

Trademarks in the Metaverse: How to Effectively Protect Trademarks for “Physical” Products in the Virtual Space in Vietnam?

Trademark disputes are becoming increasingly diverse, complex, and unceasing. Does the owner of a trademark for a “physical” automobile or watch, protected in Vietnam, China, or any other country, have the right to prevent a “virtual” version of the same product from appearing in an online game - with its logo intact and players willing to spend real money to acquire it? In a broader sense: Can using a mark on a **virtual goods** infringe the trademark for a **physical goods**? Traditionally, [trademark infringement](#) has been assessed based on the likelihood of confusion, in which the similarity between goods or services plays a critical role. Under classic criteria (nature, purpose, function, and trade channels), a **virtual product** would seem *inherently different* from its **physical goods**.

However, two recent rulings in China and the European Union indicate a shift in this approach, potentially redefining the scope of trademark protection in the digital space. KENFOX IP & Law Office provides detailed analysis of the above two rulings, from which we summarize new legal principles and offer a comprehensive strategic roadmap for businesses operating and investing in Vietnam to protect their assets in the developing digital landscape.

1. The Evolving Legal Landscape: “Physical goods” vs. “Virtual goods”

In China: The George Patton

The case centered on the “**George Patton G.PATTON**” trademark, a well-known car brand, which was infringed upon by a video game development company. The company illegally used [the trademark](#) on a virtual car within the game “*Game for Peace*”. Initially, the trial court ruled that there was no trademark infringement. This ruling was based on the traditional argument that “**virtual cars**” could not cause confusion with “**real cars**” due to clear differences in function, distribution channels, and target customers.



However, this decision was convincingly reversed on appeal by the Hangzhou Intermediate People's Court. This Appellate Court, on July 21, 2025, overturned the lower court and issued a landmark decision. The Appellate Court recognized that under certain conditions, virtual items can be treated as similar to their real-world counterparts for trademark purposes. It found the game developer and its affiliates liable for trademark [infringement](#) (and unfair competition), awarding 1 million RMB in damages (approximately 3.5 billion VND).

Court’s Reasoning: Importantly, the court acknowledged that on paper the goods fall in different Nice classes (**real autos** in Class **12** vs. **game software** in Class **09**). Moreover, the virtual car differs in form and customers from a physical car. However, the court identified several key overlaps between the virtual and physical versions:

- **Function and usage:** In-game, the virtual vehicle served a **transport function** for players (allowing quick travel and racing) – a function closely mirroring that of a real automobile. The virtual G. Patton was meticulously designed to replicate the *appearance, interior, and even engine sounds* of the real model. This functional and visual fidelity created a strong association in the player’s mind with the actual car.
- **Consumer overlap:** While the *sales channels* differ (dealerships for real cars vs. in-game shop for the virtual car) and target users are not identical, the court noted a **convergence of consumer interest**. Players exposed to the “G. Patton” brand in the game could become *potential customers* for the real vehicle. This demonstrates that the court did not view commercial channels statically but considered the dynamic interaction and migration of consumers between the two worlds, thereby establishing a market overlap
- **Public perception and marketing:** The defendants not only reproduced the trademarks (name and logo) and design in the game, but also marketed the collaboration as “officially licensed” and “accurately recreating” the real vehicle. These actions misled the public into believing that the game developer had been legally authorized by the George Patton trademark owner. The court concluded that this severed the link between the trademark and its true source, causing confusion and constituting infringement

In brief, despite obvious differences between a digital car and a physical car, their **commercial and brand impact** was closely linked. Thus, the virtual car was deemed **similar** to the real car in the context of trademark law, and **unauthorized** use of the mark in the virtual realm constituted infringement. This Chinese case is heralded as a *legal milestone*, marking the first time a court explicitly recognized virtual goods as potentially “similar” to physical goods for [trademark protection](#) purposes, showing the court’s readiness to look beyond the Nice Classification to address the challenges of the digital economy. The decision is a direct repudiation of the traditional approach, affirming that the value of a trademark lies in the public’s perception of its origin and sponsorship, regardless of the medium of expression.

In the European Union: The Glashütter Case

This case involved a renowned German watchmaker, **Glashütter Uhrenbetrieb GmbH**, which filed a [trademark application](#) for its logo, including the words “**Glashütte ORIGINAL**” for virtual [goods and services](#) such as “*downloadable virtual products, namely watches*” in Classes 9, 35, and 41. The European Union Intellectual Property Office (**EUIPO**) and the Board of Appeal rejected the application, citing a lack of distinctiveness. Reason: “Glashütte” is the name of a German town renowned for fine watchmaking. The concern was that consumers - especially in Germany - seeing “Glashütte” used even on **virtual watches** would **immediately think of the town famous for high-quality watches**, rather than see it as a badge of origin.



