

Insights: Publications

6 Key Takeaways | Recent Developments in U.S. Trademark and Unfair Competition Law

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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.

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