

Insights: Publications

5 Key Takeaways | Recent Developments in US Trademark and Unfair Competition Law

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Kilpatrick partner **Ted Davis** spoke recently at the International Trademark Association's annual meeting on recent developments in United States trademark and unfair competition law over the trailing twelve months.

That presentation addressed, inter alia, the following topics and key takeaways:

1. *Vidal v. Elster*, 602 U.S. 286 (2024), in which the Supreme Court for the first time employed a history-and-tradition framework when evaluating a First Amendment-based challenge to government action, and which therefore has possible consequences far beyond trademark law;
2. *Dewberry Engineers Inc. v. Dewberry Group*, 145 S. Ct. 681 (2025), in which the Court confirmed that the inherently flexible nature of the equitable remedy of an accounting of a defendant's profits nevertheless is subject to guardrails;
3. revised findings of fact and conclusions of law on remand in *Jack Daniel's Properties, Inc. v. VIP Products LLC*, 599 U.S. 140 (2023);
4. the continued viability of the test for infringement first articulated in *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989), in cases not presenting trademark uses by defendants; and
5. the possible beginning of the end for the *Dawn Donut* Doctrine.

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