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## **2017 – 2018 SAUL LEFKOWITZ MOOT COURT COMPETITION OFFICIAL RULES**

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Saul Lefkowitz Moot Court Competition (the “Competition”) participants are expected to read and apply the Official Rules (the “Rules”) using reason and judgment. The Competition simulates the role and responsibility of lawyers appearing before a court. The Saul Lefkowitz Moot Court Competition Project Team (the “Project Team”) will not, therefore, generally provide advisory opinions on the application of the Rules unless it is demonstrated to the Project Team’s satisfaction that the Rules – which selectively incorporate the Rules of the U.S. Supreme Court by reference – provide no meaningful guidance.

### **1. INTRODUCTION**

The Competition was established in 1990 in honor of Saul Lefkowitz, Chief Judge of the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office. The Competition occurs annually, with regional rounds in Atlanta, Chicago, Dallas, Los Angeles, New York and San Francisco, and subsequent national finals in Washington, D.C.

The objective of the Competition is to introduce law students to important issues arising in United States trademark and unfair competition law. Participants will have the opportunity to develop their brief writing and oral advocacy skills by applying legal principles to a fictional fact pattern, and then advocating their legal positions in a mock courtroom experience.

### **2. PARTICIPANTS AND TEAMS**

Each school may enter up to TWO teams. Teams may consist of two, three, or four students from the same school. Any law school student from any U.S. law school is eligible to enter and participate in the Competition so long as receiving a degree from the student’s law school satisfies the legal education requirement for taking a state bar examination. No team member may hold a Juris Doctor (“J.D.”), Master of Laws (“LL.M.”) or other law degree from a U.S. law school. However, a law student pursuing a joint J.D. / LL.M. program may enter the Competition so long as the law student has not received a J.D. degree.

Participants compete on teams identified by the law school, and each participant must be enrolled in a full- or part-time J.D. program at the identified law school. Teams entering the Competition must also have consent from their law school to participate, and should have an advisor who is a member of the same law school’s faculty. Each team’s entry form must include, for each participant, proof of current enrollment at the team’s identified law school.

### **3. ENTRY FORM**

**Each team desiring to participate must complete the online entry form at**

[www.inta.org/lefkowitzregistration](http://www.inta.org/lefkowitzregistration) to be received by the International Trademark Association (“INTA”) no later than 8:00 P.M. U.S. Eastern Time, **October 13, 2017**. Early entry is suggested and there is no registration fee to enter.

Please save the credential information received when registering for the Competition. You will need this information to make any changes to your form and upload your Competition brief. INTA and the Project Team will generally keep the submitted information confidential. However, INTA and the Project Team may use the information for Competition-related purposes, and the participants and law schools hereby consent to the use of such information for such purposes.

After the entry form has been received and accepted, the team leader will receive an e-mail confirmation with the following:

- Team code
- Brief assignment
- Appeal number
- Region and regional round competition location

If you do not receive a confirmation e-mail, please e-mail [lefkowitz@inta.org](mailto:lefkowitz@inta.org) or call +1-212-642-1707.

**Any substitution of team members must be made by 8:00 P.M. U.S. Eastern Time, January 3, 2018, the date briefs are due.** There shall be no replacement of team members after filing of briefs except with the express written consent of the Project Team.

#### 4. REGIONS

Absent extenuating circumstances, the first round of the Competition will occur on the same day at six U.S. locations (Atlanta, Chicago, Dallas, Los Angeles, New York and San Francisco) corresponding to six geographic regions.

Each region shall comprise at least four teams. As a general rule, a team will be assigned to the region corresponding to the law school’s primary location, in the order of receipt of the team’s entry form. The Project Team may assign teams to other regions at its discretion to meet the needs and goals of the Competition.

