

INTRODUCTION

This packet contains all of the materials necessary to participate in the Twenty-Third Annual New York Metropolitan MENTOR Moot Court Competition. Participants may not utilize any materials not contained in this packet in preparing for and presenting their arguments.

The MENTOR program focuses on the ability of the student advocates to organize and present their arguments persuasively. Advocates will be questioned by the judges as they would in actual appellate court proceedings. While structuring a coherent argument and understanding the legal issues are important, memorization of a prepared text should be minimized. Rather, emphasis should be placed on effectively responding to the judges' questions, the ability to think extemporaneously and overall persuasiveness. Some participants may be called upon to advance unpopular positions with which they disagree. This is often a characteristic of the legal process and should not diminish the student's enthusiasm or quality of presentation.

This year's imaginary lawsuit is entitled, The Michael Jackson Company v. Vidster, Inc., Thompson, Walsh and Bernstein. The competition focuses on whether a music video parody counts as a "fair use" of copyrighted materials, and whether video-hosting websites should be held liable for infringing content posted on their sites.

This packet contains the fictitious opinions of Judge Alexander of the Southern District of the State of Fordham and Chief Judge Fein for the Court of Appeals for the Fourteenth Circuit. Set forth in the District Court's opinion is the Statement of Facts. In addition, this packet contains the Order granting the Petition for a Writ of Certiorari to the United States Supreme Court, which contains the two questions certified for review in this case.

In Michael Jackson v. Vidster, Inc., Thompson, Walsh and Bernstein, Judge Alexander held that the student video, *Eat It*, did not qualify as fair use of Michael Jackson's original, and

that Vidster, the video sharing website, did not qualify for safe harbor protection under the Digital Millennium Copyright Act. The Court of Appeals for the State of Fordham reversed on both issues.

RULES OF THE COMPETITION

Preliminary rounds are scheduled for Wednesday, November 14; Wednesday, November 21; Monday, November 26; Tuesday, November 27; Wednesday, November 28; and Thursday, November 29, 2007. Each participating school will compete during one day of preliminary competition. The rounds will be held at Fordham University School of Law, 140 West 62nd Street, New York, NY, 10023. All teams must register by 8:45 am and rounds will begin promptly at 9:15 am. Failure to register on time may result in disqualification. Please plan accordingly.

Upon completion of the preliminary rounds, the two top-scoring teams from each day of preliminary rounds will advance to the quarterfinals. The quarterfinals will be held for those twelve teams on Tuesday, December 4, 2007. The four top-scoring teams will then advance to the semifinal rounds, which will be held on Thursday, December 6, 2007. The date of the final round is to be determined. Scores will not be disclosed during the competition, but will be available for review after the completion of the competition. Schools will be notified of advancement by telephone. Results of advancement will be made available after the rounds of each day are fully completed.

Competition conflicts must be submitted in writing by October 24, 2007. The last day to withdraw from the competition is also **October 24, 2007**. Untimely withdrawals may result in disqualification from the 2008 MENTOR Moot Court Competition.

TEAMS

Each school will field two teams, each team consisting of four students. Team I will represent Petitioner, The Michael Jackson Company, on both issues. Team II will represent Respondent, Vidster, Inc, Bernstein, Thompson, and Walsh, on both issues. Only two students from each team may participate in each oral argument round.

Among the semi-finalists, the assignments of party representation will be decided based on the teams' scores and whether teams have faced each other in a prior round. For the semifinal round, each participating school may select any four representatives of the eight students from their school who participated in the competition's preliminary rounds. As in the preliminary rounds, however, only two students will be allowed to serve as oralists. The two finalist schools will be announced after the semifinal rounds on December 6, 2007 at the closing luncheon to be held at Fordham Law School. The two finalist teams will reach a mutual agreement as to which team will represent Petitioner and Respondent, respectively. If no agreement can be reached, assignment of representation will be determined by a coin toss.

PREPARATION

Teams may be coached by teachers and attorneys from sponsor law firms. Teams should arrange practice sessions with their MENTOR attorneys from sponsor law firms. Visits to the appellate courts to observe the nature of appellate oral advocacy are also encouraged. Teams should also conduct practice rounds.

Teams may not utilize any legal precedent or other research aids not contained in this packet. Moreover, participating attorneys may not use any outside materials in coaching student advocates. The facts contained in the record are inclusive; students may not invent facts or present data that conflict with these materials. However, in drawing inferences about the

strength of given arguments, students may draw upon personal knowledge of the song and video for Michael Jackson's *Beat It* or of video-sharing websites like Vidster.

Teams may photocopy the cases and statutes cited in the fictitious opinions. The list of cases and statutes used in the two opinions are set forth in Appendix I of this packet. If a team experiences difficulty accessing the cases, please contact the Fordham Moot Court office. All other materials cited in the opinions are located in the Appendices. One of the cases for Issue I is included in the appendix as a redacted version. Please refer to this version when preparing your arguments.

FORMAT OF THE COMPETITION

The order of arguments at each round is as follows: (1) counsel for the Petitioner on the fair use issue ("Issue I"); (2) counsel for the Petitioner on safe harbor protection ("Issue II"); (3) counsel for the Respondent on Issue I; and (4) counsel for the Respondent on Issue II. Each student-advocate will have ten minutes to argue his or her client's position. Time periods will be strictly enforced. No rebuttal time will be permitted.

During the competition, only two team members will argue for each team. All four team members may, however, be seated at the counsel table in the courtroom, although **no note passing will be permitted during oral argument.**

All teams, coaches, teachers and guests are invited to attend their school's rounds. Unfortunately, some rooms may not be large enough to accommodate all spectators. Therefore, we are asking that schools inform the MENTOR Editor by November 7, 2007 of the number of spectators that will be attending. If we are unable to accommodate your school, the teacher-coach will be informed and the number of spectators will be limited. **While MENTOR attorneys and teachers may be present during oral arguments, they may not coach the**

students while the round is in progress. Additionally, all persons affiliated with a school participating in the competition are prohibited from previewing the arguments of other participants.

SCORING

All rounds will be scored by a panel of judges. No attorney may judge his or her MENTOR high school in any round. Judges will evaluate students on the following criteria: (1) overall persuasiveness; (2) ability to respond effectively to questions; (3) knowledge of the case law; (4) clarity of arguments; and (5) poise and appearance. Scoring in each category will range from one to ten, with ten being the highest score. After both teams have presented their arguments, the bench will give comments to the individual oralists. The bench will not announce a ruling on the merits of the case nor will the bench reveal the specific scores of the teams. The bench may, however, provide group or individual feedback to the oralists as time permits.

AWARDS

All team members will receive a “Certificate of Participation.” The finalists will receive a gift commemorating their participation in the competition. The name of the overall winner will be engraved on the MENTOR trophy.

CLARIFICATIONS

Please address all inquiries with respect to the New York Metropolitan MENTOR

Moot Court Competition to:

Meghan Spillane
MENTOR Editor
Fordham University School of Law
Moot Court Board, Room 305
140 West 62nd Street
New York, New York 10023

Phone: (212) 636-6882
Fax: (212) 636-7934
Email: mentormc@law.fordham.edu