

Genericization Of Trademarks: Brand Name Becomes Generic Name - A Challenge For Brand Managers

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What is the word that describes the use of trade names to mean much more than that trade name?

Examples: Let's go get a coke. I'll make you a Xerox copy. Put a Gem Clip on it. I need to Hoover my rug.

- Spike Parker

INTRODUCTION

A successful trademark can help a company build a strong franchise that can be licensed, sold, or used in brand extension. Many consumer product manufacturers, faced with an increasing financial risk in entering new markets, are using established brand names to facilitate such entries (Aaker and Keller 1990). The major assets of any Company are its trademarks, therefore, companies spend billions to promote their brands or Trademarks to increase their brand equity and make their brands "Household Names" or "Top-of-the-Mind Brands". But if customers use these names as generic names from being applied to any product beside their names, then they have to spend millions more to prevent these Trademarks from becoming Genericized Trademarks. Coca Cola and Xerox are probably the best known global brands facing this challenge globally. The process by which intellectual property in trademark is diminished or lost typically occurs over a period of time as a result of common use of trademark in a market place, where a trademark falls into disuse entirely, or where a trademark owner doesn't enforce its rights through law suits or actions for passing off or trademark infringement. When a brand name or trademark becomes a generic name, it is termed as "*Genericide or Genericized Trademark or Generic Descriptor or Trademarkicide*" but these are not technical terms. Experts have suggested various terms, like in Plasticolor Molded Products Vs Ford Motor Co., who called genericide a "malapropism" i.e. unintentional misuse of a word by confusion with one that is similar and suggested genericization. A member of Cecil Adams's contributing board suggested genericide as "Brand Eponym". However, in legal literature till date, only *genericide* has been used for all such cases.

A survey of the usage of the trademark Nike in the press showed that on the one hand, Nike is associated with sports and fitness, which is what the owner of trademark wishes to project. But on the other hand, Nike is used in less flattering terms, which the brand owner can do little to control. Here there are two examples below, which use the Nike brand to depict the subject.

✿ According to the *Sunday Times*, when Bill Clinton jogged in Oxford last year, "wearing a black Nike t-shirt and short emblazoned with the legend Miami Heat", Nike was associated with celebrity and dynamism.

✿ "They must work to pay back their debts, to pay next term fees, to buy their new Nikes and Engineered Levis." - *The Sunday Express* wrote about student summer jobs. Here, Nike Brand is used ironically to allude to trend following.

These statements provide an analysis of brand perception useful to the marketers who want to know their brand's real perception by customers. The afore - mentioned example shows that Nike means different things for different market segments.

OBJECTIVES OF THE PAPER

✿ To identify reasons for trademarks becoming Genericized Trademarks.

✿ To suggest various strategies to brand managers to protect their trademarks from becoming genericized Trademarks.

METHODOLOGY

The study is based on secondary data collected from literature review of previous studies related to branding strategies and brand protection articles in journals, business magazines, and newspapers. Review of concept related to brand

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strategies, and trademarks was done through books. Review of global majors like Coca Cola, Xerox, Google, LEGO and other major brands and their branding strategies to protect their brand from genericization was done through news coverage and articles to suggest measures to protect trademarks from genericization.

LIMITATIONS OF THE STUDY

The major limitation of the study is the research topic, which is a first attempt made by any researcher in this field. Therefore, direct references related to this topic were not available. Therefore, there is a plenty of scope to work on this topic. The study is purely based on secondary data as collecting primary data from relevant companies was very difficult.

LITERATURE REVIEW

THEORETICAL BACKGROUND

The **Brand** name is an important and valuable asset of an enterprise, which identifies and differentiates it from various other competitors in the market. The word Brand is derived from the Old Norse word *brandr*, which means “to burn”, as brands were and still are the means by which owners of livestock mark their animals to identify them. A Brand, according to the American Marketing Association is defined as “a Name, Term, Sign, Symbol, or Design or a combination of them, intended to identify the goods and services of one seller or group of sellers and to differentiate them from those of competition”. Now-a-days, brands also include Colors, Music, and Songs associated with it.

Intellectual Property Rights (IPR): Include Patents, Trademarks, Designs, Copy Rights and Trade Secrets, which are the legal rights that protect monopoly market rights of the registered owners.