**The six regions are defined as follows:**

	<b>Atlanta</b>	<b>Chicago</b>	<b>Dallas</b>	<b>Los Angeles</b>	<b>New York</b>	<b>San Francisco</b>
<b>Law School Primary Location</b>	<ul style="list-style-type: none"> <li>• Alabama</li> <li>• Florida</li> <li>• Georgia</li> <li>• Kentucky</li> <li>• Mississippi</li> <li>• North Carolina</li> <li>• South Carolina</li> <li>• Tennessee</li> <li>• Virginia</li> </ul>	<ul style="list-style-type: none"> <li>• Illinois</li> <li>• Indiana</li> <li>• Michigan</li> <li>• Minnesota</li> <li>• North Dakota</li> <li>• Ohio</li> <li>• South Dakota</li> <li>• West Virginia</li> <li>• Wisconsin</li> </ul>	<ul style="list-style-type: none"> <li>• Arkansas</li> <li>• Colorado</li> <li>• Iowa</li> <li>• Kansas</li> <li>• Louisiana</li> <li>• Missouri</li> <li>• Montana</li> <li>• Nebraska</li> <li>• Oklahoma</li> <li>• Texas</li> <li>• Wyoming</li> </ul>	<ul style="list-style-type: none"> <li>• Arizona</li> <li>• Southern California</li> <li>• Hawaii</li> <li>• Idaho</li> <li>• New Mexico</li> <li>• Nevada</li> <li>• Utah</li> </ul>	<ul style="list-style-type: none"> <li>• Connecticut</li> <li>• Delaware</li> <li>• District of Columbia</li> <li>• Maine</li> <li>• Maryland</li> <li>• Massachusetts</li> <li>• New Hampshire</li> <li>• New Jersey</li> <li>• New York</li> <li>• Pennsylvania</li> <li>• Rhode Island</li> <li>• Vermont</li> </ul>	<ul style="list-style-type: none"> <li>• Alaska</li> <li>• Northern California</li> <li>• Oregon</li> <li>• Washington</li> </ul>

## 5. THE PROBLEM

The fictional fact pattern (the “Problem”) is prepared by the Project Team and is available on INTA’s website at [www.inta.org/lefkowitz](http://www.inta.org/lefkowitz).

The Problem may be presented as a Memorandum Opinion and may include findings of fact and conclusions of law of the lower court. The Problem will focus on one or more issues arising under the general subject of United States trademark and unfair competition law. As the Memorandum Opinion comes from the imaginary United States District Court for the Eastern District of Utopia, it is expected that participants’ arguments may rely on established law from courts in other United States jurisdictions.

Participants and law schools may not use the Problem for any purpose other than the official Competition without prior written permission from INTA. Accordingly, this Rule prohibits, for example, use of the problem in intra-school competitions, particularly where the competition is used to select the team(s) representing the school in the Competition.

## 6. BRIEF GUIDELINES

The brief shall be a written argument relating to the issues before the Court. Any or all team members may participate in writing the team’s brief.

### **Each brief must follow the guidelines listed below:**

- Each brief shall, without exception, be limited to twenty-five (25) double-spaced 8 1/2 x 11 inch pages, with printed matter (excluding page numbers) not to exceed 6 1/2 x 9 inches (1 inch margins all around).
- This twenty-five (25) page limitation shall include only the argument itself and the conclusion (i.e., the cover page, questions presented, table of contents, table of authorities, statement of the case, summary of the argument and appendices are not included in the twenty-five (25) page limit).
- Either a proportionally spaced font (Times New Roman, Arial) or a monospaced font (Courier) may be used. A proportionally spaced font must be 12-point or larger. A monospaced font may not contain more than 10 characters per inch.
- The alpha-numeric team number assigned to you must be the name of the PDF file of the brief filed with INTA (for example, E-01-004.pdf) and be on the cover of the brief in the lower right-hand corner. Do not overwrite the .pdf extension when naming the brief as INTA may not be able to access your filing.
- **The name of the law school, the names of the team members and the geographical region SHALL NOT appear anywhere on the brief.** Briefs shall not be signed, and no information (real or fictional) serving to identify a team or team member shall appear on or within the brief itself, including as part of the name of the PDF file of the brief filed with INTA.

