

7 KEY TAKEAWAYS

Annual Update on Recent Trademark Case Law

Kilpatrick partner [Ted Davis](#) spoke on recent developments in U.S. trademark and unfair competition law during Kilpatrick's advanced trademark seminar on January 29.

That presentation addressed, inter alia, the following topics:

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the Supreme Court's confirmation in *Dewberry Engineers Inc. v. Dewberry Group*, 604 U.S. 321 (2025), that the inherently flexible nature of the equitable remedy of an accounting of profits nevertheless is subject to guardrails;

clarification of the test for genericness;

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the continued post-*Jack Daniel's* viability of the restrictive test for infringement first articulated in *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989), in cases not presenting trademark uses by defendants;

the Federal Circuit's war on claimed color marks in *CeramTec GmbH v. Coorstek Bioceramics LLC*, 124 F.4th 1358 (Fed. Cir. 2025), and *In re PT Medisafe Techs.*, 134 F.4th 1368 (Fed. Cir. 2025);

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the Ninth Circuit's continued inconsistent applications of the nominative fair use doctrine;

the possible beginning of the end for the *Dawn Donut Doctrine* in *Westmont Living, Inc. v. Retirement Unlimited, Inc.*, 132 F.4th 288 (4th Cir. 2025); and

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possible limitations on the failure-to-function ground for unregistrability.