

The Problem with Trademark Grammar

Linguistics 120: Structure of English Grammar

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1. Introduction

When the average person sits down at his computer with the intent to find information, he may be performing an operation that has implications beyond simply getting answers. He opens up his web browser, types a few words into their search engine, and discovers what he's looking for. Asked what he has just done, he might reply, "I just Googled for something." What program did he use? "I used IE." What did the program run on? "On my Dell." While this might seem like a harmless everyday activity, corporations and their hired grammarians know that everyday people such as this person are up to something exceedingly more insidious: trademark misuse.

According to Google, Microsoft, and Dell – and their big friend, the International Trademark Association (INTA) – this person is, in fact, contributing to the demise of their trademarks. What Joe Average should have said was that he used his Dell™ Dimension® desktop computer to run the Microsoft® Internet Explorer® internet¹ browser to navigate to the Google™ search engine and perform a Google Web Search™ (Dell, Microsoft, Google). When he states that he is Googling using IE on his Dell, he is committing "genericide" – heartlessly abbreviating and otherwise misusing terms, which then propel them into mainstream vernacular, making them generic – meaning they are no longer recognized by law as trademarks, or names that belong to their respective companies, and competitors are free to use them.

In addition to the ramifications pertaining to free speech, fair use, and the natural evolution of language, there are multiple grammatical problems with the prescriptive rules that INTA pushes upon companies and its consumers, suggesting the implausibility of their demands, and demonstrating the lack of knowledge trademark lawyers have about simple grammar.

2. INTA specifications

INTA is a non-profit membership association which consists of over 5,000 trademark owners

¹ The word "internet" is lower case according to Microsoft's specifications of generic terms, although it is often referred to as a proper name, hence, "Internet." Whether this is intentional, a mistake, or a style choice, is unknown (OED).

and professionals. It was founded in 1878 in order “to protect and promote the rights of trademark owners, to secure useful legislation and to give aid and encouragement to all efforts for the advancement and observance of trademark rights” (International Trademark Association, “About INTA”).

INTA advises companies and consumers on tactics that will help them enforce their trademarks (International Trademark Association, “Trademarks vs. Generic Terms”). First, they provide companies with a scale that determines how suitable words are as trademarks. (1) illustrates this scale from strongest to weakest.

Fanciful marks	Made-up words with no relation to the good, such as Google, a company specializing in Internet searching.
Arbitrary marks	Existing words that still hold no relation to the good, such as Adobe, a software company.
Suggestive marks	Suggest a relation to the good, such as Microsoft (originally an abbreviation of “microcomputer software”), a software company.
Descriptive marks	Ultimately describe the good or service, such as Pizza Hut, a company that would originally sell pizza in hut-shaped buildings. ²
Generic terms	Act as descriptors for goods, such as “desktop computer,” “internet browser,” or “search engine.”

Figure 1

Furthermore, INTA provides guidelines to both companies and consumers on proper use of trademarks. A series of PowerPoints (that is, Microsoft® PowerPoint® presentation files) on its site reveal some explicit rules (International Trademark Association, “Trademark Proper Use”). Trademarks are “proper adjectives” which modify the generic term of the good or service, which it must immediately precede. For example, words such as “Kleenex” or “Kodak” are, in fact, adjectives, which modify words like “tissue” or “camera.”

Secondly, singular trademarks should not be pluralized. For example, names such as “Gillette” or “Nintendo” do not refer to a specific object, nor do they refer to multiple objects – besides,

² Some might argue that “hut” is such a little-used term that Pizza Hut would qualify as a suggestive mark – unfortunately, there is no exact scale to determine this.

according to INTA, they are “adjectives.” So talking about a case of Gillettes or a room of Nintendos is frowned upon. In a similar light, pluralized trademarks cannot be singularized. If one were to ask for a single piece of candy, they would have to ask for a piece of Hershey's Kisses candy. If one were to ask for multiple pieces, they would still have to ask for Hershey's Kisses candies. A single “Kiss” is out of the question.

The presentation continues, stating that non-possessive trademarks should not be used in the possessive form: instead of referring to a Reebok's comfort, one should refer to a Reebok sneaker's comfort. But if the trademark is already possessive, the speaker is in luck, as they can refer to Levi's jeans – although since the trademark is also an “adjective,” they need to refer to a Levi's pair of jeans.