Except to the extent that the Rules herein are not addressed, the Rules of the Supreme Court of the United States shall govern the format of the briefs. There need not be, however, a formal statement of jurisdiction. All citations shall be complete and in the form prescribed by the most recent edition of The Bluebook: A Uniform System of Citation.

Briefs shall not be shared or otherwise exchanged between teams participating in the Competition (including teams from the same school). Although teams brief only one side, all teams will argue both sides before the Court and are expected to rely upon their own research and originality of thought in preparing their briefs and oral arguments.

By submitting a brief for the Competition, the team hereby grants a perpetual, royalty-free, non-exclusive worldwide license to INTA and the Project Team to reproduce, distribute, display and modify the brief, including the right to create derivative works based on the brief. The Project Team and INTA may use the briefs, including any portion thereof, for any Competition or research-related purpose.

Failure to conform to this Rule will result in reduction of a team's brief score in an amount deemed appropriate in the judgment of the Project Team, and may result in disqualification.

## 7. FILING OF BRIEF

Each team shall file its brief as a PDF file by uploading it at the following link:  
[www.inta.org/lefkowitzregistration](http://www.inta.org/lefkowitzregistration).

**The brief must be received by INTA no later than 8:00 P.M. U.S. Eastern Time, January 3, 2018.**

Briefs received after that time may not be considered. Briefs may not be mailed, e-mailed or hand delivered to INTA's office. There may be a heavy volume of filings on the day of deadline, so teams are advised to file their briefs early to avoid unnecessary problems.

Failure to file a timely brief may result in automatic disqualification from the Competition. The team leader will be notified of disqualification by e-mail and shall have the opportunity to appeal such disqualification by 8:00 P.M. U.S. Eastern Time (Close of Business) on January 8, 2018.

If the team leader does not receive an auto-generated e-mail reply confirming receipt of the brief by INTA, please e-mail [lefkowitz@inta.org](mailto:lefkowitz@inta.org) or call +1-212-642-1707 by 5:00 P.M. U.S. Eastern Time on January 8, 2018 to reconcile any submission issues.

The auto-generated e-mail reply will be sent to the team leader and faculty advisor listed on the entry form. Failure to timely contact INTA may result in automatic disqualification from the competition.

Briefs may not be revised or amended after they are filed. No supplemental briefs will be accepted.

## 8. REGIONAL ROUND FOR THE COMPETITION

Regional round oral arguments will be held in the locations identified in Section 4 (i.e., Atlanta, Chicago, Dallas, Los Angeles, New York City and San Francisco). Absent extenuating circumstances, all regional round oral arguments will be conducted on one day: **Saturday, February 10, 2018**. Each team will compete in two rounds of oral argument: arguing as Appellant in one round and Appellee in the other round.

All teams are advised to make adequate plans (for required filings, travel, etc.) and to anticipate the possibility of adverse weather conditions or other delays. It is recommended to arrive in the competition location city at least the day before the competition, as appearing late may result in score deductions or disqualification. Due to the likely possibility of other events being held on the same weekend as the regional round, teams are encouraged to book hotel and transportation arrangements as soon as possible.

Two team members will argue in each oral argument. Any two team members can argue for the team in each of the arguments. All team members may be present for the team's argument, even if they are not making the oral argument.

The competition will provide further information regarding times to appear for the Competition. If any team is late in arriving at the designated check-in time, before the scheduled start of an argument, or after the lunch break, the Project Team reserves the right either to declare a default or to assess penalty points. Participants must be seated in their scheduled courtroom at the appointed time of argument.

Each team is allotted twenty (20) minutes for each oral argument. The two team members can divide this

time between them as they wish, provided that each team member argues for at least five (5) minutes. In advance of the argument, the courtroom bailiff must be notified as to how the time will be divided, including any reservation of time for rebuttal.

