B&B Inc. v. Happy Frocks Inc.

Model answer: the outline, then the written brief (annotated)

A persuasive brief for the defendant. Read the colors the same way as your marked-up File and Library: each highlight is the rule a fact serves, and the same color links a rule to the fact that triggers it.

Key: a highlighted phrase is the fact; **the teal → text** after it is the shorthand analysis, what it proves and which way it cuts.

Romag threshold **F1 mental state** **F2 profit connection** **F3 other remedies** **F4 equitable defenses** **F5 public interest** **the 3 rationales**

STEP ONE The outline (what you jot before you write)

One issue (is an award of profits justified?), five factors, all pointing the same way. Note the authority by each rule; mark facts in their colors so the write-up is just joining the dots.

Frame: threshold + rationales

R **Threshold:** willfulness is NOT required for a profits award; mental state stays highly important. *Romag (U.S. 2020).* **→ do not stop at "not willful"; win the balance**

- Rationales for any award: deterrence, unjust enrichment, compensation; five factors, unequal weight, court's discretion. *Spindrift.*

The five factors (each → no award)

F1 **Mental state** (b)(1): HF never knew; fired Quality Clothes on learning. **→ innocent / at most negligent, weighs against**

- Rebut B&B: lax QC + no recall = mere negligence, which *Spindrift* says is not enough. **→ still against**

F2 **Profit connection** (b)(2): HF paid full B&B price + lost its inventory; B&B's sales rose; survey 3% / under 1%. **→ no benefit, no harm beyond damages, against**

F3 **Other remedies** (b)(3): actual damages + injunction make B&B whole; HF already stopped. **→ no need for profits, against**

F4 **Equitable defenses** (b)(4): B&B hid the maker's identity + waited 9 months, timed to Black Friday. **→ delay / unclean hands, against**

F5 **Public interest** (b)(5): buttons not dangerous (B&B conceded); infringement already ended. **→ no safety or deterrence need, against**

C **Conclude:** all five weigh against; no rationale is served (no deterrence need, HF lost money, damages + injunction compensate). **→ deny the award of profits**

STEP TWO The written brief (persuasive, full IRAC)

Full-sentence argument headings (firm rule), then rule, application with the matched facts, and a close. Essay on the left, teaching notes on the right.

ARGUMENT: NO AWARD OF PROFITS IS JUSTIFIED

Persuasive brief section on profits only. Others cover the injunction and actual damages.

The court has found Happy Frocks liable, but liability does not entitle B&B to an award of profits. Willfulness is not a prerequisite to such an award, so B&B need not prove it; yet the infringer's mental state remains highly important. Romag Fasteners, Inc. v. Fossil Group, Inc. (U.S. 2020). Whether to award profits turns on balancing the five factors of *Spindrift* Automotive Accessories, Inc. v. Holt Enterprises, Ltd. (Franklin Dist. Ct. 2021), which carry unequal weight and lie in the court's discretion. Here every factor weighs against an award, and none of the three rationales for one, deterrence, unjust enrichment, and compensation, is served.

***Rule.** Overview. Concede liability, clear the Romag threshold so you are not stuck on willfulness, then preview that all five factors and all three rationales favor Happy Frocks.*

I. Because Happy Frocks never knew of the substitution and cured it as soon as it learned, its innocent, at most negligent, mental state does not support an award of profits.

***Heading.** Point I. A full-sentence heading applying the mental-state factor to these facts.*

Under *Spindrift*, willfulness, recklessness, callous disregard, willful blindness, or intent to deceive favors an award, while mere negligence or an innocent state of mind weighs against one. Here, Happy Frocks did not know Quality Clothes had substituted knockoff buttons; the infringement was begun by a separate entity without its knowledge. When Happy Frocks learned of it, it investigated and terminated Quality Clothes. Unlike Holt in *Spindrift*, which knowingly sold marked goods and continued after notice, Happy Frocks acted innocently. B&B's contention that lax quality control or the failure to recall shows culpability establishes, at most, negligence, which Spindrift holds is not a basis for an award.

***Apply.** Rule + apply, both sides. Lead with your strongest factor. Distinguish Holt, then name and defeat B&B's lax-QC and no-recall theories as mere negligence.*

II. Because Happy Frocks gained no benefit from the infringement and B&B suffered no harm beyond its actual damages, the profit-connection factor weighs against an award.

***Heading.** Point II. Heading ties the connection factor to the no-benefit facts.*

This factor asks whether the plaintiff lost sales beyond its actual damages, whether consumers were confused, and whether the infringer certainly benefited. None is present. Happy Frocks paid Quality Clothes the full price of genuine B&B buttons and lost the value of inventory it could not sell, so it did not benefit; it lost money. B&B's own CEO admitted its overall sales

***Apply.** Apply F2. Hit the two halves: no benefit to Happy Frocks (it lost money) and no harm to B&B (sales rose, survey minimal). Contrast Holt's real windfall.*

increased, and its survey showed only 3% noticed the logo and under 1% bought for it. This contrasts with *Spindrift*, where the infringer paid a quarter of the genuine cost yet charged full price. At most, 3% of the $450,000 could be tied to the mark, and even that overstates a minimal effect.

