

# Eissenstat and Becker in IP Watchdog: A Mindful Look at Trademark Protection Amid Newfound Fame

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**PRACTICES** Intellectual Property, Trademark and Advertising

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Haynes Boone Associate Katie Eissenstat and Partner [Jeff Becker](#) authored an article for *IP Watchdog* detailing a trademark dispute over the viral phrase "Very Demure .. Very Mindful .." and what comes next for the parties involved.

Read an excerpt below.

Imagine this – you’re a content creator. Amid a sea of compelling content, you labor over every video, ensuring each captured moment is as catchy and clever as the next. Until one day – it happens. One of those carefully crafted sound bites becomes a viral sensation. The phrase catapults you to stardom and is suddenly a staple in content everywhere. Your followers are multiplying, your brand is booming, and you’re riding high on a wave of newfound fame.

And then – you learn another individual has filed a trademark application for YOUR catchphrase. A stranger is attempting to capitalize on the slogan that YOU made famous. Suddenly, your excitement is overshadowed by frustration and despair. Anxious thoughts flood your mind. Did you drop the ball by waiting to protect your valuable intellectual property? Can this person stop you from using your very own creative concepts? What do you do when your social media dreams turn into a trademark nightmare?

Meet Jools Lebron. Lebron is the latest influencer to find herself in the midst of this very conundrum. She shot to fame in early August with her “Very Demure, Very Mindful” video, which has generated over 52 million views on TikTok to date. The satirical phrase has taken social media by storm, with everyone from celebrities to corporations jumping on the “demure” bandwagon.

On August 20, 2024, an unrelated individual named Jefferson Bates took the wheel of that bandwagon and filed a trademark application for VERY DEMURE .. VERY MINDFUL .. with the United States Patent and Trademark Office (USPTO). In a tearful video, Lebron lamented whether her efforts and investments would all be lost because someone else beat her to the filing punch. Is there anything Lebron can do about this apparent trademark troll? How can she salvage her brand and continue to thrive amidst a legal battle for her trademark rights

## **Commercial Use**

Trademark protection is importantly only available for catchphrases and other devices used commercially. For that reason, Lebron’s video post on its own has likely not created any presumptive trademark rights simply by going viral – much to the chagrin of her and the public.

Fortunately, all is not lost for Lebron. Lebron made several videos in partnership with popular brands like Verizon, Lyft, and Synergy Kombucha using her “very demure” catchphrase in the days that followed her viral success. In the United States, trademark rights can accrue through commercial use even absent a trademark filing – and “first to use” rights trump “first to file” rights. In

some good news for LeBron, these brand deals likely qualify as commercial use of the catchphrase that can give LeBron priority over any subsequently filed trademark applications.

### **Registration Concerns for Viral Phrases**

To date, five separate individuals have now filed trademark applications for related “demure” phrases inspired by the video, including LeBron herself. While LeBron may be able to ultimately establish priority over these copycat filers, she could still run into registration issues if the USPTO is not convinced the public associates the viral catchphrase with her and her brand alone.

For example, how many people can recall the origins of “SOCIAL DISTANCING,” a mark which flooded the USPTO with trademark applications in 2020 during the pandemic? Or the now famous meme “OK BOOMER?” What about the “GIRL DINNER” trend? Probably not many. Instead, these phrases are often considered common messages used by the public that do not identify any specific source of products or services. We all know that history is the best predictor of the future. So how has the USPTO treated these filings in the past?

To read the full article on *IP Watchdog*, click [here](#).