

SPONSORED UPDATE

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PROTECT YOUR TRADEMARK FROM GENERICIDE



When the relevant public considers your trademark to stand for a category of goods rather than the source of the goods, the trademark indeed has lost its distinctiveness and become generic. According to Article 11 and Article 49(2) of Trademark Law of the People's Republic of China, anyone can apply to cancel a trademark that has lost its distinctiveness and become generic. When this happens, the trademark can be ruled as abandoned and enter into the public domain. For example, “优盘” (“You-Pan”, a trademark genericised as USB flash drive), “味精” (“Wei-Jing”, as gourmet powder) etc.

Main Reasons of Trademark Genericide

1. Trademark design flaw. Some trademarks have design flaw from the very beginning and thus, bear relatively weak distinctness. This kind of trademarks, even if registered successfully, are more easily cancelled for genericide after long term use;
2. Inappropriate use of the trademarks as product name by the public, and sometimes even by the trademark owner;
3. Intentional misuse of a trademark as product name by the competitors. Some competitors will intentionally misuse the famous trademark as product name to promote its own products;
4. A trademark is incorrectly quoted or described in the governmental file/official record or dictionary as the generic name of the corresponding products;
5. Long term monopoly status of the product can sometimes lead to trademark genericide.

Tips to Prevent Your Trademark from being Generisided

1. Carefully design your mark before it is too late, seek professional advices from your trademark attorney;
2. Use the trademark sign as much as possible when it is seen publicly. The letter “R” in a circle indicates a registered trademark, and letters TM indicates a protected but not registered trademark. Using trademark sign helps the public understand that your trademark is a trademark legally registered/applied, rather than a product name;
3. Always use your trademark prominently, and correctly, always follows a product name after it. If possible, educate the public about the correct usage of your trademark. Make sure you use your trademark correctly. Don't use it as a noun (i.e. generic name of the product) or as a verb (such as “I'll google it” instead of “I'll search it on line”). A trademark should be used as an adjective in front of the correct generic term. Using it this way consistently helps the public understand the correct usage;
4. Consistently monitor for incorrect uses and correct them in time, confront the competitors that infringe upon your trademark right intentionally. Sending Cease and Desist letters, and be prepared for litigation against the infringing competitor when necessary.

■ MS SPRING CHANG

■ T: +86 10 8836 9999
■ F: +86 10 8836 9996
■ E: spring@changtsi.com

■ MS DAISY QIN

■ T: +86 10 8836 9999
■ F: +86 10 8836 9996
■ E: litigation@changtsi.com

■ A: **Chang Tsi & Partners**, 7th-8th Floor Tower A, Hundred Island Park, Bei Zhan Bei Jie Street, Xicheng District, Beijing, 100044

■ W: www.changtsi.com