

A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.

[How Realistic is the Risk of Trademark Genericide?](#)

Posted on December 20, 2010 by [Steve Baird](#)

The [Grand Marshal](#) in the [Parade of Horribles](#), at least for some [trademark types](#), is the one who forbids any deviation from the absolute "rule" against using brand names and trademarks as nouns or verbs, a standard "rule" commonly found in [trademark use guidelines](#) (only permitting the use of trademarks as adjectives). As I have written about previously, these "rules" they are a changing, or at least they're seriously being challenged by some creatives and [marketing types](#):

- [Just Verb It? A Legal Perspective on Using Brands As Verbs: Part I](#)
- [Just Verb It? Part II: A Legal Perspective on Using Brands As Verbs](#)
- [Just Verb It? Part III: Testing the "Slippery Slope" of Using Brands as Verbs](#)
- [Managing The Legal Risk of "Verbing Up" Brands and Trademarks](#)

A couple of days ago I was reminded that the [trademark verbing](#) trend is not going away when I saw a light rail train in downtown Minneapolis fully encased in an advertisement for Cisco's Flip video camera, asking consumers what its [Silicon Valley](#) neighbor Yahoo! Inc. used to ask in their advertising ([Do You Yahoo!?](#)), but of course, Cisco's new and current use is tailored to Cisco's [Flip trademark](#), asking their consumers and potential consumers, [do you flip?](#)



WINTHROP WEINSTINE

ATTORNEYS AND COUNSELORS AT LAW

Capella Tower | Suite 3500 | 225 South Sixth Street | Minneapolis, MN 55402
Main: (612) 604-6400 | Fax: (612) 604-6800 | www.winthrop.com | *A Professional Association*

Cisco is not only breaking the "rule" against "verbing" trademarks, but it also encourages the use of the Flip trademark as a noun too, in advertising telling prospective customers to "[Find Your Flip](#)," and then asking them to decide "[Which Flip is right for you?](#)"

Smartly, I believe, it also has filed a [trademark application](#) to register the Do You Flip? tagline and question (see point three in listing of [how to manage the risk of genericide](#)).

Although there is certainly no shortage of [recent trademark genericness decisions](#), they focus on inherently generic marks, ones that started out generic, not ones that have become generic over time through misuse or changes in the English language.

The poster child for this type of genericness decision is "[ScreenWipe](#)" for wipes used to clean computer screens. Of course, vigilance to trademark use guidelines and other trademark "rules" is imperative when you're on the border of the genericness or descriptiveness lines or the [suggestiveness and descriptiveness](#) lines, along the [Spectrum of Distinctiveness](#), so, not a good idea to identify your ScreenWipe product as "a . . . wipe . . . for . . . screens."

I'm happy to be enlightened or steered in the right direction, but I can't think of the last time an arbitrary, coined, or fanciful trademark degenerated into an unprotectable generic term, landing in the [Trademark Graveyard](#), through the process known as [trademark genericide](#). Can you?

Given how prevalent trademark and brand verbing is, why haven't we seen any recent trademark genericide examples? Or, are they just on the horizon?

How realistic is the risk of trademark genericide anyway?