Next, the presentation emphasizes that trademarks should not be verbs. You can't Google for something, you can't go Jet-Skiing, you can't Spam, you can't Xerox a document, you can't TiVo that show, you can't Hoover your boss, you can't go Rollerblading, and you certainly cannot Photoshop an image. Although “verbing” words is a perfectly common occurrence, performing this on trademarks is prohibited. Besides, we're dealing with “adjectives” here. When's the last time you stupided anything?

INTA presents methods to make trademarks stand out from regular text so they are not mistaken as generic terms – for example, by putting them in all capitals, bolding them, surrounding them in quotation marks, or printing them in a different color. These kinds of textual treatment place the focus on the trademark itself, rather than the generic term. Their intent is to inform people that the trademark is not part of the name of the product as an object, but something that simply specifies which brand of product it is.

And in all cases, INTA states that product, good, and company names should be followed by either a TM or SM symbol, denoting their status as a trademark, or a ® symbol, denoting their status as registered trademarks. If it is impossible to write these symbols (for example, the trademark is spoken), one must declare somewhere in the media that the word is a registered trademark of said company. In

addition, companies can insert the word “brand” within the trademark and the generic term, although INTA does not specify what part of speech that is supposed to be.

This prescriptive thinking is only due to INTA's original intent: to prevent confusion in the market and direct all revenue to the trademark holders. Their intent is not to warp the face of the English language and obscure its basic tenets beyond recognition – quite the contrary, they want to keep it regimented and static. But doing the latter directly results in the former. By continuing to emphasize trademarks and push them upon consumers in advertising and other company media, the names are prone to market saturation. If the good has unique traits or is known as the dominant name within its market, its trademarks' chances of becoming generic are high, despite the amount of effort that INTA and individual companies apply toward preserving it.

3. Problems with trademark grammar

There are grammatical problems with every single rule that INTA puts forth to preserve trademarks. It is false that trademarks are adjectives. The INTA's remarks about singular, plural, and possessive trademarks are flawed, and go against patterns of natural speech. Preventing words from becoming verbs defies the basic tenets of linguistic evolution. And placing special marks after company names is something that companies themselves rarely do. I will analyze each rule in depth, and show how INTA's specifications do not mirror reality.

3.1 Adjectives

INTA posits that trademarks are always proper adjectives, in that they take an initial capital letter and refer to a specific person, place, language, or organized group. As adjectives, trademarks are expected to modify the generic term that follows it. While trademarks do specify what company and brand name the product has, they do not modify it in the same sense that adjectives do. If they were, in fact, adjectives, the structure of “Microsoft Windows Vista operating system” would follow that of (2).

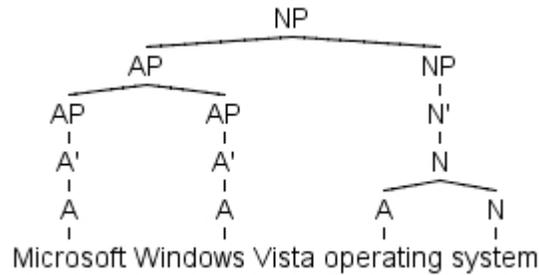


Figure 2

This structure suggests that the trademark “Microsoft” is an adjunct of the trademark “Windows Vista,” which is an adjunct of “operating system.” While it makes sense that “Microsoft” and “Windows Vista” describe the type of operating system, the claim that each trademark is a separate adjective, adjunct to the following one, would open the grammar up to problems such as the one shown in (3).

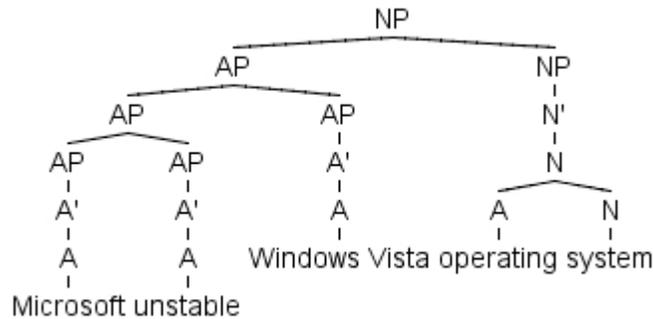


Figure 3

If it is in the nature of adjectives to adjoin to one another, then wouldn't it still be grammatical to stick the adjective “unstable” between the two words? There must be another plausible explanation as to why “Microsoft” and “Windows Vista” must precede “operating system.”

