

Her Name — Their Brand

JLM Couture, Inc. v. Gutman, No. 20-CV-10575-LTS-SLC (S.D.N.Y. Feb. 14, 2022)

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On February 14, 2022, the Southern District Court of New York ruled that "Say Yes To The Dress" designer Hayley Paige Gutman ("Gutman") was required to split certain social media accounts with fashion company and former employer, JLM Couture, Inc. ("JLM"). The Court ordered JLM to return the TikTok account to Gutman because JLM did not use the account as an advertising platform for its brands, but gave JLM control over the disputed Instagram and Pinterest accounts.

In 2011, JLM and Gutman entered into a contract in which Gutman, as a designer for JLM, was required to post Hayley Paige ("HP") brand materials and JLM-approved content on her social media accounts, to assist in JLM advertising, not to compete with JLM or post off-brand content, and not to use her name in trade or commerce without JLM's permission. Pursuant to a marketing strategy intended to "combine the personality with the brand," Gutman and JLM entered into a "Names Rights Agreement" under which JLM obtained certain trademark rights in Gutman's name (*i.e.* "the Designer's Name"). Following a falling out in 2019, Gutman changed the password to the "misshayleypaige" Instagram account (created after she joined JLM, but with a username Gutman was already using in social media), locking JLM out. Then, she began using it for non-JLM uses, such as to promote herself as a celebrity influencer and to endorse third-party products and services. JLM sued for breach of contract and moved for a preliminary injunction to regain control of those accounts and restrain Gutman from further breaches.

The Court originally granted JLM's motion for preliminary injunction and entered a preliminary injunction order enjoining Gutman and other persons in active concert with her from taking a number of actions. Gutman appealed the preliminary injunction order and challenged the provisions (1) ordering her not to compete with JLM, (2) barring her from using "Hayley Paige Gutman" and its derivatives in trade or commerce, (3) awarding control over disputed accounts to JLM, and (4) that JLM did not breach the contract and forfeit its rights to seek injunctive relief. The Second Circuit affirmed that Gutman's first, second, and fourth challenges were foreclosed by the plain language of the contract but that the Court erred in transferring control of the accounts to JLM because her contractual breaches did not alone support the relief of transferring the disputed accounts (a remedy sounding in property). Thus, the Second Circuit vacated those provisions of the preliminary injunction order and remanded for further consideration.

The Court found that JLM provided credible evidence that warranted injunctive relief relating to control of the Instagram and Pinterest accounts: that they served as "critical advertising platforms for the HP brands" but returned the TikTok account because JLM could not prove that the account served as an advertising platform for JLM's HP brands, and unlike the other accounts, JLM could not show that it had access to the account before the preliminary injunction order. Thus, the Court required JLM to return the TikTok account credentials to Gutman with the caveat that her subsequent use of it was nonetheless limited by her obligations under the contract and the preliminary injunction order.

Gutman regained her TikTok account, but her use of it—and "the Designer's Name"—remains bound by contract. And, even as Gutman and JLM's battle rages on in courtrooms and on Twitter, "misshayleypaige" continues to post cleverly captioned photos to the Gram. A bleakly dystopian reminder of just how much one can give up with a piece of paper and a signature ([JLM has rights in that too, btw](#)).