When a Name Becomes a Mirage: The CJEU on Designer Surnames as Trade Marks

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Executive Summary

Fashion houses trade in dreams, and often in names. But what happens when a famous designer leaves the label, and the business keeps using the designer's surname as a trade mark?

The decision of the Court of Justice of the European Union (CJEU) in *PMJC* confirms that the continued use of a designer's surname as a trade mark by a successor company remains permissible following the designer's departure, provided that the way the trade mark is used does not mislead consumers into believing the designer is still creatively involved. While the mere separation of a designer from their eponymous brand is not, by itself, deceptive, the court emphasised that context matters. Advertising, visual presentation and the appropriation of a designer's distinctive aesthetic, particularly where the designer's copyright is infringed, may create a sufficiently serious risk of consumer deception.

Where use of the trade mark fosters a false impression of ongoing creative authorship by the original designer, the registered trade mark becomes vulnerable to revocation for deceptive use.

Key Takeaways for Brand Owners and Designers

For brand owners:

- A designer's name can continue to be used as a trade mark after they depart from a successor business.
- However, branding, advertising and product styling should not falsely imply the designer's ongoing creative involvement with the successor business.
- Borrowing from the designer's distinctive aesthetic, especially without ownership of relevant intellectual property (IP) rights, increases the legal risk of deceptive use of the designer's name, which can lead to the revocation of a registered trade mark of the designer's name owned by the

successor business (even where the rights in the designer's name have been assigned to the successor business).

For designers:

- EU law accepts that, in certain contexts, the identity of the designer may form part of the characteristics of the goods for the purposes of assessing whether trade mark use is misleading.
- If a successor company suggests ongoing creative involvement where none exists, legal remedies may be available.
- Evidence such as misleading marketing or unauthorised use of signature designs may be decisive.

Background: Change of Ownership and the Dissolution of a Creative Relationship

The case involves the French design company JEAN-CHARLES DE CASTELBAJAC (the Company), which owns registered trade marks for "JC de CASTELBAJAC" (the Trade Marks), reflecting the name of its founder, fashion designer Jean-Charles de Castelbajac (JCC). Following the insolvency of the Company, ownership of the Trade Marks was transferred to a separate entity, PMJC. JCC continued to work for PMJC for a short while before parting ways. PMJC then sued JCC for infringement of the Trade Marks.

In return, JCC applied to revoke the Trade Marks on the basis that the PMJC was using the Trade Marks deceptively to suggest that JCC still had a hand in clothing sold by PMJC under the Trade Marks (it being notable that such clothing included a design for which JCC owned the copyright — the French courts found two instances where PMJC infringed JCC's copyright in designs that had not been assigned to PMJC with the Trade Marks — this reinforced the impression that the clothing was still authentically JCC's, even though he was no longer involved).

Accordingly, the Paris Court of Appeal revoked the Trade Marks for deceptiveness. On appeal, the Court de Cassation asked the CJEU whether EU law permits the revocation of a registered trade mark when the use of a designer's name leads the public to believe the designer is still involved in the design of goods bearing that trade mark, when that is no longer the case.

Key Legal Principle: Deception Centres on Use, Not the Name Alone

Under EU law, a trade mark can be revoked where its use misleads the public, "particularly" as to the nature, quality or geographical origin of goods. The CJEU confirmed that the "creative origin" of a product (i.e., who designed it) can be a relevant characteristic, and misleading consumers as to the creative origin can justify revocation.

Importantly, the CJEU then went on to reaffirm a long-standing principle that the mere fact that a label bearing a designer's name has been separated from the designer does not, by itself, make the mark deceptive. It is expected that most consumers recognise and appreciate that not every eponymous fashion label is still controlled by its namesake. That said, if the designer's name is used in a way that creates a false impression or a sufficiently serious risk that the designer remains involved, the CJEU's decision confirmed that a registered trade mark of the designer's name is vulnerable to a revocation challenge.

Factors Indicating Misleading Use

Determining when the use of a designer's name becomes misleading is context-specific. The CJEU highlighted that certain factors in this case suggested a risk of consumer deception, namely the use of visual elements closely associated with JCC's distinctive creative style, particularly where such use infringed JCC's copyright.

The Advocate General, whose reasoning the Court largely echoed, elaborated on the types of proof that matter. Evidence could include advertising or communications that feature the designer, suggest collaboration when none exists or use distinctive stylistic motifs closely associated with the designer but that are not owned by the company. Ultimately, revocation requires solid evidence that the mark's use creates a false impression of the designers ongoing creative involvement.

However, the decision leaves practical questions to be resolved by the national courts; for example, how many misleading incidents are required, how extensive must the advertising be and how far a brand owner can borrow from a designer's aesthetic before crossing the line.

Why It Matters for Brands and Designers

For brand owners, this decision allows continued use of a designer's name for a successor business, but prevents misleading suggestions of ongoing involvement of the designer. Maintaining the use of a designer's name as a trade mark is permitted, but it cannot be paired with messaging, visuals or product styling that mistakenly leads consumers to believe the designer is still at the drawing board.

For designers, the ruling protects reputational capital after an exit. It recognizes that the "person" behind a design can be a product characteristic in its own right. If a successor company leans too hard into a designer's signature motifs (where they have not been assigned to the successor company) or falsely signals the designer's continuing involvement, there is a meaningful route to revoke the trade mark registration.

Maintaining the Name Without Misleading Consumers

Names carry weight in fashion, but they do not confer a license to imply creative involvement that no longer exists. The CJEU's message is balanced and commercially sensible. Successor companies can keep the designer's name, but not the illusion of the designer's continuing involvement. Where heritage is used to suggest a false narrative of creative control, the law can be deployed to prevent it.

**Amelie Hitchings, a trainee in our London office, contributed to this article.*

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