Even more worrying is the fact that the actual number of instances in which companies use trademarks as “adjectives” is quite slim. If we are to visit Microsoft Windows's website, we see trademarks all over the place: “Windows” and its logo in one corner, phrases such as “Are you ready for Windows Vista?” and “See what Windows Vista can do,” and nouns other than the supposed

“generic term” that is supposed to follow it, such as “Windows Vista partner products” and “Windows Vista license discount.” “Microsoft” does not appear once in the body of the page. But more surprisingly, “operating system” does not appear at all (Microsoft).

The designated generic term for Windows Vista is nowhere to be found. Might this mean that the “adjective” Windows Vista can precede other noun phrases, such as “partner product” or “license discount?” Might this mean that Microsoft is advertising their operating system with ungrammatical sentences, as in (4)?

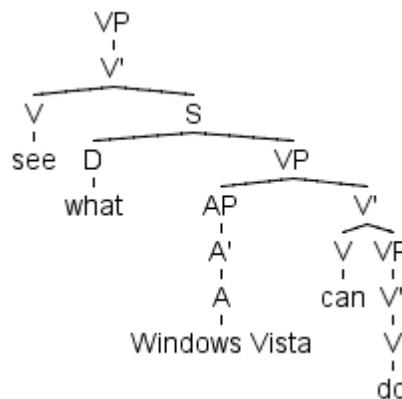


Figure 4

Are we to believe that the adjective, “Windows Vista,” has unrightfully taken the place of the subject location within the verb phrase? All of this is false. Microsoft is simply using the “Windows Vista” trademark the way any normal person would use it – as a noun.

Trademarks are nouns. They might not be tangible objects, but they are still nouns. Even if followed by a generic term, they do not modify it the way an adjective would. What INTA means to say is that trademarks are nouns which should be used as attributive modifiers (Pullum). If this is the case, our Windows example would appear as it does in (5).

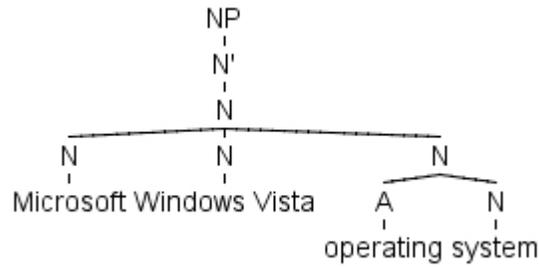


Figure 5

3.2 Singular vs. plural

Distinguishing between singular and plural trademarks can be very problematic. There are good intentions behind the distinction, though. By defining trademarks as “adjectives,” INTA defies all logic that is used to categorize parts of speech – so marking certain “adjectives” as singular or plural, while not adhering to basic ideas about the English language, is perfectly reasonable. The truth is, in the same way that trademarks are used as nouns by the companies which are told otherwise, the same companies swap grammatical numbers all of the time.

The Hershey's Kisses website is quite adherent to the rules set forth by INTA (Hershey's). “KISSES” always functions as the modifier for another term, sometimes has “brand” following the trademark, is always capitalized, and has a ® symbol following the trademarks on the page at least once each. It is ironic, therefore, that the Hershey Company had to register a separate trademark to simply include the phrase, “Say it with a KISS”™. The mixed message sent by the Hershey Company can be shown in the Wikipedia article for Kisses, which, until recently, was titled “Hershey's Kiss.” Those who had written the article assumed that treating the name as singular, as is the norm for Wikipedia articles, was perfectly fine. The article still does not obey INTA's policy of putting generic terms after the name, but let's leave that up to someone who cares (Wikipedia, “Hershey's Kisses”).