The teams are responsible for observing the twenty (20) minute time limitation. The courtroom bailiffs, however, will assist with the use of time cards.

The courtroom bailiff will advise each arguing counsel when there are five (5) minutes, three (3) minutes and one (1) minute remaining of his/her allotted time. Once counsel is informed by the courtroom bailiff that the time has expired, counsel must conclude the argument or receive the Court's permission to continue.

Appellant (as identified in the Problem) may reserve up to five (5) minutes for rebuttal by notifying the bailiff prior to commencement of the argument. There is no rebuttal permitted for a Cross-Appellant (if any). Rebuttal time may be utilized by only one team member, and the time reserved must be subtracted from the twenty (20) minute allotment for that team to present its case-in-chief. Appellant may waive reserved rebuttal time at the conclusion of Appellee's argument.

## **9. NATIONAL FINALS FOR THE COMPETITION**

Two teams each from the six regions will advance to the National Finals. The teams with the highest total score and second highest total score in each region will advance. (See Scoring). Each team will be notified by **Friday, February 16, 2018** of the location and times of their arguments at the National Finals.

The National Finals will be held in Washington, D.C. on **Saturday, March 17, 2018** and will consist of two equally weighted rounds of arguments. Each team will argue twice, once as Appellant and once as Appellee.

INTA will reimburse those teams that advance to the National Finals for their reasonable accommodation and transportation expenses for attending the Finals, up to a maximum of \$1,000 per team. Due to the likely possibility of other events being held on the same weekend in the Washington D.C. area, advancing teams are encouraged to book hotel and transportation arrangements as soon after the regional round as possible. **All expenses must be submitted to INTA no later than March 21, 2018.** After this date, INTA will not consider travel expenses for reimbursement and the team (or law school) will be responsible.

If any team is late in arriving at the designated check-in time, before the scheduled start of an argument, or after the lunch break, the Project Team reserves the right either to declare a default or to assess penalty points. Participants must be seated in their scheduled courtroom at the appointed time of argument.

Each team is allotted thirty (30) minutes for each oral argument. Co-counsel may divide this time between them as they wish. In advance of the argument, the courtroom bailiff must be notified as to how the time will be divided, including any reservation of time for rebuttal.

The teams are responsible for observing the thirty (30) minute time limitation. The courtroom bailiffs, however, will assist with the use of time cards.

The courtroom bailiff will advise each arguing counsel when there are five (5) minutes, three (3) minutes and one (1) minute remaining of his/her allotted time. Once counsel is informed by the courtroom bailiff that the time has expired, counsel must conclude the argument or receive the Court's permission to continue.

Appellant may reserve up to five (5) minutes for rebuttal by notifying the bailiff prior to commencement of the argument. Rebuttal time may be utilized by only one team member, and the time reserved must be subtracted from the thirty (30) minute allotment for that team to present its case-in-chief. Appellant may

waive reserved rebuttal time at the conclusion of Appellee's argument.

## 10. ORAL ARGUMENT

At the commencement of each argument during Regionals and National Finals, the team members arguing the case shall introduce themselves by name to the Court. **The name of the team's law school shall not be mentioned or otherwise disclosed at any time before, during or after the argument.** Failure to comply with this Rule may result in automatic disqualification of the team from the Competition.

Oralists should be prepared to address all issues. Oralists are not required to argue all issues, but the failure to argue important issues may be considered by the judges.

No discussion with the judges is permitted until their critique, which follows oral argument.

**Note:** *Team members, coaches, faculty advisors or any other person affiliated with the team are permitted to attend only those arguments in which that team is participating. Other spectators are allowed to observe the argument only if no team objects before the argument.*

The photographing or recording of any argument by a competing team or persons affiliated with the competing team is expressly forbidden. Failure to comply with this Rule will result in automatic disqualification from the Competition. However, INTA and the Project Team reserves the right to photograph or otherwise record any argument for use in marketing or for other Competition-related purposes, and INTA shall own all rights to any such recording. In this regard, by entering and participating in the Competition, the participants and law schools hereby consent to such photographing and recording and uses thereof.