Glashütter Uhrenbetrieb GmbH appealed to the General Court, arguing that the EUIPO’s Board of Appeal erred by “transferring” the city’s reputation from physical watchmaking to the virtual domain, as Glashütte had no reputation for producing virtual goods.

General Court Ruling: In December 2024, the EU’s General Court (“**GC**”) dismissed the appeal and upheld [the refusal](#). Notably, this was the **first EU court decision** on trademark distinctiveness for **virtual**

goods. The GC’s reasoning underscores that, **from the perspective of the average consumer**, a “virtual” product is essentially perceived the same as its “physical” equivalent. Key points from the judgment include:

- Glashütte’s strong reputation in watchmaking was acknowledged. The court accepted that within Germany, “Glashütte” immediately evokes a place of high-end watch production.
- The applicant contended that Glashütte has no reputation in making **digital** watches or virtual goods, implying that the term might be distinctive in the virtual context. However, the court rejected this artificial separation. It held that **if the virtual goods “expressly refer” to a type of physical goods (here, watches and horological instruments), the relevant public will transfer their perception from the physical to the virtual realm**. In the court’s words, consumers “*will view virtual watches in the same way as physical ones*”, so the sign “Glashütte” on a virtual watch **immediately serves as an indicator of quality or style, not as a source-indicating trademark**. Thus, the mark was deemed devoid of distinctiveness for those goods.
- The argument that there is no overlap between the consumer bases of “physical” watches and “virtual” watches is also rejected; it is the nature of the product - being a direct imitation of physical watches - that is the decisive factor, leading the public to tend to unify their perception across both physical and virtual environments.

The EU’s ruling in this case does not directly assess the act of infringement or the likelihood of confusion, but instead focuses on the issue of trademark registration. But its implications are clear: **a trademark’s meaning and reputation in the physical world can world can be fully transposed into the virtual environment**. In fact, the General Court further affirmed that the **public’s perception of a sign “does not change when transitioning to virtual goods”**. In essence, this approach indicates that corresponding virtual goods are perceived as equivalent to physical goods - at least in the context of sign differentiation, and more broadly, in the analysis of potential confusion.

It’s worth noting that this stance **departed from prior EUIPO guidance**. The EUIPO’s own 2024 Examination Guidelines had cautioned that *digital goods and physical goods should not automatically be considered similar* for trademark purposes. However, the Glashütte case presents a different perspective: when virtual goods directly simulate physical goods, they may be considered equivalent in [trademark analysis](#). The divergence between administrative guidance and the Court’s judicial reasoning reflects the pace at which the law is adapting to the rapid evolution of the metaverse phenomenon.

2. Are “Virtual” and “Physical” Goods “Similar” for Trademark Purposes?

Two cases, one in China (concerning infringement) and one in the EU (concerning registration), both illustrate a common trend: once-clear line between physical and virtual products is blurring in the eyes of the law.

Under classic trademark doctrine (also applied in Vietnam), determining a likelihood of confusion involves comparing the similarity of the marks **and** the similarity of the goods/services. To gauge goods-similarity, factors such as **nature or composition, purpose/use, functional characteristics, customers, and channels of trade** are examined. If applying these criteria rigidly, a tangible product (e.g., a car or a watch) differs fundamentally from a digital asset (a 3D model in a game or a piece of software): real-world transportation vs. in-game enjoyment; auto dealerships vs. app stores or game platforms; car buyers vs. gamers. By this reasoning, one would conclude that confusion is unlikely - consumers should not believe an in-game item originates from the same source as a real product. Indeed, this was the logic of the Chinese first-instance court and has been a prevailing view in trademark offices (even the EUIPO initially took this view per its guidelines).

However, the **modern trend - spurred by the metaverse’s growth - is to look beyond the traditional factors**, especially when a virtual good deliberately imitates a real one. In the Chinese **G. Patton** case, the appeal court essentially found that *despite differences, the virtual and physical cars were closely related in the commercial impression they create*. Similarly, the EU’s General Court effectively pronounced that **a virtual watch is just a watch** presented in a different medium. If consumers see a famous mark or name on a virtual depiction of a watch, they will immediately connect it to the real product domain of watches – meaning any descriptive or generic connotation carries over. From there, one can extrapolate that if the case were about infringement, such use could also cause confusion for the same reasons (consumers might think it’s a licensed extension of the brand).

