

Clarifications about the Moot Problem in Response to the Requests of Clarifications from Competing Teams

Clarifications about the Competition Rules:

Question:

Of the four team members, we understand that only two are allowed to present oral arguments in any given hearing.

(A) We understand that each team will argue twice in the general rounds, once as claimants and once as respondents.

(B) We assume that we are allowed to have two oralists argue as claimants and the other two oralists argue as respondent.

(C) We assume that, in each hearing, one oralist will argue jurisdictional issues and the other oralist will argue the merits.

Response: yes, all the understandings above are correct. As to (C), please note that depending on the individual characteristics of the case, you may diverge from this rule. This rule is not a rigid or strict rule that necessarily has to be followed in all cases.

Question: Please explain the following “One team member must argue both the claimant and respondent during the general rounds...”.

Response: this rule applies to team members who wish to qualify for the “best oralist” prize. Only students who competed in the general rounds on both sides of the case (respondent and claimant) are eligible for the “best oralist” prize.

Question: Please explain the last paragraph of Section 5.9 of the rules which states that a team representative has 30 minutes to go to the Competition Office to inquire about the result of the round, and that a coin flip will be used if needed.

Response: this is the rule applicable in case of two or more teams having the same points. The coin flip will be used to decide on the prevalence of any of the teams, if needed. In the recent past we never were in a position where we had to use this rule.

Clarifications about the Moot Problem:

Question: Can we refer to actual laws (codes) of Ecuador and/or the United States?

Response: No, please stay within the legal framework provided in this Problem. Both “Ecuador” and the “United States” are imaginary countries for the purpose of the Moot Problem.

Question: Was Bubblewash Corporation (the Korean parent company) formally a party to the Supreme Court proceedings that resulted in the 28 May 2022 decision? If so, in what procedural capacity?

Response: Yes, Bubblewash was a party to the Ecuadorian proceedings. It was respondent.

Question: Which entity ultimately paid the USD 5 million in damages and USD 567,000 in attorney's fees ordered by the Supreme Court, and on what date was payment made?

Response: See Notice of Arbitration, para. 48: "Bubblewash, through its subsidiary BWLS, which was jointly and severally liable for the judgment, paid the damages award to Ropasuave and JWD on August 19, 2024."

Question: Was the 2023 trademark sublicense agreement in force prior to the Supreme Court's decision of 28 May 2022, or was it concluded after that decision? (referring to Ecuador's Objections, p. 4 ¶13 and p. 5 ¶18)

Response: as the text states, this right "was created *after* the Ecuadorian Supreme Court decision here at issue

Question: Does Ecuadorian law have provisions with respect to liability in case of bad faith procedural conduct?

Response: Yes, Ecuadorian law does contain provisions regarding liability due to bad faith procedural conduct. If a party is found to have acted in bad faith during legal proceedings, it could be held liable for damages.

Question: Does Ecuador have regular diplomatic relations with Korea?

Response: Ecuador does maintain regular diplomatic relations with Korea.

Question: What do articles 18.3 and 20.4 of the BIT, as referenced in para. 27 of Ecuador's Response, state about the requirements for notification of denial of benefits?

Response: Please disregard the references to arts. 18 and 20! These provisions are irrelevant for the present case.

Question: Is Ropasuave an Ecuadorian company?

Response: yes, it is.

Question: How and when did Claimant send Respondent a Notice of Intent to arbitrate?

Response: On March 1, 2024

Question: Why did BubbleBrands LLC (BBB) oppose JWD International's trademark application in Florida, and not BWLS or BWC?

Response: BBB opposed the application because it was the trademark owner or rights-holder in the relevant jurisdiction.

Question: On what basis did the Supreme Court conclude that Ropasuave and JWD had suffered a \$6,000,000 loss? Was it because of Ropasuave's and JWD's expert report?

Response: Yes, the loss determination was based at least in part on the claimants' expert evidence.

Question: Why did the Supreme Court conclude that BBB's Reservation of Rights letter was evidence of recklessness?

Response: The Court viewed the letter as indicative of improper commercial pressure.

Question: Is the TPA referenced in Respondent's brief the same as the FTA referenced in the Claimant's brief?

Response: Yes, they are referring to the same treaty instrument.