The Project Team will attempt to ensure the impartiality of all judges. Accordingly, the Project Team reserves the right to change judges at any time (even immediately before oral argument) if, for example, a judge informs the Project Team that he/she recognizes a team or its participants. If a team recognizes a connection with a sitting judge, the team should identify the connection to the Project Team for consideration prior to oral argument. Any team that recognizes a connection between the opposing team and any sitting judge may object to the Project Team prior to the argument. After argument begins, no such objections will be considered.

It is anticipated that arguments will occur in actual courtrooms with standard non-electronic equipment such as podiums, although this is not guaranteed and is subject to space limitations and emergency conditions. The Regional and National Competition Coordinators may prohibit the use of podiums and other logistical items brought by teams. Reasonable demonstrative exhibits are permitted.

## 11. OUTSIDE ASSISTANCE

Teams are expected to rely upon their own research and originality of thought in drafting their briefs and preparing for oral arguments. Specifically:

- a. No team may receive any outside assistance, including assistance from faculty members, coaches, other students or attorneys, in the writing of its brief. Before briefs are submitted, team members may not discuss the facts of the problem, issues on appeal, or arguments that may be or will be presented on appeal with anyone other than their fellow team member(s). This rule shall not be construed to prevent the general discussion of issues in trademark law with faculty or others.
- b. No team is permitted to review briefs (or drafts of briefs) prepared by anyone else relating to the specific case being briefed and argued in this Competition.
- c. No team may have its brief (or drafts of briefs) critiqued by any faculty member (including the faculty advisor) or other person who is not a member of that team prior to submission of the

final brief to INTA.

- d. Students may review briefs prepared for other cases or other competitions.
- e. Practice arguments are permitted only after briefs have been submitted to INTA, as are critiques and evaluations of such practice arguments, by faculty and others.
- f. Briefs shall not be exchanged between teams participating in the Competition (including teams from the same school).

## 12. SCORING

Three judges will independently score each brief. A panel of judges will independently score each team's oral arguments.

The judges' evaluations of the briefs and oral arguments should not be affected by their personal views of the merits of the case. Copies of the judging criteria for the brief and oral argument are attached as Appendix I and II respectively.

In computing the total score for each team in both the Regional Competition and the National Finals, the brief score is 50% and the oral argument score is 50%. With respect to computing the total score in the National Finals, the brief score is 50% and the oral argument score from only the National Finals is 50%. In other words, a team's oral argument score from the Regional Competition is not counted as part of the total score in the National Finals.

In the event of a tie in total scores, the advancing or winning team shall be the team with the higher oral argument score.

In the event the oral argument scores also are tied in the Regional Competition, the advancing or winning team shall be the team with the higher score in the second round of oral argument.

In the event those scores also are tied in the Regional Competition, there will be a tie-breaker oral argument.

### **Regional Awards**

Regional award winners will be announced immediately following the regional oral argument rounds. Awards will include the following:

<b>Award</b>	<b>Criteria</b>	<b>Cash Prize to Winning Team</b>
<b>Best Team</b>	Highest total score (overall brief and oral argument scores combined)	US\$3000 (and also US\$1000 to Team's law school)
<b>Second Place Team</b>	Second highest total score (overall brief and oral argument scores combined)	US\$1500
<b>Best Brief</b>	Highest overall brief score	US\$1000
<b>Second Place Brief</b>	Second highest overall brief score	US\$500
<b>Best Oralist Team</b>	Highest overall oral argument score	US\$1000
<b>Second Place Oralist Team</b>	Second highest overall oral argument score	US\$500

### **National Awards**

National award winners will be announced immediately after the National Finals. Awards will include the following:

<b>Award</b>	<b>Criteria</b>	<b>Cash Prize to Winning Team</b>
<b>Best Team</b>	Highest total score (overall brief and oral argument scores combined)	US\$3000 (and also US\$1000 to Team's law school)
<b>Second Place Team</b>	Second highest total score (overall brief and oral argument scores combined)	US\$1500
<b>Best Brief</b>	Highest overall brief score	US\$1000
<b>Second Place Brief</b>	Second highest overall brief score	US\$500
<b>Best Oralist Team</b>	Highest overall oral argument score	US\$1000
<b>Second Place Oralist Team</b>	Second highest overall oral argument score	US\$500

INTA will distribute cash awards after the Competition.

