



Delving into the Legal Landscape of Trademark Genericide: A Critical Perspective on Indian Law

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Companies invest heavily in publicising their brands, as trademarks have a commercial value in the market. With this brand-building process, there are times when trademarks lose their exclusive right as source indicators through a process known as genericide. Genericide is a devil that takes away the identity and dominant character of the trademark and makes it a common descriptive word used by consumers for Sui Generic goods and services. Ironically, the popular brands with the lion's market share are more prone to genericide. Under the Trademark Act of 1999, such a registered trademark can be cancelled, extinguishing the trademark holder's rights forever. The author of the present paper argues that genericide is a concept that penalises a successful proprietor rather than protecting the interests of rivals or consumers. To examine the said argument, the author has taken a doctrinal approach by providing an in-depth analysis of the process of trademark acquisition, the phenomenon of genericide, and the measures that can be taken to prevent the genericisation of a trademark, with illustrative examples from Indian Trademark jurisprudence. Fortunately, there are various means to combat the devil of genericide; in the final remarks, the author will summarise the measures that trademark holders must take to preserve the 'Distinctiveness' of the trademark.

Keywords: Trademark, Genericide, Distinctive, Descriptive Marks, Generic Marks, Advertising, Brands

The most imperative concern any corporate organisation or enterprise comes across when establishing itself in the market is its identity. How will consumer identify their product and services in the market? The entities are not leaving a single opportunity to protect, reinforce, and develop new ideas to maintain the brand's popularity and connect with the consumer base. This hard labour is protected and recognised as an Intellectual property right, i.e., *trademarks*.

A *trademark* is a device, symbol, name, logo, or mark that allows one company to differentiate its goods from intrans. Trademarks serve four purposes: product identifier, Source Indicator, quality level Pointer, and a significant character for marketing and advertising the goods.¹ The legal protection of trademarks is only limited to a degree where the consumer is informed about the genesis of the products. The protection is also available without statutory registration via the common law remedy. However, registration yields substantial benefits in the long term in building and safeguarding the reputation and goodwill in the market. Legal advisors all over

the globe pitch for registration, and brands repeatedly seek it.² The registration establishes a presumption of legal rights of protection to the trademark owner; nevertheless, as per the 'Trademark Act', if a registered *Trademark* is widely used as an expressive term for a product, it may be cancelled.³ A mark may be terminated if it has become generic and lost its distinctive value. When such a situation happens, a conflict arises between the right-holder interest in maintaining his or her exclusivity and the interests of the public and rivals in the unrestricted use of the once-distinctive trademark. In such a scenario, the trademark may no longer be protected, which is terrible news for trademark owners who work hard to keep their brand's individuality and originality. This predicament has an equal impact on brands as intangible rights and goods or services as tangible entities. In this case, the consumer takes control of the brands when the product is reduced to a commodity; the producer is no longer recognised as the source identifier, and the brand name is reduced to a common word in the language. A genericness finding considers a shift in how the brand name is used within the user base (interpreted as the "relevant public" for the goods or services in question). It demonstrates that

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the former brand name has started to spread independently of the product it was initially attached to.⁴ As a trademark proprietor, it is concerning that all of the effort put out to establish a positive reputation and goodwill in the marketplace has backfired and is now being used against him for creating a successful brand. Most competitors monitor these cases and bring legal action against the owner to claim that their trademark has become generic.

This brings us to the central theme of the study, where the author argues that trademark erosion is a significant problem for brand recognition. Therefore, it is even more crucial to acknowledge and understand the issue of genericide in the context of trademark regimes. To understand the topic more profoundly, the author's primary focus is on Indian trademark law and case laws, with a secondary reference to provisions and illustrations from other legal systems.

