

6 tips to saving your trade mark from brand genericide

By [Melissa Morris](#)

25 Nov 2022

Videotape, escalator, trampoline, laundromat. What do all of these words have in common? They were all once legally protectable trade marks which, due to the way in which they were used, have lost their distinctiveness and since become 'generic'.



Image source: Pxabay from [Pexels](#)

But what does 'generic' mean? A generic trade mark is a word or phrase that becomes the common term for an entire class of goods or services over time. They are not protectable under trade mark law. Essentially, the term becomes the 'brand' for a group of products. For example, the word 'aspirin' has become the common name for several pharmaceutical pain-relief products (regardless of the brand). Genericide happens when consumers, over time, associate extremely popular trade marks with the products and services themselves instead of their specific source.



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The genericide of a trade mark can happen to any brand owner, even where the trade mark is being used and promoted in good faith. In order to continue enjoying the rights of your trade mark, trade mark owners should, at all costs, protect their brands from falling into the public domain. So what can a trade mark owner do in order to prevent this? There are a few things...

1. **Choose a strong trade mark at the get-go.** Invented words that have never been used in association with particular goods/services are the strongest kinds of trade marks. We have some tips and tricks on this found here: [Choosing a 'good' trade mark \(a lawyer's take\) - Adams & Adams](#)

2. **Always use the ™ or ® symbol when using your trade mark.** This avoids confusion in the minds of consumers between the products/services themselves and the brand names/trade marks associated with them. In South Africa, the ® symbol may only be used in relation to a registered trade mark.
3. **Do not use your trade mark as a noun or verb.** Trade marks should always be used as adjectives. For example: a Ferrari car and not simply a Ferrari; a Kleenex® tissue and not a Kleenex.
4. **Trade mark owners should actively police how the media or competitors use their trade marks.** Where misuse occurs (ie. trade marks are used to refer to the products and services they represent instead of as a source indicator), owners should consult a trade mark attorney to determine possible legal options.
5. **Ensure that you have detailed brand guidelines and protocols regarding the correct usage of the trade mark.** For example, particular fonts, colours, positioning on packaging should be in place both internally and for PR purposes. Training your staff regarding these issues is also beneficial.
6. **Advertising campaigns may also assist in educating consumers on the correct usage of the trade mark.** The lawyers of Kleenex® have recently launched a light-hearted social media campaign in which they thank the general public for saying 'Kleenex® brand tissue' and educate them on the proper usage of the trade mark.



Image: Supplied

Save yourself from having to use a Kleenex® brand tissue while lamenting the loss of all the rights you may have acquired (at a great cost and effort) in your trade mark due to genericide. Use our tips to continue enjoying the brand rights and

value in your trade mark.

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