The LEGO Group is another example of a company which tries to strictly adhere to INTA's specifications, and aggressively protect its own trademarks. Its last standing LEGO patent expired in

1988 (CBC News), but despite other competitors moving in on its interlocking brick technology, trademarks can be kept forever, as long as LEGO makes sure to protect them. One almost embarrassing display of trademark anxiety is the domain <http://www.legos.com>. Upon visiting the domain, the visitor would receive this notice:

“The word LEGO is a brand name, and is very special to all of us in the LEGO Group Companies. We would sincerely like your help in keeping it special. Please always refer to our products as “LEGO bricks or toys” and not “LEGOS.” By doing so, you will be helping to protect and preserve a brand of which we are very proud, and that stands for quality the world over. Thank you!” (Wikipedia, “Image:Lego website brand name notice.png”)

The visitor would then be redirected to <http://www.lego.com>. While it is true that “LEGOS” is not a registered trademark (USPTO), it is ridiculous for the LEGO Group to assume that a consumer's mention of “Legos” instead of “LEGO bricks and toys” is detrimental to the brand, and even more ridiculous to impose rules like this on consumers. What might be most ridiculous of all, though, is the purchase of the domain name, if the LEGO Group is so bent on distancing itself from pluralization of its trademark.

3.3 Possessive vs. non-possessive

The possessive construction in English is made of a series of determiner phrases specifying the next, each of which consists of a determiner, and then a complement such as a noun phrase, or a larger clause. There is no known case, though, where the complement can be an adjective. Since INTA claims that trademarks which have been registered as possessive must stay possessive, while those which are singular must stay singular, let's look at the trademark “Levi's” (which, of course, is an “adjective”) and see how it is expected to work as possessive in (6).

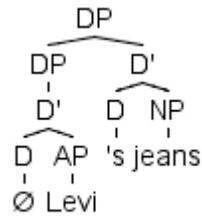


Figure 6

Putting aside for the moment the observation that this seems completely wrong, let's remember another constraint that INTA has posed: trademarks must immediately precede the generic term they modify. In this case, the trademark seems to be a complement of a null determiner, which specifies another determiner and its complement. It does not immediately precede it, nor does it act, in the slightest, as an adjective.

Of course, for non-possessive trademarks, like “Pepsi,” referring to them in the possessive is not allowed, which is often quite difficult when its generic term cannot be found following the trademark anywhere on the entire site (Pepsi). “Pepsi” used in the possessive form can be found, though, by just Googling “Pepsi” and looking at the first result, in (7).



Figure 7

On a side note, Pepsi's generic term is “cola,” which is ironic given that the term “cola” was originally trademarked by the Coca-Cola Company (International Trademark Association, “Trademark Proper Use”). This means that INTA would not object to “cola” being used in the possessive form, and serving as the generic term for other trademarks.

3.4 Verbs

One of the most discussed trademark misuses in recent time is the phenomenon of deriving trademarks into verbs, or “verbing” trademarks. The verb is used to describe the action that one usually takes while using the product or service that the trademark describes. There are many commonly used terms which are still registered trademarks, but are in danger of becoming generic trademarks, according to INTA, due to their misuse:

- FedEx – pertains to the FedEx Corporation. It means to send something by overnight courier, e.g. “I need to fedex this package.”
- Google – pertains to Google Inc. It means to run a query using an Internet search engine, e.g. “I googled 'trademark'.”
- Hoover – pertains to the Hoover Company. While the company sells vacuum cleaners, the term is slang for sucking up to something, e.g. “I hoovered my boss.”
- Jet-Ski – a brand of personal watercrafts by Kawasaki Heavy Industries, Ltd. It means to use any kind of personal watercraft, e.g. “Let's go jetskiing.”
- Photoshop – a name of image editing software by Adobe Systems. It means to manipulate something using a graphics editor, e.g. “Some guy photoshopped this image.”
- Rollerblade – a series of inline skates by Nordica S.P.A. It means to use inline skates, e.g. “I went rollerblading yesterday.”
- Spam – a name for canned meat by the Hormel Foods Corporation. Its definition is completely different, in fact taken from a Monty Python sketch about an overabundance of Spam being served at a diner (Templeton) – meaning to send unsolicited email, e.g. “I got spammed 100 times yesterday.”
- Xerox – pertains to the Xerox Corporation. It means to photocopy something, e.g. “Go xerox 50 copies of this document.”

The formation of these words is an interesting derivational example, where a much larger phrase is replaced by the trademark that often represents it. Some are transitive, while others are not. Some take complements other than nouns. While the word “google” can precede the object, whereas it acts like a word such as “research,” as shown in (8), it can also be used to replace “search,” which precedes a prepositional phrase, as shown in (9).