Legal Background

The statutory framework of the Indian trademark law was established by the Trademark Act of 1940. It was taken from the 1938 British Act that established the official registration procedure. Later, when India gained independence, the Trade & Merchandise Act of 1958 took its place. As trade and industry become more globalised, it is necessary to promote investment and knowledge transfer, as well as to streamline and harmonise the trade mark administration system and to meet its obligation as a signatory to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, the Trademark Act of 1999, read in conjunction with the Trademark Rules of 2017 (as amended), supersedes the 1958 Act.⁵ The Trademark Act, 1999 accords a wide definition to the term trademarks as a

“a mark⁶ capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging and combination of colours.”⁷

Being an inclusive definition, it includes all the marks that can be graphically represented and are distinctive enough to differentiate goods and services between the competitors. The Supreme Court laid out the concept and intent of trademarks in the *Ramdev Food Products (P) Ltd v Arvindbhai Rambhai Patel* case.⁸ A trademark is considered a significant corporate asset and a marketing tool that may

sometimes aid business funding. Customers are frequently persuaded to purchase a specific product by its unique trademark, which signifies quality. The distinctiveness spectrum is crucial when assessing a trademark's strength and prosecutability. A trademark should be distinctive and distinguishable, which is determined by comparing the trademarks. In the case of *Pidilite Industries Ltd. v Vilas Nemichand Jain*, the court observed

“...mere evidence of the extent of use — invoices, financial figures of sales and so on — might show use or even increased use. But something more is necessary to show that the use is such that the mark has become distinctive...use itself does not equal distinctiveness. To succeed in such an action, a plaintiff must show that the goods bearing the mark have come to be identified with his goods exclusively.”⁹

The legislative framework summarises that when the competitor's mark is identical to the proprietor's trademark, and even if the goods and services are similar in nature, it may be necessary to prove public confusion or a likely association with the registered trademarks. However, in cases where the defendant's trademark is identical to the plaintiff's registered trademark and the goods or services are identical, the Court must presume that public confusion is likely.¹⁰ This argument has reinforced the approach that trademark registration bestows on the proprietor an exclusive right to use that trademark in relation to goods and services in respect of which the trademark is registered and obtain relief in respect of infringement of the trademark.¹¹ Registration acts as a constructive notice of the trademark proprietor's ownership claim everywhere nationwide. Its enormous economic worth is the main factor influencing a successful trademark's legal protection. Trademark owners generate product distinctiveness and foster brand loyalty through effective advertising campaigns.¹² But think of a situation when effective brand-building acts as the antithesis to the object of this IP right, and the mark chosen turned a common word of marketing language. This reinforces the importance of the strength of distinctiveness as an essential component in the word mark.

Distinctiveness and Conflict of Interest

As discussed above, the essence of a trademark regime is to distinguish one proprietor's goods or

services from those of its competitors in the same class. Accordingly, not all marks are protected by trademark law; instead, they protect the distinctive character that a specific mark embodies. In the case of *Marico Ltd. v Agro Tech Food Ltd.*, the court explained that

*“Distinctive has been explained to mean such use of the trademark with respect to the goods of a person that the public will immediately and unmistakably co-relate the mark with the source or a particular manufacturer/owner thereof”.*¹³

Similarly, as laid in the *Abercrombie* case¹⁴, the marks falling under the distinctiveness continuum are a good start to understanding how distinguishing character is essential to grant trademark registration. From a substantive perspective, "distinctiveness," which might be inherent or acquired, is the main emphasis of the law on enforceable trademarks. The requirement of distinctiveness stipulates that a trademark, as a sign placed on a good or service, must be able to differentiate the goods or services of one company from those of another. "Fanciful," "arbitrary," and to some extent "suggestive" marks are accorded strong protection by the law. They are intrinsically distinctive and capable of trademark protection without additional evidence, with a precondition that they fulfil other minimum requirements laid by the act.¹⁵ For example, 'KODAK' is a unique, fanciful mark for photography, while 'APPLE' marks are arbitrary in nature for laptops and computers. On the other hand, 'MICROSOFT' for software are suggestive marks as they suggest the quality and characteristics of the goods without describing them directly.

On the other hand, descriptive marks may not always be qualified as trademarks. As such, marks describe "the qualities or characteristics of a good or service."¹⁶ Descriptive words can only be protected under trademark law if the applicant can establish that the mark has acquired "secondary meaning" in customers' minds¹⁷; for instance, a surname integrated into a mark is considered a descriptive mark and is not entitled to protection until it acquires a secondary meaning. As in *Dr Reddy Laboratories v Reddy Pharmaceuticals*¹⁸ the high court of Delhi has given judicial pronouncement on acquired distinctiveness with the surname 'Reddy' for pharmaceutical and medical drugs. The court is also renowned that the plaintiff is distinctly recognisable and connected with

the trademark "Dr Reddy" and its logo and that the pharmaceutical preparations it produces have acquired tremendous trade reputation and goodwill. But in another Case,¹⁹ a Single Bench of the High Court of Delhi allowed the respondent to continue using the mark Singh & Associates since it's a common surname with a disclaimer 'founder Manoj K. Singh to remove any likelihood of confusion or likelihood of association in the minds of the consumers. Thus, in India, acquired distinctiveness is imperative for protecting such marks, which, even though they do not ensure exclusive rights, provide a difficult path for the competitor to register the trademark. It is noted in the case of *Heinz Italia and Another v Dabur India Ltd.*