Trade Mark (TM): A “Visual Symbol” in terms of “word”, “device” or a “label”, is applied to articles of commerce (vendible commodity). Property in TM is obtained by registration of a brand under TM Act 1999. In India, the term of TM is ten years from the date of registration and renewable from time to time by payment of renewable fee for indefinite period as long as the TM is in commercial use.

Trademark Dilution is a trademark law concept permitting the owner of a high brand equity trademark to forbid others from using that mark in a way that will lessen its uniqueness. In majority of the cases, trademark dilution involves an unauthorized use of another's trademark on products that do not compete with, and have little connection with, those of the trade owners.

A **Genericized Trademark** (Generic Trademark or Proprietary Eponym or Genericide or Trademarkicide) is a trademark or Brand name that has become the colloquial or generic description or is synonymous with a particular class of goods or services. Genericized Trademarks are former brand names once legally protected as trademark, which have since come to signify a generic product regardless of its manufacturers or brand owners.

Richard Lederer, in Crazy English, refers genericized trademarks similar to words like Sandwich, Braille and Leotard, that to say words coined for people with whom they were associated, called “*eponyms*” (Greek, meaning “after or upon a name”).

REASONS FOR TRADEMARKS BECOMING GENERICIZED TRADEMARKS

Few trade marks, which have high brand equity and household brand names of different companies, became genericized trade mark for different reasons in different parts of the world and in different industries. Major reasons for Trademark becoming genericized name are as follows:

✿ Risk factor, which may lead to genericide trademarks, is the use of a trademark as a verb (Google), noun, plural (LEGOS) or possessive, unless the Trademark itself is possessive or plural (e.g. Friendly's restaurants).

✿ If companies use Descriptive Brand Names or trademarks which may have more chances of becoming genericized names, they cannot be protected legally. Example, Coca Cola lost the proprietary right to their part of their brand name “Cola”, because it is descriptive of the product.

✿ Innovative Products' Trade Marks are more prone to become genericized names because of lack of alternative term to describe the product which is completely new. And customers try to associate brand name with product name when they are not aware or familiar with the product. Examples of Innovative products' trade marks are Walkman, Xerox, Escalator etc.

✿ Lack of proper promotional strategy of brand managers may lead to brand becoming genericized trademark. Like one company manufacturing and marketing salt with trade mark name “Crystal” uses slogan in advertisement as “*Crystal Means Salt And Salt Means Crystal*”.

✿ High Brand equity of a trademark is also more prone to become a household name of the brand and people use brand name common to a product. Then a brand name may become a generic name if marketers are not able to protect it. Google is going through this process.

✿ Illiterate Customers who are not able to understand and differentiate between product and brand name, use brand name synonymous to a product, which may lead to genericization of the brand name. In few cases, even educated people use trademarks to describe products like in case of trademark “Xerox”.

AN ILLUSTRATION OF GENERICIZED TRADEMARKS

A trademark becomes genericized trademark when the goods or services with which it is associated have acquired substantial dominance in the marketplace. When brand managers of a company are not able to manage their trademarks, it becomes a generic name. Law has clearly mentioned that unless a company sufficiently works to prevent use of trademark to refer to any other product, its intellectual right in the trademark may be lost. When brand names are so commonly used, customers associate the brand name for every product of that type- like for packaged drinking water, majority of the customers refer to it as “Bisleri” regardless of the specific brand or who manufactures it or who trademarked the name. Then the Trade Mark becomes synonymous with a product. Trade Name (Brand Name) can lose the right to registration and protection and it becomes a generic name. Sony lost its trade mark registration of “Walkman” for its personal audio system. Genericide is the process by which trademark rights are lost or diminished as a result of common usage in the market place for referring a brand for product. Here are few examples of brand names becoming generic name or Genericized Trademarks.

✿ “*Escalator*” is originally a Trademark of Otis Elevator Company which is now used as Genericized trademark for all elevators.

✿ *Aspirin* is Bayer's trademark and the product is “Acetylsalicylic Acid Tablets”, which is the term all manufacturers are forced to use in order to avoid infringing on the trademark. In 1921, after the First World War, Bayer lost the trademark to the word “Aspirin” by a landmark judgment by Learned Hand and Aspirin became a genericized trademark.