III. Because an injunction and actual damages will fully compensate B&B, no award of profits is needed to make it whole.

Heading. Point III. Heading applies the adequacy factor.

An award of profits is unwarranted where other remedies make the owner whole. B&B can recover actual damages for its lost button sales and obtain an injunction against further infringement. Happy Frocks has, moreover, already terminated Quality Clothes and stopped selling the goods, so the injunction secures complete relief going forward. Nothing more is needed to compensate B&B.

Apply. Apply F3. Short and firm: the ordinary remedies already do the job, and Happy Frocks has self-cured.

IV. Because B&B concealed the infringing manufacturer's identity and delayed suit for nine months to maximize settlement pressure, equitable principles weigh against an award.

Heading. Point IV. Heading applies the equitable-defenses factor.

Equitable considerations such as delay, failure to act promptly, and unclean hands weigh against an award. Although B&B knew which of the four manufacturers was infringing, it omitted Quality Clothes's identity from its demand letter, needlessly prolonging Happy Frocks's investigation. B&B then waited nine months to sue, timing the filing to the eve of Black Friday to inflict maximum pressure. That is the opposite of the plaintiff in *Spindrift*, who acted immediately. B&B's own delay and gamesmanship counsel against rewarding it with profits.

Apply. Apply F4. This is your equity hook: withheld identity + strategic nine-month delay. Contrast Spindrift's immediate action.

V. Because the infringing buttons pose no danger and Happy Frocks has already ended the infringement, no public interest supports an award.

Heading. Point V. Heading applies the public-interest factor.

A public interest, such as protecting safety or deterring infringement, can justify an award. Neither exists here. B&B conceded the buttons are not dangerous, unlike the tainted-medicine example in *Spindrift*. Nor is deterrence needed: Happy Frocks has already fired Quality Clothes and stopped the sales, and once the court's opinion issues, further infringement of B&B's mark becomes even less likely.

Apply. Apply F5. No safety concern (conceded) and nothing left to deter. Note the published opinion itself deters.

