u>goods</u>"
> (Sidebar Note) As described in (1) A. above, the term "virtual goods" alone is unclear as to what shape of goods or the like it refers to.
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> - Class 35 "Retail services for downloadable virtual <u>goods</u>"

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[4]"NCL entry" refers to indications listed in the alphabetical list of the International Classification of Goods and Services.
[5]"SANSEIDO'S CONCISE DICTIONARY OF KATAKANA WORDS 4th Edition" (Sanseido Co., Ltd.)

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> ・ Class 35 "Retail services for downloadable virtual <u>foods and beverages</u>"
>
> (Sidebar Note) The term "foods and beverages" is used in the context of retail services (the provision of benefits to customers in retail or wholesale services for a variety of goods in each of the fields of clothing, foods and beverages, and livingware, and taking all goods together, or the provision of benefits to customers in retail or wholesale services of foods and beverages). In the case of retail services, there are generally established retail businesses handling a range of products, including livingware, foods and beverages, and there is a well-established sales system, so it is permissible to use it as an indication of designated services.
>
>   On the other hand, in the case of virtual goods, since the sales system differs from that of retail business, even an indication that might be used in the designation of retail services is not allowed as an indication of designated services handling virtual goods and is treated as an unclear indication.
>
> ・ Class 41 "Providing online images for displaying <u>goods</u> in a virtual environments"
>
> (Sidebar Note) The term "goods" alone is unclear as to the shape of goods or the like it refers to. The same applies to the following examples.
>
> ・ Class 42 "Providing computer programs on data networks for displaying <u>goods</u> in virtual environments"

B. Cases with indications other than "downloadable virtual ○○"

If "virtual goods" are described as designated goods, as in (1) above, they should be described as <u>Class 9 "downloadable virtual ○○."</u> Therefore, any other indication, as shown below, should be treated as an unclear indication as designated goods. The same applies when "virtual goods" are described in retail services.

> ・ Class 9 "<u>virtual ○○</u>," "downloadable <u>virtualized</u> ○○," "downloadable <u>virtual equivalent of</u> ○○"   and the like.

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> ・ Class 35 "retail services for <u>virtual</u> ○○," "retail services for downloadable <u>virtualized</u> ○○," "retail services for downloadable <u>virtual equivalent of</u> ○○" and the like.

C. Cases where indications that can be interpreted as virtual goods are filed in a class other than Class 9.

Since "downloadable virtual ○○" are classified as goods in Class 9, if, for example, the indication of "downloadable virtual ○○" or "virtual ○○" (which could be interpreted as virtual goods) is filed in a class other than Class 9, it will be treated as an unclear indication as designated goods.

> ・ <u>Class 25</u> "downloadable virtual clothing"
> ・ <u>Class 25</u> "virtual clothing"

2. Services provided in virtual environments

(1) Indications that are acceptable as designated services

In principle, services provided in virtual environments that have the same objects and results as services provided in reality are classified in the same class as services provided in reality and are assigned the same similar group codes.

Below are examples of indications and similar group codes that are acceptable for services provided in virtual environments, where the objects and results of the service are the same in virtual and real environments.

> ・ Class 35 "Marketing through product placement for others in virtual environments" (NCL entry) 35A01 35A02 35B01
> ・ Class 35 "Advertising for others in virtual environments" 35A01
> ・ Class 36 "Online banking services rendered in virtual environments" (NCL entry) 36A01
> ・ Class 38 "Providing chatrooms in virtual environments" (NCL entry) 38A01
> ・ Class 38 "Providing online virtual environment-based forums for work collaboration" 38A01
> ・ Class 41 "Presentation of music concerts in virtual environments" 41E03

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> ・ Class 41 "Entertainment services provided in virtual environments" (NCL entry) 41E01 41E02 41E03 41E04 41E05 41F01 41F06 41G01 41G02 41G03 41G04 41K01
> ・ Class 41 "Simulated travel services provided in virtual environments for entertainment purposes" (NCL entry) 41F06
> ・ Class 41 "Simulated restaurant services provided in virtual environments for entertainment purposes" (NCL entry) 41K01
> ・ Class 41 "Online game services provided via virtual environments" 41K01 41Z99
> ・ Class 41 "Providing in-game items especially for use in online games provided via virtual environments" 41K01 41Z99
> ・ Class 42 "Hosting virtual environments" (NCL entry) 42X11
> ・ Class 42 "Hosting software platforms for virtual environment-based work collaboration" (NCL entry) 42X11

(2) Indications that are unclear as designated services

If the objects or results of services provided in virtual environments differ from those of services provided in reality, it becomes difficult to understand the services provided in virtual environments, so they are treated as unclear indications as designated services.

