



Google: \$ Billion Brand in Peril?

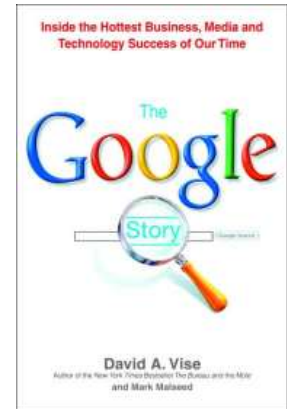
By Max Sutherland

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The names 'aspirin', 'escalator' and 'windsurfer' were once proprietary brand names, but each one lost its trademark protection because the name drifted into general usage and became generic. Is Google headed the same way?

When my wife asked me if Google could lose its trademark because it seemed to be becoming generic, I said I would Google it and find out. Using the word Google as a verb like this, is a danger sign for a brand. I said it without thinking and meant that I would use the Google search engine to research it.

I did, but I became totally distracted in the process because I hit on a most extraordinary, almost unbelievable fact. Amongst the many trademarks lost because they had become generic (like aspirin, windsurfer and escalator) I found a most amazing one - 'heroin'. Yes, it turns out that 'heroin' was originally [a Bayer brand name!](#)



Discovered by a British chemist in 1874, heroin was mass produced by Bayer in 1898. The name connotes the 'heroic', fearless and painless sensations that people feel when they use it. The product was sold through pharmacies "as an excellent pain killer" and as a cure for a number of diseases. ([More here...](#)). How scarily bizarre! What other marketing fossils lie buried under layers of antiquity?

Anyway back to Google. When brands enter the lexicon and we start to use them generically, owners risk losing their exclusive right to their trademark. Bayer was a big loser and I don't mean for heroin but for aspirin. Aspirin was a proprietary brand name until 1921¹ when it was declared generic by the courts.

A long line of trademarks have become generic this way, including kerosene, trampoline, nylon, thermos and linoleum. Once these were valuable brand names but now they are just words in dictionaries owned by no-one and available to all. Google faces the same possible fate.

Just in the last five years some valuable brands have lost their trademarks this way. [Pilates \(exercise system\)](#) for example was declared generic in 2000. And in 2002, in Austria, [Sony lost the right to its name Walkman](#) when their Supreme Court ruled it had become synonymous with all types of hand-held portable cassette players.

All these words were once registered trademarks - proprietary brand names.

- biro
- gramophone
- laser
- kerosene
- frisbee
- windsurfer
- escalator
- formica
- thermos
- linoleum

When Google went public it acknowledged the risk to it in its IPO filing. Under the intellectual property heading of the risks section it said: "We also face risks associated with our trademarks. For example, there is a risk that the word "Google" could become so commonly used that it becomes synonymous with

the word “search.” If this happens, we could lose protection for this trademark, which could result in other people using the word “Google” to refer to their own products, thus diminishing our brand.” (See [“Intellectual Assessment”](#)).

In the 1970’s, when I worked for the Coca-Cola Company, it too was concerned about its trademark becoming generic, particularly because of the growing use of ‘have a coke’ to mean ‘have a soft drink’. We had a little pamphlet printed, called ‘A is for Aspirin’ that explained how the inappropriate use of a brand name puts the brand at risk and caused aspirin to lose its trademark. It urged people to refrain from doing this with the word ‘Coke’. To anyone who used it incorrectly, we sent this pamphlet with a gentle covering letter.

Google likewise, must actively try to stem the drift towards their brand word becoming generic and they are now adopting a similar practice of writing to people when the word is used inappropriately. However, the danger to Google is greater than it ever was for Coke because of Google’s use as a verb. It is in company with other brands ‘at risk’ like Xerox and Rollerblade that must also try to dodge the same generic fate.

When a brand starts to be used as a verb, the danger signals really start flashing. If an instruction to ‘Google it’ or ‘Xerox it’ means ‘to do a search on Google’ or ‘make a photocopy on a Xerox photocopier’, that’s not so bad. But pretty soon this verbal usage tends to drift to mean any kind of ‘search’ on any kind of search engine, just like Xerox began to mean ‘make a photocopy’ on any kind of copier.

“Bobby’s mother was busy with the white-out, trying to fix a mistake on the manuscript before she xeroxed it. Meanwhile, Bobby had finished crying, threw away his soggy kleenex, checked the new band-aid on his knee, and ran back outside to continue rollerblading with his pals.”