*“...when the descriptive trademark is used only by one person undisturbed for a very long period of time, without anyone else attempting to use the trademark during this long period time, a case can be established of a descriptive word having achieved distinctiveness and a secondary meaning.”*²⁰

Ultimately, distinctiveness is evaluated based on each particular case.²¹

Finally, the weakest category of marks is the Generic Marks that are, per se, not protected. ²² A mark is presumed generic when it is the "common name of a product" or "the class of which the particular product is a species," because, in such instances, they "do not distinguish or are adaptable to differentiate the products or services from one owner to its competitor in the trade. Similarly, a mark's generic status may depend on the target market for the relevant firm; for instance, "Apple Company" may be generic if the company sells fruit but not necessarily if it sells computers. If generic and common words are protected, it will become impossible for competitors in the trade to describe their goods and services to the ultimate consumers. Accordingly, even showing secondary meaning does not necessarily render a common word protection under a trademark. Customary and generic marks should thus be excluded for two reasons: first, there should not be a favour sum and monopoly by one entity, and second, such words should be allowed to be used by everyone in the interest of ordinary trade.²³

Although the differences amongst these four classes may be pretty distinct, they are

"...often blurred, and 'the difficulties are confounded because a term that is in one category for a particular product may be in quite a different one for another...'²³

For instance, Judge Friendly used the word "ivory," which is a generic word when referring to items produced from elephant tusks but arbitrary when applied to soap, in *Abercrombie & Fitch Co. v Hunting World, Inc.*¹⁴ Every case will depend on the circumstances that appear and the evidence adduced in support to prove distinctiveness.²⁶ In brief, a distinctive or distinguishing character is essential to granting trademark registration. However, despite the significant part that distinctiveness plays in trademark regime and in the advertising approaches of right-holders, a word that was *distinguishing* at the time of registration can lose this quality and become generic due to its abuse by its owner or third parties who are then free to use the trademark as an ordinary word to designate the good or service itself. This situation and the conflicting interests that arise with it will be assessed and serve the paper's central premise.

Understanding Genericide

The English term "Genericide" refers to a process by which a trademark loses its distinctive identity as an outcome of being used as synonymous with a type of goods or services instead of being trademarked for the actual goods or services.²⁵ The famous board game "Monopoly," which was the issue of a trademark dispute in the United States, is where the term genericide first appeared. On March 7th, 1983, a story titled 'Court Rules that "Monopoly" has Suffered Genericide' appeared in the Legal Times magazine. The court observed that the phrase "Monopoly" had been so extensively used in the substance that it was tough to distinguish it from a particular manufacturer and the others, depriving the manufacturer of the capacity to take legal action against "imitation games" using the name "Monopoly."²⁶

Legally, the term genericide refers to two distinct processes- The first is the course in which a brand name or a validly registered trademark is changed through widespread use into a common noun.²⁷ Due to the widespread and indiscriminate usage of the trademark to recognise a particular class of goods or services, the trademark owner, in this process, loses their trademark rights. For example, Thermos, Band-Aid, and cola. Secondly, if a particular word is adopted as a trademark, used, and primarily

understood as a product category by the consumers, it may be denied registration. Such generic names are common words used in trade for example, 'Furniture' is a generic word used for household equipment made of wood, metal, glass, plastic, or related material, and it has various purposes. So, when a manufacturer uses the trademark 'Furniture' to sell household or office furniture, they cannot acquire any specific right as provided in the law with trademark registration. However, such a word cannot be considered generic if used arbitrarily and fancifully and not in a descriptive sense. As stated in *Vimal Dairy Ltd v Gujarat Tea Depot Co.*²⁸, the court observed that generic and common terms cannot be protected unless they have acquired distinctiveness. The author focuses on the first category of genericide. In these situations, the trademarks of successful companies slip into the public domain and are removed from trademark registers, resulting in perpetual litigation by the proprietor.²⁹ The next issue of contention is how to determine trademark genericism.

