

Published: 17<sup>th</sup> September 2024

# VERY DEMURE, VERY MINDFUL, VERY TRICKY: NAVIGATING TRADEMARKS IN THE AGE OF SOCIAL MEDIA.

You have probably seen the viral TikTok trend, "Very Demure, Very Mindful, Very Cutesy," made popular by tiktoker, Jools Lebron. With millions of views and countless users hopping on the trend, it became a cultural moment overnight. But while Jools was busy making the phrase famous, someone else swooped in and trademarked it first. In this article, we will break down how trademark law can impact viral social media content.

## Not Very Mindful

On the 20th of August, a certain Jefferson A Bates from Washington swooped in and trademarked the phrase, "Very Demure, Very Mindful" specifically for "advertising, marketing, and promotional services... for business purposes". There was obviously not much demurity or mindfulness put into this because not only is the application riddled with errors, he overlooked a declaration warning about the risks of fraud, perjury, and providing false information. But before we jump into all that...

## What is a Trademark, and Why Does it Matter?

A trademark is a legal tool used to protect brand names, logos, phrases, and other identifiers from being used by others. It gives the owner exclusive rights to use the trademarked item in commerce. For a more detailed discussion on trademark law in Botswana, please refer to our LinkedIn and Facebook posts from February 20, 2024. We highly recommend visiting these posts for a deeper understanding. In Jools' case, while she might have created a cultural trend, someone else could be the one cashing in.

## What Happens Now?





# TRADEMARK

For Jools, the road ahead may involve legal battles if she chooses to contest Jefferson Bates' trademark, but the reality is that Bates now has legal control over the phrase. As a result, Jools may face restrictions if she tries to monetize the trend in the future, whether through merchandise, collaborations, or other commercial ventures.

However, it is important to clarify that owning a trademark does not mean you own exclusive rights to a phrase in all contexts. At its core, trademark is really about association, thus the concept of **secondary meaning or acquired distinctiveness** comes into play. This occurs when a phrase or term that might be generic or descriptive becomes so strongly associated with a particular brand, product, or creator that the public identifies it specifically with that source. Jools has made significant strides in branding herself in relation to the phrase through Netflix partnerships and celebrity PR, thus the phrase is now closely associated to her.

There is also a concept in trademark law called **genericide**, where a phrase becomes so commonly used that it loses its trademark protection. For example, the phrase "Taco Tuesday," was trademarked by Taco John and Gregory Hotel Inc. for over 40 years before forfeiting it in October last year due to widespread use.

So, while Jefferson Bates may hold the trademark, if the phrase becomes widely adopted in casual use, the phrase might eventually lose its exclusivity. The lesson here is that while trademarking protects your brand, no one can truly own everyday language.

Back to the trademark application, Jefferson declared he was not aware of prior use of the phrase, though Jools began using it publicly on the 5th of August, well before he made his application on the 20th. Given this timeline and the phrase's association with her, Jools has strong grounds to challenge his trademark claim successfully.

This article serves as a gentle reminder to companies and brands that taking proactive steps can shield you from costly legal battles and help keep your brand's legacy secure. As we cheer on Jools LeBron and the hope that she reclaims her trademark, remember, be demure, be mindful, but most of all, be legally protected.

**Article by Princess Musa Dube**



TRADEMARK

If you have interest in an in-depth discussion on this subject matter or any Intellectual Property related issues, feel free to contact us at:

[info@gobhozalegalpractice.co.bw](mailto:info@gobhozalegalpractice.co.bw) Tel: 3116371

*Disclaimer: This article is for information purposes only and should not be taken as legal advice.*