

B&B Inc. v. Happy Frocks Inc.

A step by step walk-through of your MPT method

The task: you are an associate at a Franklin firm defending **Happy Frocks**, a children's clothing maker already found liable for trademark infringement (its manufacturer used cheap knockoff buttons bearing **B&B's** logo). The court asked for briefs on remedies. You draft only the part of the **persuasive brief** arguing that Happy Frocks owes **no award of profits**.

THE ISSUE

Is an **award of profits** justified against Happy Frocks? Work the **five Spindrift factors** and conclude no.

Threshold (Romag): willfulness is **not** required for a profits award, so you cannot stop at 'not willful'. Mental state is still highly important, and you win on the balance of all five factors.

Tone + traps: this is a **persuasive brief**, not a memo. Use **full-sentence argument headings** (firm rule), weave facts in (no separate facts section), and still address and distinguish B&B's contrary points.

YOUR METHOD The six moves, applied to this file

Structure first, rules second, facts last, matched to the rules, then write it in persuasive IRAC.

- 1 Read the task memo twice:** who you are, what you are writing (the profits section only), and the standard.
- 2 Work the Library and pull the rules:** Romag on willfulness + the five Spindrift factors. Tag each with a color.
- 3 Anchor your client and matter:** Happy Frocks, defendant, already liable; the fight is profits only.
- 4 Jot the case parties:** Spindrift's loser (Holt) is your yardstick, because that is where profits WERE awarded.
- 5 Work the File and match facts to the factors:** pull the helpful, contrasting, and rebuttal facts under each colored factor.
- 6 Outline, then write in IRAC:** full-sentence heading, rule, application (both sides), mini-conclusion, per factor.

STEP 1 Read the task memo twice for the structure

Two memos sit at the front of the File: the assignment, and the firm's brief guidelines. Pull this spine before anything else:

WHO YOU ARE associate at Aziz & Shapiro, for defendant Happy Frocks.

WORK PRODUCT the profits section of a persuasive brief only (others cover injunction + damages).

THE ASK argue that no award of profits is justified.

HEADINGS full-sentence point headings that apply a rule to the facts, not bare labels.

FACTS no separate statement of facts, but weave the record in; address contrary facts too.

STEP 2 Work the Library: pull the rules

Two authorities. Read them for the black letter, then color-tag each rule; you reuse these colors when matching facts in Step 5.

The controlling authorities

- › **Romag** (U.S. 2020): willfulness is not a prerequisite to a profits award; but the infringer's mental state is a highly important consideration.
- › **Spindrift** (Franklin Dist. Ct. 2021): a profits award serves three rationales, deterrence, unjust enrichment, and compensation, and is decided by balancing **five factors**; the factors carry unequal weight and lie in the court's discretion.

The five-factor test (Spindrift)

F1 mental state F2 profit connection F3 other remedies F4 equitable defenses F5 public interest

- › **F1 The infringer's mental state**: willful, reckless, callous, willfully blind, or intent to deceive favors an award; mere negligence or innocence weighs against.
- › **F2 Connection between profits and the infringement**: lost/diverted sales, consumer confusion, or a certain benefit to the infringer favors an award.
- › **F3 Adequacy of other remedies**: if actual damages + an injunction make the owner whole, there is no basis for profits.
- › **F4 Equitable defenses**: laches, delay, acquiescence, or unclean hands weigh against an award.
- › **F5 The public interest**: a safety risk or a need to deter favors an award.

STEP 3 Anchor your client and matter

From the memo only, a short spine to hang facts on:

CLIENT Happy Frocks, the defendant; already found liable for infringement.

OPPONENT B&B, the button maker, seeking profits, damages, and an injunction.

THE INFRINGER Quality Clothes, HF's overseas manufacturer, used knockoff buttons without HF's knowledge.

THE FIGHT profits only: is disgorgement of HF's \$450,000 justified? You argue no.

STEP 4 Jot the case parties as you read

Spindrift is your yardstick: there the court *awarded* profits. Your job is to show Happy Frocks is the opposite of Holt on every factor.

Spindrift v. Holt (where profits WERE awarded)

- › Holt knowingly and deliberately sold parts with Spindrift's mark and kept doing so after notice (F1 culpable).
- › Holt paid only 25% of the genuine cost but charged full price, so it plainly benefited (F2).
- › Spindrift acted immediately and got a preliminary injunction, so no equitable defense (F4).
- › Result: on balance, **profits awarded**. Every one of those facts is reversed in your case.

STEP 5 Work the File: match facts to the colored factors

Read the transcript with your five factors in front of you. Same color on both sides = a fact doing legal work. Notice every factor points the same way: no award.