✿ *Zipper* was originally a trademark of B. F. Goodrich for a line of rubber overshoes using the fastening device. Now zipper is used for zip fastener.

✿ *Walkman* was trademark for *personal audio recorder or hand-held portable cassette player* of Sony of Japan. The use of Trademark “Walkman” as a word appeared in Austrian dictionary in 1986. Trademark Walkman has been removed from the register in most of the countries like Austria in 2002 and Sony lost its trademark registration for Walkman as it had become synonymous with all types of hand held portable cassette players. According to the Austrian Court, Sony has not indicated a product name to the public, referring to the product as “Walkman”. If Sony had referred to the product as “Walkman _ Personal Stereo” it would not have become a genericized trademark.

✿ Coca Cola Company lost the proprietary right to their part of their trademark “*Cola*”, because it is descriptive of the product category.

✿ *Gramophone* was the trademark of Gramophone Company of UK. *Gramophone* or Phonograph was the most common device for playing recorded sounds from 1870s to 1980s. Due to common use of Gramophone trademark to refer to record players, it became genericized trademark.

Other than above said, there are number of trademarks which have become genericized namely; Granola, Corn Flakes, Heroin, Tabloid, Thermos and Yo-Yo. Therefore, these trademarks are no longer owned by companies or individual inventor.

TRADEMARKS IN INDIA WHICH ARE UNDER THE THREAT OF BECOMING GENERICIZED TRADEMARKS

If trademark of a company is very well known and part of everyday language and, therefore, people refer to trademark as the name of the product, rather than brand name of the product. This lead to decline in the value and strength of a

trademark and the trademark owner slowly loses the ownership if they won't take measures to prevent it. The best way for the brand owner to prevent a trademark becoming a genericized name is to identify the current status of the brand and how customers perceive the brand and product in that category. Therefore, brand managers have to identify the threat to their Trademark from genericization.

There are trademarks which are under the threat of becoming genericized trademarks, examples of which are mentioned below.

✿ In 1938, Chester Carlson invented plain paper copying called as Xerography (Electro-photography), a name based on the Greek words for Dry and Writing. In 1949, the first Xerox Copying Machine was launched and in 1961, Haloid Xerox became the Xerox Corporation. For photocopying, people use the term “Xeroxing” or “Xerox” in majority of the countries. Xerox trademark became a genericized trademark in Russia, Bulgaria, Poland, Romania and Portugal. The trademark Google is derived from “Googol” coined by Milton Sirotta and is a mathematical term for “1 followed by 100 zeros”. Google's mission is to organize the world information and make it universally accessible and useful, as the term in their brand suggested. The trademark Google is used as a verb like “you do not 'Google'- to say using the Google search engine or for web search. The 2006 Merriam Webster Collegiate Dictionary and the Oxford Dictionary “Google” have been defined as a verb meaning “to use the Google search engine to obtain the information on the internet”. This is a biggest threat to trademark “Google” which may become a genericized trademark.

✿ In India, trade mark “Xerox” is becoming a generic name as most of the people (even the educated ones) use the brand “Xerox” for photocopying of documents and Xerox is becoming a part of the English Language.

✿ Bisleri is a Trademark owned by Parley Group for their packaged drinking water. Few customers in India use the Trademark “Bisleri” for referring to packaged drinking water. This will be a threat to trademark “Bisleri” in future as it will lose its identity and may become a generic name.

✿ “Frooti” is a fruit drink Trademark of Parley Agro Limited, which is first tetra pack fruit drink in India. But most customers in India use Trademark “Frooti” to refer to fruit drink products. This may lead to common usage of the trademark “Frooti” to refer to that product category of fruit juice. Chances are there that trademark “Frooti” will become a genericized brand.

✿ Tetra Pak India Pvt. Limited deals with manufacturing and marketing of packaging for various industries, especially consumer goods in B2B markets. Majority of the customers refer the trademark “Tetra pak” to modern packages of fruit juices, soft drinks and milk etc which has more shelf value.

✿ iPod is the trademark of portable media player designed and marketed by Apple Incorporation. Majority of the customers use the trademark iPod to refer to any brand of portable media players, so iPod trademark is becoming a genericized trademark.