Raising Concern around Trademark Genericide

Trademark genericide, as a modest process, is understood as the constant use of a term by people to describe a particular product rather than its origin. The more popular a product is, the more likely it is to die a generic death. Some instances of famous trademarks that have, over time, become generic due to the public's wrongful and constant usage of the term include Aspirin, Cellophane, Zipper, Kleenex, etc. In *Coca-Cola Co v Overland Inc.* The court emphasised that

"an originally non-generic, valid trademark becomes generic and invalid when the principal significance of the word to the public becomes the indication of the nature or class of an article, rather than the indication of the article's origin".³⁰

The genericisation of trademarks has become an essential worry for entrepreneurs, who are concerned that their trademarks may be the victims of their success. When a trademark becomes generic, the company cannot protect its proprietary rights, and its trademark journey ends in the public sphere. Genericide can take away all the goodwill and reputation built over time from the mark, leaving the owner with nothing.³¹

Numerous reasons cause trademark erosion; one of the primary reasons is that the proprietor of the

registered trademark fails to exercise the reasonable care required to use the trademark correctly in advertisements and on goods and services. This includes situations when the Trademark is misused as a synonym for the goods or if there's no substitute term in an advertisement at the time of brand building. Using the phrase 'Google it' instead of searching on the Google search engine in advertising may lead the brand to lose its distinctiveness.³²

Secondly, if the trademark owner's licensing strategies are uncontrolled, are not strict, or there's no quality control, this may also cause trademark erosion, like in the cases of naked licenses.³³ Sometimes, it may prevent the mark from being a source identifier.

Thirdly, trademarks of products protected by patents can become generic after the patent expires. This is another trap when the trademark proprietor, also a patentee, reassures and convinces the consumers to use the trademark as a 'generic household word.' Eventually, the distinguishing and distinctive character of the trademark is jeopardised. One of the famous cases to be quoted for this is the 'aspirin case' here; the trademark proprietor Bayer welcomes the public acceptance of their trademark aspirin as the name of the drug itself. By the time the patent expired, aspirin was generic.³⁴ Other illustrations include 'escalator', 'cellophane', etc.

Finally, the trademark holder needs to be vigilant about the function of the trademark. If the consumer and competitors describe the goods with the trademark and there is no alternate common term to state the nature of the goods, the trademark will, in all circumstances, become a generic word for such goods and services.

Assessing Genericide: Transnational Perspective

As discussed above, distinctiveness plays a vital role in trademark exclusivity. On the opposite side of the spectrum of distinctive marks are generic terms. The issue of trademark genericide is global, and different countries have different laws and approaches to handling it. Even if most countries acknowledge the fundamental concept of genericide, there may be variations in the specific factors that courts consider, the kind of evidence required, and the possible remedies. Trademark generification has been one of the successful key grounds for trademark cancellation.

In the U.S., the Lanham Act governs trademark law, which creates the legal framework for genericide and trademark protection.³⁵ One of the earliest cases

in the United States to determine trademark generification was the *Bayer Co. v United Drug Co.*³⁴ case, where the court based its opinion on the 'primary significance test' as the criteria to determine whether the trademark has become generic. Similarly, in *Kellogg Co. v Nat'l. Biscuit Co.*, the court held that

"...for a seller to prove trademark significance in a term challenged as generic, it must be proven that the "primary significance of the term in the minds of the consuming public is not the product but the producer."³⁶

In such conditions, the registered trademark can be declared as generic. Additionally, The Lanham Act recognises evidence of consumer perception, such as media use, dictionary definitions, and customer surveys, which is sometimes essential in cases of genericide. The American system seeks to protect and reward companies that have invested significantly in putting their products on the market. In other words, the generification bar is higher as the statutory protection is given under Section 14, Lanham Act³⁷, Section 307(3) of the Trademark Trial and Appeal Board (TTAB)³⁸, which provides the administrative procedure for cancellation of trademarks that are devoid of distinctive character. In the famous *Booking.com* case the contention was whether Booking.com could be registered as a trademark for online hotel reservation services. The court observed that the protection of generic words depends on

"Whether consumers perceive that term as the name of a class or, instead, as a term capable of distinguishing among members of the class."³⁹

A similar thumb rule applies in the revocation of trademark proceedings where trademark generification is based on a consumer perception inquiry