In both cases, the driving consideration was consumer perception, public perception. If using a car brand inside a game leads a substantial number of consumers to assume an **affiliation or authorization** (as the

Chinese court found), then the use impairs [the trademark's](#) function and should be deemed infringing. Likewise, if an ordinary consumer sees "Glashütte" on a virtual clock and **immediately thinks** of high-end physical watches from that town, the mark isn't working as a source-identifier in that context (hence not registrable). Both situations demonstrate a "**transfer**" of associations from the real to the virtual world.

Therefore, the traditional approach, which solely focused on "nature, purpose, function, and commercial channels", has become obsolete in the era of "**phygital**" goods (*combining physical and digital*). A virtual car is not just an image; it can be a powerful marketing tool, attracting a new generation of consumers and turning an in-game experience into real-world brand recognition. Therefore, a new standard, focused on a holistic consumer perception, is necessary.

This new standard includes the following elements:

- (i) **Brand recognition:** The trademark's reputation and market recognition are crucial. The more famous a brand, the higher the likelihood that the public will associate it with products, even in the virtual world.
- (ii) **Product emulation:** Whether the virtual good recreates or emulates the function, appearance, and identity of the corresponding physical good.
- (iii) **Market overlap:** The potential for consumer interest and preference to shift between the physical and virtual worlds.
- (iv) **Source confusion:** The degree to which the public might mistakenly believe that the virtual goods are created, sponsored, or licensed by the original trademark owner.

A ruling from the United States further reinforces this standard. At the U.S. Patent and Trademark Office (USPTO), an examining attorney rejected a third party's [trademark application](#) for virtual Gucci goods. The reason given was that the virtual goods and Gucci's physical counterparts "are of a kind that may emanate from a single source, under a single mark." The convergence in this approach from three different jurisdictions - China, the EU, and the U.S. - indicates that this is not a random change, but a global legal trend to adapt to technological advancements. The courts are sending a clear message: a brand's reputation and goodwill are not limited to the physical world and will follow the brand into new digital spaces.

3. Effective Trademark Protection in Vietnam in the Metaverse Era: What Strategy?

Although Vietnam has yet to have specific legal regulations on distinguishing "virtual" goods and "physical goods" trademark purposes. Given the disputes discussed above, a key question arises: Would Vietnam's IP authorities consider "virtual" goods and "physical" goods as "similar" for the purposes of evaluating likelihood of confusion?

Before a black-and-white answer can be found, in order to effectively prevent third parties from using trademarks for "virtual" goods and to prepare for potential legal disputes, trademark owners must implement an expanded registration strategy. KENFOX IP & Law Office recommends that, apart from registering the marks for "physical" goods under NICE Classification, [trademark owners](#) should consider registering their marks for the following classes of goods/services:

- **Class 09:** This is the primary class for "downloadable virtual goods". Physical brands should extend their protection to this class with specific descriptions such as "*downloadable digital files authenticated by non-fungible tokens (NFTs) related to [describe physical product, e.g., cars, watches, clothing],*" and "*computer software featuring virtual products such as [describe products, e.g., vehicles, footwear, jewelry] for use online and in virtual worlds*".
- **Class 35:** This class includes "virtual retail services" and "online sales services". Registering in this class will protect the sale of virtual goods and the operation of virtual stores in the metaverse, protecting the brand at the point of commercial transaction.
- **Class 41:** This class includes "virtual entertainment services". This is a crucial class for protecting the context in which virtual products are used, such as in online games, virtual concerts, or other entertainment events.
- **Class 42:** This class includes technology-related services, such as "providing non-downloadable software for the production, creation, and modification of interactive media, images, digital characters, etc." This provides a layer of protection for the underlying technology that creates the virtual products.

Conclusion

The landmark rulings from China and the EU have sent a clear message to global trademark owners: The old approach based on rigid classification is no longer sufficient. Courts are shifting to a new legal standard, based on flexibility and public perception, to resolve disputes in the digital economy. The value of a trademark and its goodwill are no longer tied solely to “physical” products but have extended to “digital” replicas and corresponding virtual services.

For trademark owners in Vietnam, this is a time for urgent action. Although the local legal framework may not yet have specific regulations for “virtual” goods, disputes tends to be increasingly complex. Therefore, the most effective protection strategy is not to wait for a lawsuit to happen, but to proactively build a robust trademark portfolio that includes registrations in both the “physical” and “virtual” worlds. Expanding [trademark registration](#) to Classes 09, 35, 41, and 42 is no longer a luxury, but an essential requirement to protect a brand's invaluable assets in the metaverse era.

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