✿ Fevicol is a Trademark of an adhesive manufactured and marketed by Pidilite and is synonymously used to refer any adhesive product in the market. It may lead to genericization of the Fevicol brand.

✿ Maggi noodles are the trademark of instant noodle manufactured by Nestle India. In India, majority of the customers use the Maggi trademark to refer to noodles. If Nestle wouldn't take measures to educate the customer about the proper usage of its trademark “Maggi”, very soon, Maggi Trademark will become a genericized trademark.

✿ PowerPoint® is a trademark of Microsoft Corporation. But most of the professionals in business and academics use “PowerPoint Presentation” to refer to any executive presentation in boardroom meetings, seminars and class rooms.

✿ VIM dish washing cake and liquid is a trademark of HUL and is a market leader in dish washing products in India. VIM is the pioneer in dishwashing cakes since 1993. Before that, people used the dish washing powder. In India, majority of customers refer to the trademark VIM to refer to any dish washing product.

✿ Trademark “Scotch Brite” dish washing scrub pads manufactured and marketed by 3M India Limited. Most of the customers in India refer to “Scotch Brite” for all types of dish washing scrub pads, which may lead to genericization of the trademark.

✿ Band-Aid was invented in 1921 by Early Dickson, an employee of Johnson & Johnson. By 1924, Johnson & Johnson introduced the first machine to produce sterilized Band-Aids. BandAid trademark is becoming a generic descriptor for any adhesive among the customers in the USA, India, Canada, Brazil and Australia.

All the trademarks discussed above are successful household brands names that are facing a serious problem of their

trademark being used as the definitive description of the product category and are prone to become genericized trademarks. Most of the companies may not have the knowledge that genericized trademark is a real threat that their brands are facing. The earlier they realize this threat and take measures, the earlier they can save their brands from becoming victims of genericide.

MEASURES AND STRATEGIES FOR BRAND MANAGERS TO PROTECT THEIR TRADEMARKS FROM BECOMING GENERICIZED TRADEMARKS

A company owning the brand name or trade mark should prevent common or broad use of its trademark to maintain its intellectual property right in the trade mark. In US, a genericization causes a trademark to lose its protection and leads to death of a brand or trademark, a serious consequence the trademark owner might wish to avoid. But in other countries like Germany, a trademark stays protected even after genericization.

Trademark owners may take various steps to reduce the risk of genericide by educating business firm, customers on appropriate trademark use and by avoiding use of their trademark in a generic manner and systematically and effectively enforcing their trademark rights.

✿ Descriptive Brand Names are more prone to become genericized names and even then, it cannot be protected legally. Like it happened in case of Coca Cola, it has lost its right over brand name “Cola”. Therefore, while branding, companies must see that their brand names should not be descriptive of their products.

✿ In case of innovative products', trademarks are even more prone to become genericized names like in case of Xerox, Dalda, Escalator, Walkman etc. Therefore, brand managers have to take additional measures to differentiate product category and trademark. In most of the cases of innovative products, customers are not able to differentiate trademark and product category. They only know brand name through the company's advertisements and other promotions. If a Trademark owner is associated with innovative products, brand managers should consider developing a generic term to describe the product to be used in descriptive context, called as “Generic Descriptor” in order to avoid inappropriate use of the Trademark. Trademark owners have to promote Generic Descriptor through advertisements along with brand names. Otherwise, customers will use a trademark as a product name, and as a “Generic Descriptor”. When a trademark is generically used in the market place, special proactive measures must be taken by trademark owners in order to retain exclusive rights to their trademark. Xerox, through its extensive public relations campaigns, must advise customers to use the term “photocopy” rather than “Xeroxing”, to be able to minimize genericization of its trademark in many countries. But still, Xerox trademark has become a genericized brand name in Russia, Bulgaria, Poland, Romania and Portugal.

✿ In 1970's, Coca-Cola Company was too concerned about its trademark becoming a genericized name, with growing usage of 'have a coke' to refer to 'have a soft drink' by customers. It urged people to refrain from using trademark “Coke” to refer to the product “Soft drink”. For customers who use the trademark incorrectly, the Coca Cola Company sends a message through pamphlets with a gentle covering letter. Coca Cola has also won lawsuits against restaurants who serve another brand of Cola when their customers ask for “Coke”. In this case, Coca Cola has been able to protect its trademark from genericization through legal action.

