Insights: Publications

6 Key Takeaways | IP Power Play: Recent Developments and Strategies for Success

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Kilpatrick's **Ted Davis**, **Mike Bertelson**, and **Mitch Stockwell** provided an in-depth review of notable recent court decisions focusing on trademark, patent law, and advertising issues at the firm's annual **Kilpatrick Intellectual Property Seminar Series** (KIPSS) in Atlanta. The panel emphasized the implications of these cases for in-house counsel, providing critical insights to help navigate the evolving legal landscape.
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1. The Supreme Court's pending review in *RiseandShine Corp. v. PepsiCo, Inc.*, 41 F.4th 112 (2d Cir. 2022), Cert. Granted, No. 24-1016, 2026 WL 1855011 (U.S. June 29, 2026);
2. The Ninth Circuit's latest restrictive approach to the test for likely dilution in *VIP Prods., LLC v. United States*, 185 F.4th 919 (9th Cir. 2026);
3. The continued viability of the *Rogers v. Grimaldi* test for liability in cases not presenting trademark uses by defendants; and
4. The end of consumer standing in Trademark Trial and Appeal Board (TTAB) proceedings and the mass extinction of precedential TTAB opinions.
5. When faced with a U.S. design patent infringement claim:
   • Focus non-infringement arguments on the overall appearance of the design;
   • Put non-infringement arguments in context of prior art designs and visual aspects that consumers would view as significant; and
   • Distinguish between functional and ornamental aspects of the designs to help further emphasize the differences between the patented and accused designs.
6. Bad faith patent assertion acts have been adopted by multiple states:
   • They are now being successfully enforced by recipients of patent assertion letters, resulting in successful litigation against patent assertion entities; and
   • Recipients should proactively enforce their rights under these state statutes and demand full and appropriate disclosures when faced with vague or otherwise defectivepatent assertions.

For more information, please contact:

Ted Davis: tdavis@ktslaw.com
Mike Bertelson: mbertelson@ktslaw.com
Mitch Stockwell: mstockwell@ktslaw.com

Related People



Theodore H. Davis Jr.

t 404.815.6534
tdavis@ktslaw.com



Michael A. Bertelson

t 404.815.6291
mbertelson@ktslaw.com



Mitchell G. Stockwell

t 404.815.6214
mstockwell@ktslaw.com