

Don't let your trademarks die of success: Preserving distinctiveness.

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In the exciting journey of building and expanding a company, there is one asset that is often underestimated: trademarks. They are not merely names or logos; they are the very essence of a company's identity in the marketplace. However, success can have a surprising effect on a trademark essence.

Ever heard of trademark "genericide"? Maybe it's not what you imagine, or maybe it is. We briefly here explain how success can lead your trademark into that dark realm of becoming a generic term and how you can avoid it.

SUCCESS AND TRADEMARK GENERICIDE: A REAL THREAT.

While success is the ultimate goal of any business, it can also have unexpected consequences for trademark protection and distinctiveness. Genericide occurs when a trademark becomes the usual designation or generic term for goods or services rather than exclusively identifying a specific commercial source. In simpler terms, the trademark loses its distinctiveness and becomes diluted in everyday language.

It's important to remember that one of the fundamental functions of a trademark is to distinguish and differentiate a company's products or services from those of others. When consumers see your trademark, they should immediately recognize the specific business origin of YOUR product or service.

Genericization is often the result of the trademark owner's activity or inactivity when his product or service, which was previously unknown to consumers, attains significant popularity. In these scenarios, if the trademark owners do not exercise due care in its use as a distinctive sign but tolerates its use as a generic term rather than maintaining its distinctive identity, they run the risk of the trademark being genericized.

If when people encounter your product or service, the term you've chosen as your trademark directly answers the question "what is it," you're in a bind. As a result, there's a potential risk that both consumers and your competitors will adopt it as a generic term to identify those categories of goods or services.

THE DETRIMENTAL EFFECTS OF GENERICIDE.

Genericide has significant negative consequences. From a legal point of view, a trademark that has been the victim of genericide may lose its trademark protection, as it becomes grounds for applying to the Trademark Office for a declaration of invalidity. This in turn leads to the loss of the exclusive rights that the trademark originally enjoyed. From a commercial point of view, genericide can undermine the value of the trademark by depriving it of its distinctiveness and ability to differentiate. This transformation may lead consumers to associate the mark with a category of products rather than a particular source, potentially leading to reduced trademark loyalty.

PRESERVING DISTINCTIVENESS: A CALL TO ACTION.

So how do you prevent your trademarks from succumbing to the perils of success and falling victim to genericide? The answer lies in maintaining distinctiveness. Here are some practical tips that you can explore and develop with the help of your IP attorney:

- **Information:** Use the ® symbol next to your registered trademark. This informs third parties that your trademark is protected by the relevant registration.
- **Active audience education:** Maintain a proactive strategy to inform the public about the uniqueness of your trademark. Create emotional connections and highlight how your trademark identifies your company and differentiates itself from the competition. Avoid the use of your trademark as a generic term for your product or service in your own means of communication or in your information material.
- **Attentive vigilance:** Perform continuous monitoring to quickly identify any harmful use that may contribute to the genericide of your trademark. Take prompt action to prevent its erosion and preserve its distinctiveness. Ensure that your trademark is respected in dictionaries: if it is in a dictionary, there should be a reference to the fact that it is a registered trademark.
- **Intervention and Follow-up:** If you become aware of an inappropriate use of your trademark, do not remain passive and acquiesce in the harmful misuse. Seek the advice of professionals who can help you take appropriate action.
- **Continuous investment:** Dedicate resources to actively protect, defend and promote your trademarks. Maintain a marketing and advertising strategy that reinforces your unique identity.
- **Strategic review:** Seek the expertise of an IP attorney to assess your use of your trademark portfolio. Tailor your strategies to align with your current and potential product or service commercialization and optimize protection.
- **Collaborative synergy:** Ensure seamless collaboration between your branding and marketing team and IP professionals. This partnership is critical when creating new distinctive trademarks, executing advertising campaigns, and launching your trademark in the marketplace.

Remember that your trademarks are more than just a sign; they are an asset that deserves special attention. Just as you invest in technology and product development, actively protecting and promoting your trademarks remains essential to their continued success in the competitive marketplace. If your trademark is so well known that it is identified with the common name of the product, it is NOT a success. Dying "of success" is also dying - and we do not wish that for your trademark-

Please note that this is an informative summary. Specific scenarios may require tailoring and legal advice on a case-by-case basis.