In the European Union, the laws relating to trademark protection are harmonised to a great extent. On the one hand, there are the European Trademark Directives; on the other hand, the European Union Trademarks regulation provides a robust legal framework for the protection of trademarks.⁴⁰ Under Article 12(2)(a) of Directive 2008/95/EC of the European Parliament and the Council of 22 October 2008 provided that *"a trade mark shall be liable to revocation if, after the date on which it was*

registered: (a) in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered.” Further, the European Parliament approved the new Trademark Directive (Directive 2015/2436/EC), which sets new rules for EU national and Community trademarks. This new Directive, which went into effect on March 23, 2016, repeats the provisions of Articles 12(2)(a) and 13 of the old Directive and incorporates particular regulations on revoking trademarks when they become generic words.⁴¹ In the case of *Backaldrin Österreich The Kornspitz Company v Pfahnl Backmittel GmbH*, the court makes it apparent that end users’ opinions matter when determining whether a trademark can be deemed generic. The U.S. and European trademark policy provisions aim to balance the stakeholders’ interests in the marketplace.

Implication of Genericism in India: Revisiting the Xerox Case

As argued in the anterior part, distinctiveness is a determining factor in the registration and statutory protection of trademarks in India. Sections 9 and 11 of the Act⁴² lay down the grounds for refusal of trademark registration. Section 9 (1) (a) precisely states that *trademarks without any distinctive character would not be registered*. Further, the marks customary in the current language or the *bona fide* established practices of the trade are not allowed for registration. A trademark may become generic either *per se*, or it lose its identity and distinctiveness over a period of time

Under the first head, a generic trademark cannot provide distinctive character to any goods or service being offered and, thus, is not entitled to legal protection under the Trademark Act unless it proves acquired distinctiveness before filing the registration application.⁴³ In one of the illustrative cases, the word ‘*Aachi*’ for the restaurant services by the respondent was under consideration by the learned single bench of Madras High Court. The learned court observed that “*Aachi*” in Tamil means “*grandmother*”. Such a term is commonly used throughout the state of Tamil Nadu. Therefore, such a word, which is of general public use, cannot be monopolised by any person.⁴⁴ In the case of *S.B.L. Limited v Himalaya Drug Company*,⁴⁵ the high court of Delhi observed that about 100 drugs in the domestic market use the abbreviation “*Liv*,” which stands for “*liver*,” an organ

of the human body, as a portion of the names of medicinal or pharmaceutical preparations with some prefix or suffix—mostly suffixes intended for treating ailments or diseases associated with liver—and it was decided that “*Liv*” had become a generic name and *publici juris* because it is descriptive in nature and common in usage. In the case of *Skyline Education Institute (India) Pvt. Ltd. v S.L. Vaswani* the Supreme Court observed that the word ‘*Skyline*’ is a generic word used by many educational institutions. In the case of *Ram Rakhpal v Amrit Dhara Pharmacy and Ors*, the High Court in Allahabad observed that when an individual first uses the name and does not object to the right to limit others from using it and permits others to use it without complaint, a trademark may lose its character and become *publici juris*. The court stated that if the individual who initially had the prerogative to use the name continues to do so, the name will not become *publici juris*. The relevant consideration to be noted here is that the common generic marks that are descriptive in nature can also be considered distinctive in nature, with the proof of acquired distinctiveness.

Another consideration to be pointed out is when a registered mark has become common in trade over a period of time as the owner fails to police the mark, creating a fertile ground for the competitor and the public at large to use the said mark in a generic sense. The focus of the paper is on such registered trademarks. Section 36 of the Trademark Act deals with such situations in a subsidiary manner.⁴⁶ It states that if traders widely use a particular mark as the name of a good or service and not as a source identifier, the trademark becomes susceptible to cancellation. Similar is the case concerning a patented article. Even if the name is a distinctive trademark, it can still be taken from the register. Thus, it is reasonable to assess whether a mark formerly a trademark has acquired *publici juris* status by evaluating whether or not the use of the mark by third parties is meant to mislead the public. If the mark has come to be in such common use that nobody can be persuaded to believe that he or she is buying goods of a particular trader, the right of the trademark proprietor must be departed.⁴⁷

