

## Intellectual Property

## The surprising owners of 'Steve Jobs' trademark rights in Europe

By Dan Pollack



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(January 30, 2018, 8:56 AM EST) -- Vincenzo and Giacomo Barbato, clothier brothers from Naples, Italy, are the unlikely owners of the EU trademark for "Steve Jobs" and a related logo after a legal battle with Apple ended with the tech giant losing its opposition to the marks in the European Union Intellectual Property Office.

In 2012, the Barbato brothers were looking for a catchy name for their new clothing company when they surprisingly discovered that Apple had never trademarked its co-founder's name. They proceeded to not only register the name, but also a stylized "J" logo with a small bite mark and leaf that might look familiar to iPhone users.

Apple focused its challenge on the logo based on the uncanny similarities to its own iconic logo. The EU Intellectual Property Office rejected Apple's arguments primarily because the letter "J" is not edible, unlike an apple, and therefore the association between the marks is only superficial. The EU IP office had granted the brothers' registrations to the name and logo by May 2014, but their victory has only come to light recently. In various articles, Vincenzo and Giacomo have expressed the desire to eventually expand their Steve Jobs brand from clothing and fashion accessories to electronics.

It does not appear that the brothers have attempted to register any Steve Jobs trademarks in Canada and their U.S. application for "Steve Jobs" was abandoned in 2015 according to a recent search on the USPTO website.

On the surface, this might seem like the ultimate victory by David over Goliath, but it could be a pyrrhic one — especially if the Barbatos' expansion plans are true. The Barbatos could have an uphill battle in overcoming similar opposition if they try to register their trademarks in North America based on the marks being deceptively misdescriptive, as they would evoke the legendary co-founder of Apple and his company for an ordinary consumer without having any connection with Apple.

However, a more likely basis to stop the brothers from profiting from "Steve Jobs" smart phones and purses would be through the Steve Jobs estate claiming violations of publicity rights. In a case involving the use the name "Fiorucci" (the Italian fashion brand founded by Elio Fiorucci) the European Court of Justice held that under Italian law, the "right to a name" protects famous individuals from having their names used in a commercial context without their express consent. Italian courts have also held that such rights survive death, specifically in a case involving the use of images of Audrey Hepburn.

As addressed in one of my previous articles, many celebrities have successfully brought claims in the United States against commercial ventures for violating their rights of publicity (known as "appropriation of personality" in Canada). In the critical state of California, where Jobs last resided, rights of publicity survive the individual's death for 70 years under the state's *Celebrities Rights Act*. The Barbatos' proposed use of the name Steve Jobs appears to violate the *Celebrities Rights Act* as the name has commercial value, the use would presumably be without his estate's consent, and the use would not be connected to a work of political or newsworthy value. While the estate may elect to ignore the brothers if their enterprise remains small scale, the Barbatos will probably not stay off the estate's radar screen if they try to expand their efforts.

Regardless of how this plays out (if it plays out at all), it is surprising that a company like Apple — with a list of trademarks that would kill a small forest if printed — would not register the name of its iconic co-founder. But if the Barbato brothers are dreaming about becoming the next Steve Jobs (or even the Winklevoss twins), they might be in for a rude awakening.

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