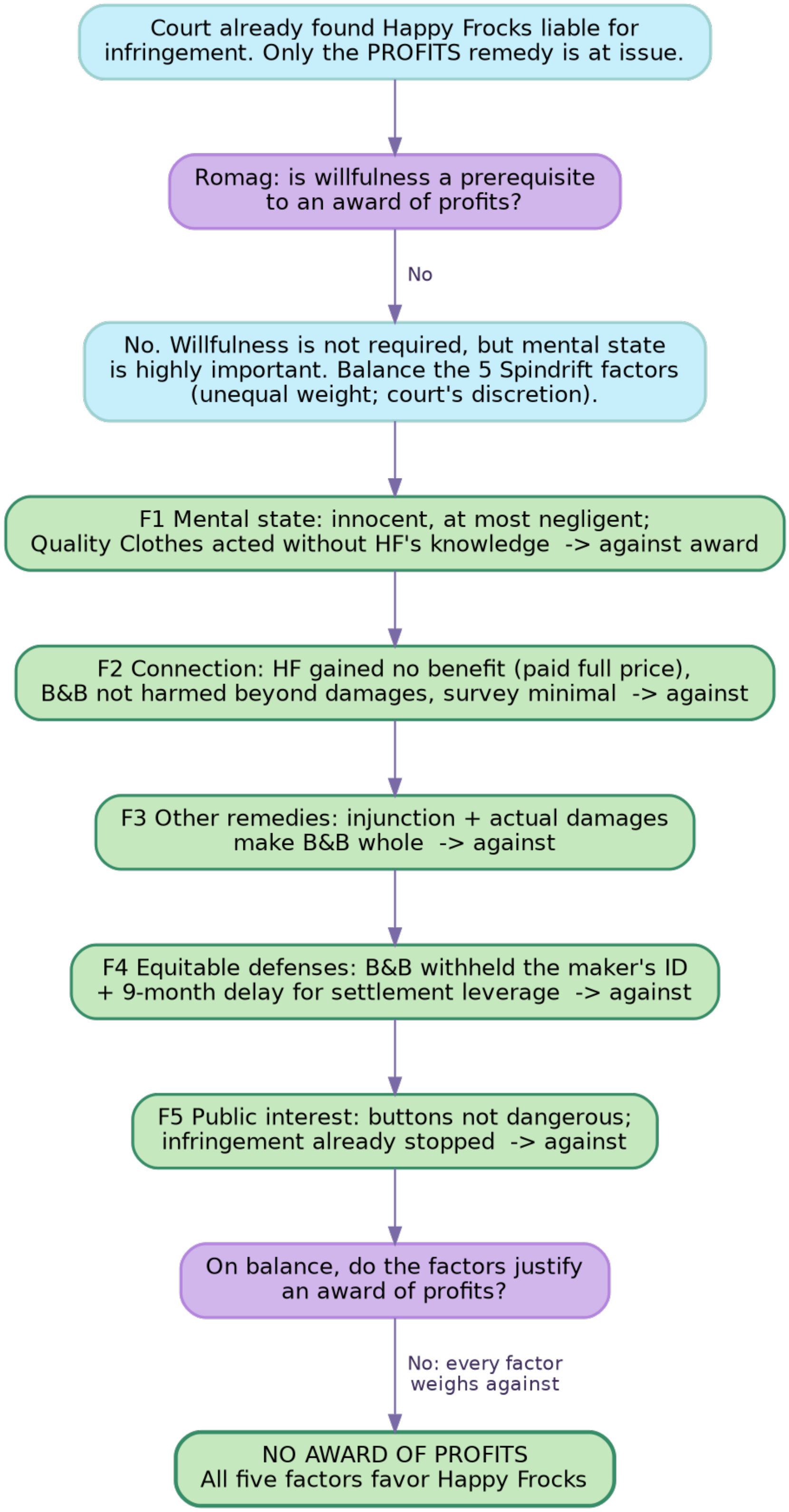
CONCLUSION

Conclude. Conclusion. Balance the factors, then map them to the three rationales so the request to deny profits lands as the equitable result.

All five factors weigh against an award, and the three rationales confirm it: an award is not needed to deter (Happy Frocks has stopped), there is no unjust enrichment (Happy Frocks lost money), and B&B will be fully compensated by damages and an injunction. The court should decline to award profits to B&B.

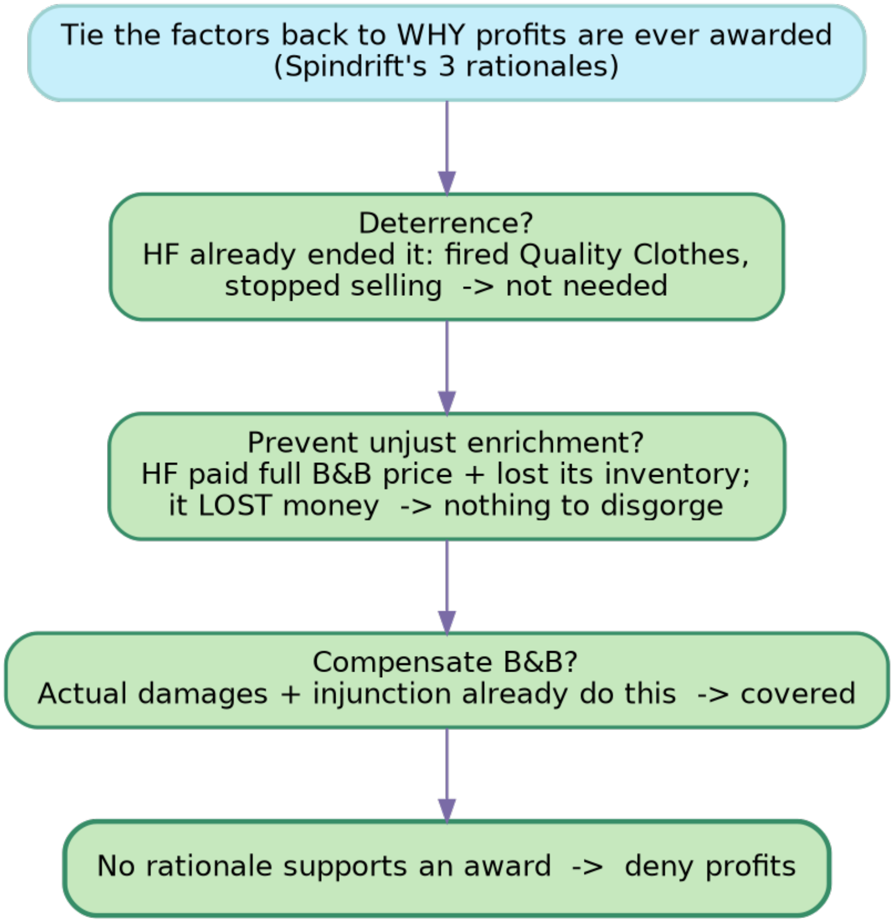
AT A GLANCE The two decision paths

The analytic path: threshold, then the five factors



Romag clears the willfulness threshold; every Spindrift factor then weighs against an award.

The capstone: none of the three rationales is served



Deterrence, unjust enrichment, and compensation all fail, so no award is justified.