Below are examples of unclear indications as designated services provided in virtual environments because the objects and results of the services differ in virtual and real environments.

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> ・ "Tour conducting in virtual environments"
>
> (Sidebar Note) Class 39 "tour conducting" (42A02) involves actual movement to another location, "tour conducting in virtual environments" does not involve any real movement and the objects and results of the services are different, so the indication is unclear as designated services.
>
>   As an alternative, the indication of Class 41 "simulated travel services provided in virtual environments for entertainment purposes" (NCL entry) (41F06) can be considered.
>
> ・ "Providing foods and beverages in virtual environments"
>
> (Sidebar Note) Class 43 "providing foods and beverages" (42B01) involves real eating and drinking, but "providing foods and beverages in virtual environments" does not involve real eating and drinking, and the objects and results of the services are different, so the indication is unclear as designated services.
>
>   As an alternative, the indication of Class 41 "simulated restaurant services provided in virtual environments for entertainment purposes" (NCL entry) (41K01) can be considered.

(Note) The above alternatives and similar group codes are for this example and services with different objects and results in virtual environments and reality are not necessarily acceptable with such class, indication and similar group codes and should be considered carefully.

3. Designated goods and designated services related to non-fungible tokens (NFTs)

(1) Indications that are acceptable as designated goods or designated services

  A "non-fungible token (NFT)" is "digital data that cannot be falsified or tampered with." It provides uniqueness to the digital data on the blockchain, ensuring authenticity and allowing tracking of transaction histories.[6]

  Additionally, this term is used to describe "something valuable that is not a reproduction, such as artwork, and embedded with[7] information proving that it is the only unique set of data."

  Although the meaning of "non-fungible token (NFT)," "non-fungible token," and "NFT" cannot be specified or clarified in isolation , they are acceptable if used as indications of designated goods or designated services as follows,.

(Note) The terms "non-fungible token (NFT)," "non-fungible token," and NFT" are

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[6]Ministry of Economy, Trade and Industry, "The Future of Regulations and Systems in the Digital Age," 4th Industrial Structure Council, Committee on New Direction of Economic and Industrial Policies, Secretariat Briefing Materials (Feb. 2022)
https://www.meti.go.jp/shingikai/sankoshin/shin_kijiku/pdf/004_05_00.pdf
[7]Digital Daijisen "NFT" (Shogakukan, last viewed on Mar. 19, 2024)
https://kotobank.jp/word/NFT-2783796

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interchangeable.

- Class 9 "Downloadable digital image files authenticated by non-fungible tokens [NFTs]" (NCL entry) 24E02 26D01
- Class 9 "Downloadable computer software applications for minting non-fungible tokens [NFTs]" (NCL entry) 11C01
- Class 25 "Clothing authenticated by non-fungible tokens [NFTs]" (NCL entry) 17A01 17A02 17A03 17A04 17A07
- Class 35 "Retail services relating to downloadable digital image files authenticated by non-fungible tokens [NFTs]" (NCL entry) 24E02 26D01 35K15 35K99
- Class 35 "Provision of an online marketplace for buyers and sellers of downloadable digital image files authenticated by non-fungible tokens [NFTs]" (NCL entry) 35B01
- Class 35 "Listing of downloadable digital image files authenticated by non-fungible tokens [NFTs] in online marketplaces on behalf of others [office functions]" 35G03
- Class 35 "Obtaining authentication by non-fungible tokens [NFTs] for digital image files on behalf of others [office functions]" 35G03
- Class 35 "Purchasing of digital image files authenticated by non-fungible tokens [NFTs] on behalf of others" 35B01
- Class 36 "Management of cryptocurrency authenticated by non-fungible tokens [NFTs]" 36A01
- Class 42 "Providing online non-downloadable computer software for minting non-fungible tokens [NFTs]" (NCL entry) 42X11

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(2) Indications that are unclear as designated goods or designated services

  Because the meaning of "non-fungible token" and "NFT" cannot be specified in isolation, they are treated as unclear indications as designated goods or designated services.

- ・ "Non-fungible tokens [NFTs]"
- ・ "Non-fungible tokens"
- ・ "NFTs"
- ・ "Online retail services for non-fungible tokens [NFTs]"
- ・ "Provision of an online marketplace for buyers and sellers of non-fungible tokens [NFTs]"
- ・ "Providing online non-fungible tokens [NFTs]"

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4. Date Applied

This handling applies to applications for trademark registration pending with the Japan Patent Office on the publication date (March 29, 2024), or applications filed on or after the publication date, including designated goods and designated services related to virtual environments and non-fungible tokens (NFTs).

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