One of the first cases of trademark genericide appears in the famous *Xerox case*, where the defence was trying to convince the court that the word mark ‘*Xerox*’ is now used as a common word and a synonym for photocopy by the general public. Since it

is used generically, its trademark value has been reduced. Due to time and consent, it is no longer as distinctive and has become part of the public domain. The IPAB observed, *'To prove generic use; one should have evidence of production, consumer service and the competitor's perception...'*⁴⁸

Further, the IPAB ruled that a firm or brand's trademarked word wouldn't be considered generic if it had gone to great lengths to fix and control improper use, including sending cease and desist orders. All advertising efforts, emphasis on trademark usage rules, oppositions brought by owners of well-known trademarks, etc., shall be considered evidence if the trademark is being considered for genericide. Usually, the domestic take is that as long as the trademark owner is shrewd in protecting their trademark and preventing any ill-informed use, such a trademark could not become a victim of genericide. For this, the trademark owner has to continuously try to keep his trademark exclusive through advertising and creating a balance with a more significant interest in which its brand name is not used in a descriptive sense, striking a balance among the opposite interests.

Preventing Genericide: Strategies for Trademark Owners

Trademark owners have been prudent to ensure that their trademarks don't get used in the same way by opponents, customers, media persons, and other third parties. For example, Bisleri, the most popular bottled drinking water in India, is running an ad with the tagline *"Har paani ki bottle bisleri nahi hoti"* making a conscious effort that its trademark doesn't die a quick death. Likewise, Xerox has been running a campaign in the newspapers and magazines telling people to "copy" documents and not "Xerox" them.

In the year 2012, the IPAB, while deciding *B.V Ilango.*, held that if a company or brand had taken extensive measures to rectify and police the incorrect usage of their trademarked term, including sending cease and desist notices, it would not be deemed as a generic term. The assertion of the IPAB – *"perhaps the respondent has acted just in time to save its mark, losing its life..."*⁴⁸ shows that Xerox is in a precarious position and must act proactively to prevent its trademark from dying a generic death.

This implies that genericide is preventable. For instance, stakeholders who want to keep their marks from becoming too generic should always employ a generic signifier in combination with the mark.⁴⁹

Trademark proprietors should also take proactive measures to prevent misappropriation of the trademark. They should immediately contact any publication or competitor that misuses the trademark in a broad sense and request that there be no further misappropriation. Other active steps taken include:

- (i) Do not use the trademark as a noun or verb but as an adjective. For example, rather than stating "Google it," use "Run a search on Google" when stating the term "Google."
- (ii) Trademark owners must establish strategies for managing their brands and be assured that these regulations are strictly followed. Businesses should have a stringent trademark policy that will help them avoid having generic trademarks. One such effective strategy is trademark policing⁵⁰, where the trademark owner ought to be extra vigilant and make prompt decisions when the trademark is misused.
- (iii) To ensure that your brand is accurately represented and does not become an interchangeable term for a category of goods or services, monitoring both traditional and digital media is significant. For the sake of objectivity, it might be beneficial to enlist the services of third-party organisations.
- (iv) Other indications may include using the phrase "brand" after the mark, using a distinct typeface or design for the mark, capitalising⁵⁰ the mark's first letter to prevent it from being used as an adjective, etc.

Conclusion

A trademark's popularity is a mixed bag. Contrary to the common opinion, the trademark holder's excessive use of advertising and marketing is likely to cause more damage than benefit. Through advertising, the manufacturers frequently encourage the user to use their trademark as generic household terms, which, in time, will be perceived as the product's representation rather than the origin. This is the case with popular products such as thermos and cellophane. The goal of every proprietor is to make their trademark famous and get exclusive protection, but there is a slim line between a registered trademark and a generic word.

The decisive factor of whether a trademark has been rendered generic, courts often draw upon the judgment in *Elliott v Google, Inc.*⁵¹, wherein it was observed that a reasonable question to determine

whether a trademark had been made generic was “whether the primary significance of the term in the minds of the consuming public is now the product and not the producer.” Additionally, in the case of *Bayer Co. v United Drug Co.*³⁴, it was held that “What is important is not whether a small part of the public perceives the term as an indication of the source but rather what the whole consuming public perceives it to signify.” To sum up, maintaining ongoing protection for well-known trademarks at the peak of their popularity whitethorn is not easy; however, it is certainly not impossible. If preventive and corrective measures are taken promptly, it is possible to ensure that famous trademarks remain protected long before they lapse into oblivion.

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