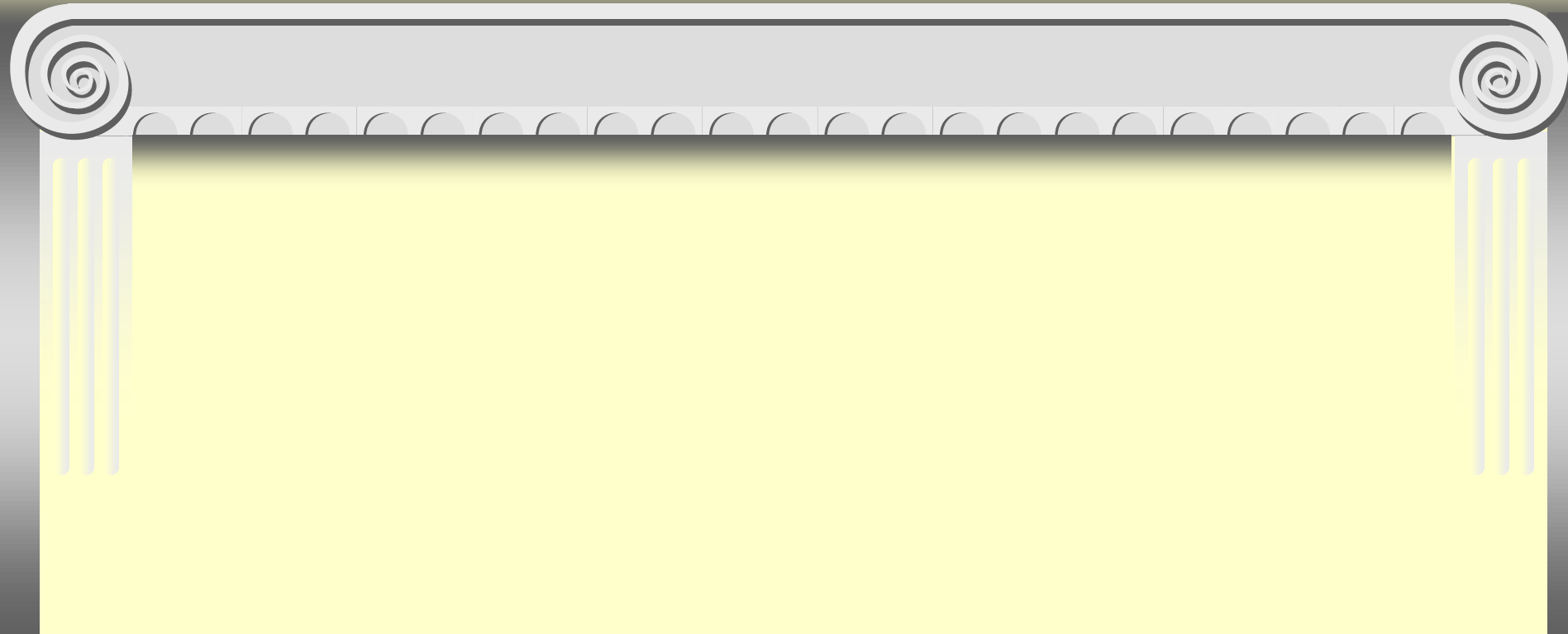


Quick “Rules” for Evaluating Evidence in Competition Cases



Rules of Thumb for Evaluating Evidence

Reliability of All Proof Should be Tested by Investigators.

- Witnesses should be credible and competent.
- Documents should be authentic.
- If opinion evidence is used, the basis of the opinion and the opinion maker's qualifications should be tested.
- Evidence and witnesses should be subject to cross examination to test reliability.
- Keep healthy skepticism about all information supplied.

Rules of Thumb for Evaluating Evidence

Who said it? The source of the statement.

- Witnesses are most reliable when they have personal knowledge of the facts.
- Parties and competitors: exercise particular care for potential bias.
- When you want know the company's policies speak to high-level employees.
- When you want to know details/facts speak to lower-level employees.
- Consider the source: Is the witness qualified to speak on the subject? (Who said it matters as much as what was said.)

Rules of Thumb for Evaluating Evidence

When and Where They Said It: The Circumstances of the Statement.

- Pre-existing, ordinary course of business documents are more reliable than present testimony or documents created after the start of the investigation.
- Statements are more reliable when the company relies on their accuracy (e.g., use in day-to-day decision making).
- Statements are more reliable when the speakers believe they will be held to their words (e.g., statements in SEC filings).

Rules of Thumb for Evaluating Evidence

Interpreting Evidence

- Actions speak louder than words.
- So do inactions: The dog that didn't bark.
- Determine whether a witness's experience is representative of others
- Take the bitter with the sweet
 - You cannot pick and choose only the evidence that it favorable to your case.
 - Consider the totality of the evidence.