

6 KEY TAKEAWAYS

Recent Developments in U.S. Trademark and Unfair Competition Law

Kilpatrick partner [Ted Davis](#) spoke recently on recent developments in U.S. trademark and unfair competition law as part of Kilpatrick’s “IP Innovations” series.

That presentation addressed, inter alia, the following topics:

1

The precipitous decline in precedential opinions from the Trademark Trial and Appeal Board;

2

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;

3

Judicial preoccupation with actionable uses in commerce by defendants;

4

The Ninth Circuit’s continued incoherent and inconsistent applications of the nominative fair use doctrine;

5

The disposal of claims of consumer standing in *inter partes* proceedings; and

6

Possible—but perhaps not actual—guardrails on the failure-to-function ground for the refusal of applications by the USPTO.