



## CAN TRADEMARKS FALL PREY TO THEIR OWN WEB OF MACHINATION?

**Trademarks do commit suicide. Doesn't that ring a bell? Yes, it's happening!!!**

See the brands like Escalator, Xerox, Aspirin, Thermos, Laundromat, which we use in our day to day life. Isn't it fascinating to know that all these names hold a trademark and entitled for its protection? Trademarks lose their strength with time and popularity, when they are constantly used by the public where they associate a trademark with a particular class of items rather than the owner, who is only known as the source of origin of a given product. This woeful transition is known as **Trademark Genericide** where trademarks lose their distinctive identity.

Paradoxically the well-known brands in the world are the ones that are more plagued to this genericide syndrome. Where there are several instances such as aspirin, cellophane tape, zipper that were once non-generic trademarks have now been generalized by the public over time. The genericization of the trademark like "Escalator" used by Otis Elevator Company has now become a common word defined by the dictionary.

As held in **Coca-Cola Co. v. Overland Inc.**, the Court has ruled that when a word's major public significance shifts from describing the type or class of an item to describing its origin, the initial non-generic, authorised trademark turns generic and invalid."

In a recent judgement in March 2023, the Delhi High Court ruled on the **Burger King Corporation v Ranjan Gupta & ors** case, wherein the defendants argued that "Burger" and "King" in the plaintiff's registered name were generic and couldn't create a distinct brand but the court upheld the plaintiff's initial mark usage and well known status and hence dismissed the generic claim, noting that defendants who had attempted to register the same mark.



One must note that the majority of the businesses that are currently in for losing their trademarks are also to blame, not only for effectively popularising their goods but also for implementing insufficient control procedures that caused their Trademarks to shift to generic state. Another reason would be that the product might have been the first of its kind and held a monopoly in the industry, which caused consumers to associate the trademark with the product rather than the product's manufacturer. The intransigence of the businesses that control the Trademarks could be another factor for genericide. For instance, an esteemed trademark like "Google" has been reduced to a mere verb "Google it". To refrain the public from genericizing it, Google has strategically published "rules for proper usage" to create awareness among the masses.

Thus, this genericide outbreak murdering trademarks can be prevented by adopting some robust guidelines by the trademarks owners such as abstaining from using their mark as a verb or noun, which implies that the word is generic, to add the word "brand" after their trademark on goods packaging and by establishing guidelines for the utilisation of their trademarks and make sure that they are strictly followed. As well businesses should implement a stringent trademark policy that could help them avoid having such generic trademarks. So finally adopting a proper legal recourse in a timely manner is an important step to counter any practice that may lead to trademark genericide !!!!