F1 mental state

F2 profit connection

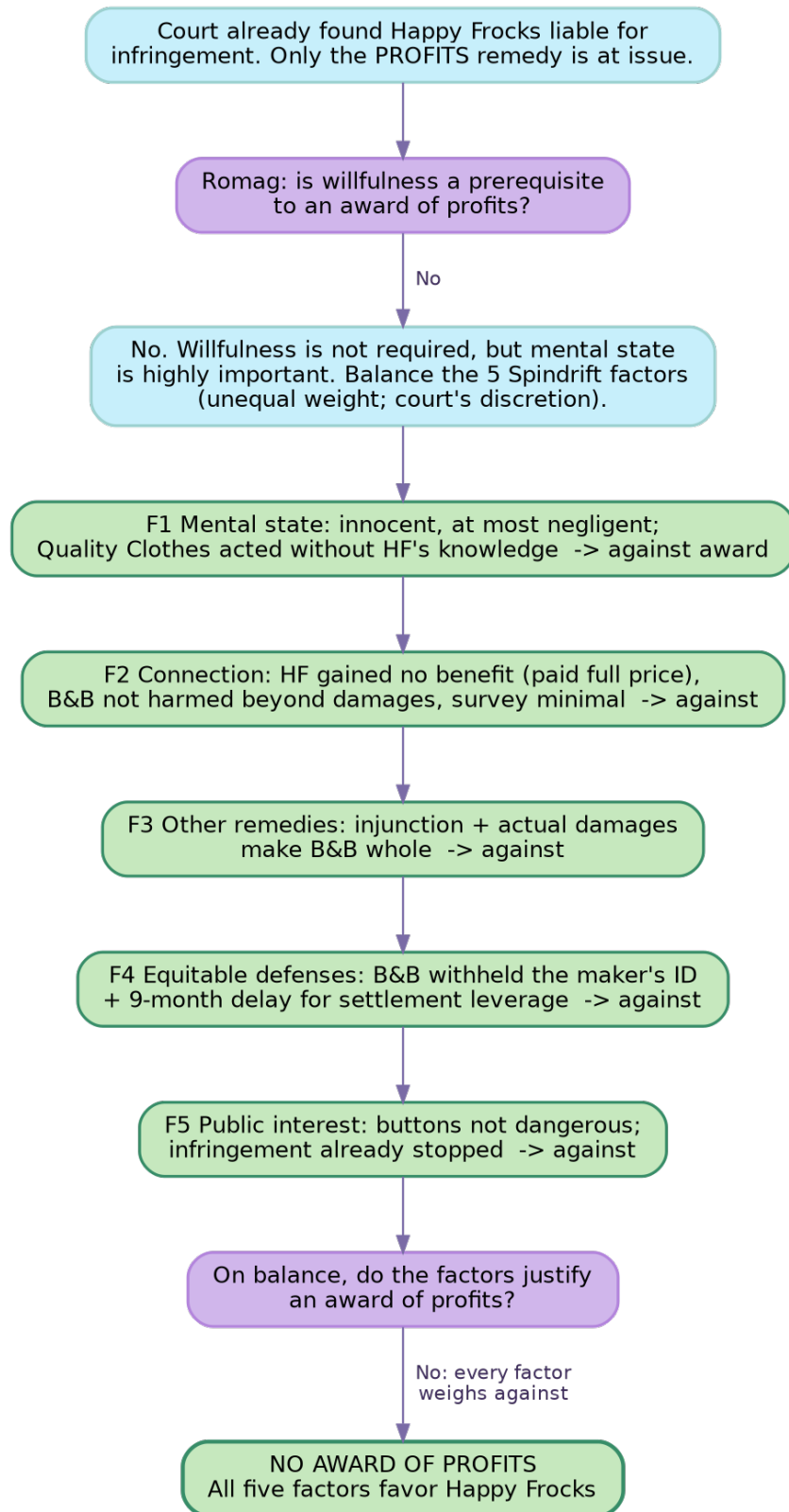
F3 other remedies

F4 equitable defenses

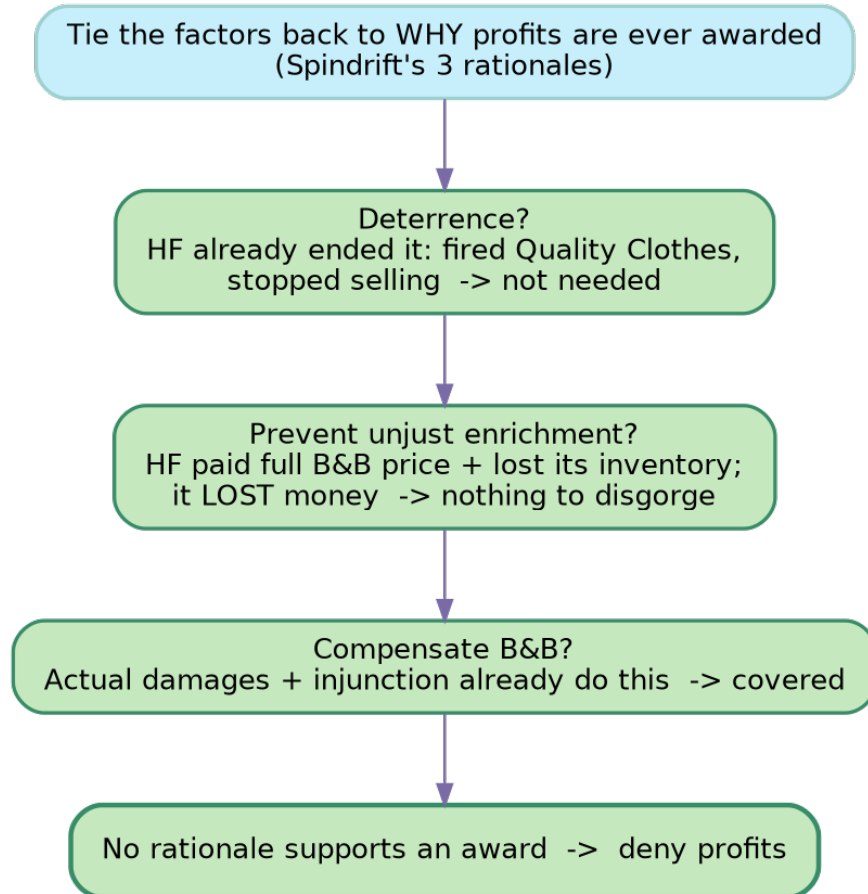
F5 public interest

RULE (FROM THE LIBRARY)	MATCHED FACT (FROM THE FILE)
■ F1: innocence or mere negligence weighs against an award (<i>Spindrift</i> ; <i>Romag</i>).	■ HF did not know Quality Clothes swapped the buttons; once it learned, it investigated and fired Quality Clothes. At worst negligent QC, which is not enough. Rebut B&B's 'lax QC / no recall' points.
■ F2: a certain benefit to the infringer, or harm beyond damages, favors an award.	■ HF paid Quality Clothes the full B&B price anyway and lost its unsold inventory, so it did not benefit; B&B's sales rose and the survey showed 3% / under 1% logo impact.
■ F3: if damages + an injunction make the owner whole, no profits.	■ B&B gets actual damages for lost button sales + an injunction; HF already fired Quality Clothes and stopped selling the goods.
■ F4: delay, laches, unclean hands weigh against an award.	■ B&B did not name Quality Clothes in its demand letter and waited nine months, timing suit to Black Friday for leverage.
■ F5: a safety risk or deterrence need favors an award.	■ Buttons are not dangerous (B&B conceded); HF already ended the infringement, so little left to deter.

Tie back to the rationales. Deterrence is not needed (HF already stopped), there is no unjust enrichment (HF lost money), and B&B is already compensated by damages and an injunction. So the balance, which is discretionary and not a nose count, favors no award.