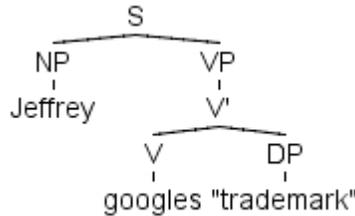


Figure 8

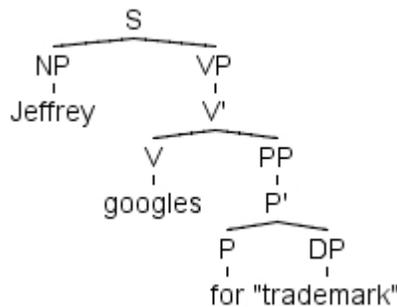


Figure 9

INTA has alternative suggestions to these uses. For example, instead of “could you xerox the report?” they suggest “could you use the Xerox® copier to make six copies?” Or instead of “I would like to go rollerblading,” they suggest “Bring your Rollerblade® skates and we’ll go in-line skating” (International Trademark Association, “Trademark Proper Use”).

The fact is, verbing is one of the most common kinds of derivation in the English language, and it is not only trademarks which become verbs – any other term that can be easily associated with an action, such as “access,” “host,” “gift,” or “chair,” is often used as a verb, and seeing as trademarks

usually pertain to new ideas and processes, it is no surprise that there is an impetus to make them easier to refer to.

3.5 Designation

The rule that is probably least adhered to (due to the fact that it is very confusing) is the placement of proper symbols, ®, ™, or ℠, at the ends of trademarks, or optionally placing the word “brand” between the trademark and the generic term. There are many misunderstandings which lead companies and other entities to not use these marks at all.

One problem is that there is often confusion between all three marks. While ® is intended for use after trademarks which are registered with a governmental agency (International Trademark Association, “Trademark Proper Use”), many companies, such as Dell, forego the specification and choose to use the unregistered mark, ™, instead, despite the fact that their marked trademarks are registered.

Another problem is distinguishing between a product, service, and company name. While Dell provides services, it still refers to itself with a trademark instead of a service mark. This might be due to the fact that ℠ is not widely seen or used. And while referring to it as a company, one should not place any marks after the name at all.

Furthermore, though INTA even intends for consumers to use these marks, it is difficult to continuously place the marks in every place where they are required, especially due to constraints of keyboards and symbol insertion. 3Com even offers instructions on incorporating trademarks into documents using different software and operating systems, but their details are very limited and unclear (3Com).

Lastly, the word “brand” throws yet another wrench into INTA's rules about the grammatical specifications about trademarks. It is not said what part of speech “brand” is, see (10), but it would seem as if its insertion between the trademark and the generic term would mean that the trademark is

now modifying the word “brand” instead.

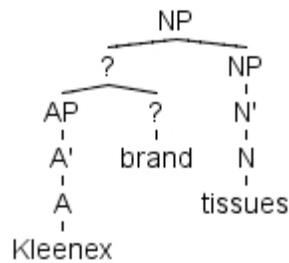


Figure 10

4. Conclusion

Despite the plethora of grammatical problems introduced by INTA's misguided rules, and despite companies' varied attempts at adhering to them, consumers are the ones which ultimately decide how trademarks are used in everyday speech. But is this really the fault of companies misusing their own trademarks by calling their products “elevators” and “yo-yos”? Did the wild, uncontrolled spreading of their name really have an effect on their business, or could it have been the fact that the company created something new in the first place that didn't have a name?

It is understandable that INTA would provide companies with rules about trademark usage. There is nothing wrong with emphasizing the product name, and it is worthwhile to provide credit where it is due when citing the products of other companies. But trademark genericide could be seen as a positive factor: companies can benefit from their trademark becoming synonymous with the good, where consumers are compelled to look for the one brand they know they can trust.

The argument for and against trademark protection can also be seen as a moral issue: should a certain company be able to hold onto a trademark forever, as long as it is properly maintained and contained? Is genericide an inevitable step in a trademark's life? Either way, one thing is clear: imposing rules on grammar is futile in the long run. Grammar should not be warped and constrained to appease the whims of a corporation when thousands of years of linguistic evolution go against them.

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