✿ Google has taken measures to prevent itself from becoming a victim of genericization by discouraging publishers from using the term “Googling” in reference to web search. Under Intellectual Property heading “Risk”, Google trademark owners have said that, “*We also face the risks associated with our trademark that the brand “Google” could become so commonly used that it becomes synonymous with the word “Search”.*” This could result in other competitors using brand “Google” to refer their own products.

✿ Few companies have used strategies like suffixing their trademark with the word 'Brand' to help define the word as a trademark. Example, Johnson & Johnson changed the lyrics of their brand “Band-Aid” Television commercial jingle from “I am stuck on Band Aid” to “I am stuck on Band-Aid brand”.

✿ Another example of an active effort to prevent the genericization of a trademark was by Toy manufacturing Company “LEGO”. Through printed manuals in 1970s and 1980s, the LEGO Company requested their customers that they call the company's interlocking plastic building blocks “LEGO blocks or Toys” and not just “LEGOS”.

✿ Despite their high brand equity and being household names, certain corporate brands survive overtime and remain as powerful corporate brands globally. For example: Yahoo, Apple, Netscape, Microsoft, Sony, Rolex and Nintendo.

Have you ever heard these brands used as verbs like: “I Rolexed and realized I was late” or “leave me alone, I am Appling” or “I Just Nintendozed off”. But we may not come across such “Google de geek”. In their brand names, companies should not use common or generic names as trademarks. In USA, companies manage to register common names as trademarks, but this typically results in the eventual cancellation or surrender of the registration concerned.

✿ Studies have shown that despite their fame and popularity, alpha structuring of certain brands does not lend to verbing. These brands survive overtime and remain very successful corporate brands and also protect their intellectual property. Examples are Apple, Microsoft, Ninetndo, Sony, Rolex and Yahoo. People might have never used that “Leave me alone, I am *Appleing*” or “I am very *Mircosoftist*”. Finding a great brand name is a scientific process which needs great creative exercise and vision.

Exhibit 1: Trademarks Of Various Brands



Exhibit 1 (continued) :Trademarks Of Various Brands

WALKMAN LOGO



source : www.singaporetechreview.com

COCA COLA LOGO



source : www.coca-cola.com

GRAMOPHONE LOGO



source: www.music.ualberta.com

GOOGLE LOGO



source : www.scifi.epfl.ch

XEROX LOGO



source : www.xerox.com

BISLERI LOGO



source : www.bisleri.com

Exhibit 1 (continued) :Trademarks Of Various Brands

FROOTI LOGO



source :www.connect.in.com

TETRAPACK LOGO



source www.chinabevnews.wordpress.com

iPOD LOGO



source:www.ilounge.com

FEVICOL LOGO



source : harishplywood.net

MAGGI LOGO



source : www.mindfreak82.blogspot.com

MICROSOFT POWERPOINT LOGO



source : www.emmettidaho.com

CONCLUSION

Trademark owners naturally seek to maximize the popularity of their trademarks, and most of them believe that a minimum level of genericity demonstrates how well known and successful a trademark has become. But, generic use of trademark presents an inherent risk of effective enforcement of trademark rights and may lead to genericide. Great corporate names and Trademark identification is result of very scientific process and a complex creative exercise. Most of the corporate naming is like a last minute casual process led by big advertising agencies. Branding is not just logos or graphs or designs. Under The Law of Corporate Naming, all the issues of branding should be explored, so that the brand name will be engineered for long term survival and durability. If Trademarks are developed with vision i.e. considering the future threats and opportunities for the trademark in the market, and planning marketing strategies, then the chances of the trademark becoming a genericized trademark will be minimized. Therefore, Trademark owners should have a strategic brand management to continuously monitor and to reposition the trademark whenever required. Therefore, trademark owners have to use different strategies to protect their trademarks in different markets, for different products and in different circumstances. Finally, to protect a trademark, correct usage of the trademark by owners and licensees should be emphasized and incorrect usage of trademark by others should be policed vigorously and consistently before it is too late.

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