The analytic path: Romag clears the willfulness threshold, then all five Spindrift factors weigh against an award.



Capstone: none of the three rationales for a profits award is served here.

STEP 6 Outline, then write it in persuasive IRAC

Each factor becomes a **full-sentence heading** (your conclusion), then **rule** (Spindrift / Romag), **apply** the matched facts and answer B&B, and a one-line **close**.

HEADING *"Because Happy Frocks was at most negligent and never knew of the substitution, its mental state does not support an award of profits."*

RULE Willfulness is not required, but mental state is highly important; mere negligence weighs against an award. *Romag*; *Spindrift*.

APPLY **Here**, HF did not know and cured the problem once it learned; unlike *Holt*, it never acted knowingly. B&B's lax-QC theory shows at most negligence, which *Spindrift* says is not enough.

CLOSE Therefore this factor weighs against any award. Repeat the loop for F2 through F5, then tie to the three rationales.

BEFORE YOU HAND IT IN Point-losers on this file

- › Stopping at 'not willful'. *Romag* killed that shortcut; you must win the **five-factor balance**.
- › Bare headings. Use **full-sentence** point headings that apply a rule to these facts (firm rule).

- › Ignoring B&B. **Name and rebut** the lax-QC, failure-to-recall, and 3% survey arguments.
- › Skipping the contrast. Distinguish *Spindrift/Holt* factor by factor; that is where the persuasion lives.
- › Forgetting the rationales. Close by showing deterrence, unjust enrichment, and compensation are all unmet.