Bill Walsh (writer),
Rejecting that writers should refrain from such use of brand words. See [Media Literacy](#)

At Coca-Cola, we particularly asked journalists and authors not to write ‘Coke’ with a small c, as in ‘coke’, because that type of usage is potent evidence to the courts that the term is generic. That’s what is now happening to Google. The recently released corporate biography by David Vise, [“The Google Story”](#), is unauthorized by Google but one would expect its co-operation might have been traded off for some influence over the book. Apparently not because this book also

- commits the sin of using Google as a verb and
- uses the ‘lower case g’.²

Listing of Google as a verb is also beginning to show up in dictionaries. Type ‘Google’ into dictionary.com and you find that it is listed (by the *Webster’s New Millennium Dictionary of English*) as a verb meaning “to search for information on the Internet, esp. using the Google search engine”. Note the term ‘especially’ (not exclusively) using the Google search engine. It gets worse. The illustrative example uses a lower case ‘g’: “She googled her high school boyfriends.” This is the sort of thing that should be ringing very loud alarm bells for Google and its investors.

If they haven’t already done so, I expect Google’s attorneys will be sending Websters a very stern letter, because Google’s fate depends on the actions it takes now to try to stop the brand becoming generic. The courts, in deciding whether to declare a brand word generic, are influenced not just by general usage, but also by what efforts, if any, the company has made to ward off the growing use of their trademark in generic form.

Clearly Google is now in the dubious company of a long line of brands that are ‘at risk’ (see inset) and that must be constantly devoting effort to warding off what *otherwise* is an inevitable fate. The maneuvers of these other ‘at risk’ brands provide a guide to what we can expect from Google.

Inevitably Google must become more publicly active in urging people not to use the word Google when they simply mean 'search'. Rollerblade and Xerox are the role models on this. Rollerblade was very proactive, and went into action very early when it heard people talking about its new sport as rollerblading. It spearheaded a campaign to stop the public from using Rollerblade as a verb or a generic noun and to substitute instead the generic terms "in-line skating" and "in-line skates" ([more...](#)). Thus far it has worked because Rollerblade still has its trademark. By contrast, Windsurfer lost its trademark when windsurfing came to mean sail boarding.

At Risk	
• Google	• Weight Watchers
• Xerox	• Kleenex
• Rollerblade	• NutraSweet
• Walkman	• Scotch Tape
• Chap Stick	• Ray-Ban
• Dumpster	• AstroTurf
• Fed-Ex	• Rolodex
• Velcro	

Google is a multi-billion dollar brand, built uniquely by word of mouth with no advertising. So it is ironic that it will be forced to advertise but when it does it will have to advertise not what Google is, but what it is *not!* Google [told 'MIP week'](#) in November 2005 that "*Genericization is a concern and something we have to face, we haven't got to the point of running an ad yet, like Xerox, but it is definitely something we do consider.*"

They will inevitably follow what Xerox has done in taking the fight to journalists and authors with campaigns [in magazines such as Writer's magazine](#) and Editor & Publisher. The Xerox advertisements use the slogan "*You cannot xerox a document, but you can copy it on a Xerox Brand copying machine*" and urge that "*Whenever you use our name, please use it as a proper adjective in conjunction with our products and services: e.g., Xerox copiers or Xerox financial services. And never as a verb: 'to Xerox' in place of 'to copy', or as a noun: 'Xeroxes' in place of 'copies'.*"

Is this just Canute trying to command the tide to roll back? No, because even though dictionaries continue to list Xerox as a verb (and not just a trademark), this is crucial activity because it has two important effects:

- it delays what is otherwise the brand's inevitable fate i.e. being declared generic by the courts
- it demonstrates to the courts that the trademark owner is genuine in trying to stop the drift.

Active campaigns like this will not let Google escape the threat, but as Xerox has shown, they can delay the brand being declared generic - in Xerox's case, for more than half a century. However, Google seems to be curiously slow in getting off the mark which is a bit of a mystery. Sergey Brin, (a founder of Google) is on record as saying: "The only way you are going to have success is to have lots of failures first."³ That's good philosophy but the loss of its trademark is one failure that even gargantuans like Google can't afford.

Notes

¹ At the end of WW1, the Allies seized and resold Bayer's assets. Sterling acquired Bayer's US assets from the US Government so Bayer Aspirin sold in the USA thereafter was made by Sterling Pharmaceuticals. Sterling lost the right to exclusive use of it as a trademark when it was declared a generic term by a Federal Court in 1921.

² e.g. p75: an employee "googled an online holiday calendar"

³ Vise, D. (2005). [The Google Story](#). NY, Bantam Dell. P16