Insights: Publications

5 Key Takeaways | Trademark and Patent Rights: Better Together—How to Strengthen Your IP Protections

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Kilpatrick's **Megan Bussey**, **Justin Eurek**, and **Calla Yee** recently led a session at the 21st annual KTIPS (Kilpatrick Townsend Intellectual Property Seminar) on **"Trademark and Patent Rights: Better Together—How to Strengthen Your IP Protection."** This session provided strategic recommendations on protecting intellectual property by leveraging the combined benefits of trademark and patent rights, including trade dress and design patent protection. The attorneys addressed challenges associated with such combined protection and highlight common pitfalls to avoid.

Key takeaways from the presentation include:

1. Design patents aim to protect the ornamental appearance of an article of manufacture. Whereas trade dress protects distinctive product packaging and configuration of the product itself. Trade dress cannot be functional and must serve a source-identifying function (*e.g.*, it must be used to identify and distinguish the source of the brand owner's goods and/or services).

2. Functionality is key strategic consideration for both design patent and trade dress protection.

3. Design patents have the potential to help set you up better for your trade dress protection.

4. Design patents can aid in pre-litigation enforcement (cease and desist letters, trade shows, foreign customs enforcement) given their non-technical nature.

5. Coordination is needed between design patent, utility patent, and trade dress strategy to avoid pitfalls and maximize IP protection.

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