### 13. RANKING

After the Finals, INTA will notify each team by e-mail of its oral argument, brief, and overall rankings in its region and nationwide. **Individual and team scores ARE NOT released.** Individual team briefs or the winning brief will not be posted or distributed, but may be used by INTA or the Project Team.

### 14. POWERS OF THE PROJECT TEAM

The Project Team shall have sole discretion to interpret and apply these Rules, and to assess penalties or to disqualify teams for failure to abide by any of the foregoing Rules. At the Competition, and given the need for exigent decisions during the Competition, the coordinator is empowered to interpret and apply these Rules on behalf of the Project Team, including the assessment of penalties and the disqualification of advocates, concerning matters that arise in connection with the arguments.

All requests for Rule interpretations must be submitted by e-mail to [lefkowitz@inta.org](mailto:lefkowitz@inta.org). If you do not receive a response within three (3) business days, please call the Coordinator, Education Academic Programs at +1-212-642-1707.

At the Project Team's discretion, the response to any inquiry may be sent to all participating teams. All decisions of the Project Team regarding Rules interpretations are final.

The Project Team shall have sole power to resolve any dispute, which may arise during the Competition. All objections must be submitted to the Project Team in writing, or be put on the record at the commencement of oral argument. If an objection arises during the course of an oral argument, the objection must be submitted to the Project Team immediately following the round in which the objection arose.



**APPENDIX I**

**Judging Criteria for the Brief**

Scoring is based on a 100-point rating scale

<p>PART A: LEGAL ANALYSIS Maximum of 60 points TOTAL for the following:</p>
<p>Focus on relevant issues (15 points maximum)</p>
<p>Originality and creativity (15 points maximum)</p>
<p>Effective use of cases and other authorities (15 points maximum)</p>
<p>Effectiveness in dealing with contrary arguments and authorities (15 points maximum)</p>
<p>PART B: WRITING QUALITY Maximum of 40 points TOTAL for the following:</p>
<p>Logical organization (10 points maximum)</p>
<p>Clarity in expressing arguments (10 points maximum)</p>
<p>Effectiveness of writing style (10 points maximum)</p>
<p>Use of proper grammar and citation form; overall appearance of the brief (10 points maximum)</p>
<p>PART A AND PART B COMBINED NOT TO EXCEED 100 POINTS TOTAL.</p>

The Judges' evaluations of the briefs and arguments presented therein should not be affected by their personal views of the merits of the case.

**APPENDIX II**

**Judging Criteria for Oral Argument**

Scoring is based on a 100-point rating scale

MAXIMUM FOR ALL CRITERIA COMBINED IS 100 POINTS TOTAL.
Coherence and clarity of argument
Effectiveness in responding to judges questions and ability to return effectively to argument after questions
Effectiveness of delivery and ability to engage in a dialogue with the court
Poise and demeanor
Use of most powerful arguments
Logical ordering of argument and effective use of time
Distinction of unfavorable authority
Mastery of facts of case being argued and the decision below
Knowledge and understanding of relevant precedent

The Judges' evaluations of the oral argument should not be affected by their personal views of the merits of the case or any briefs the Judges have seen. Scoring is to be based entirely on the oral argument.

The Judges are encouraged to engage the participants in a dialogue, as the evaluation of the abilities of the participants according to the above scale becomes much easier to the extent that the Judges do so. The Judges also are asked to comment on the arguments and to provide critiques of the individual participants (but **not** disclose any scores), after the arguments in each round conclude.