

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

NOTICE: These Representative Good Answers are provided to illustrate how actual examinees responded to the Multistate Performance Tests (MPT 1 & 2) and the Multistate Essay Examination (MEE 1-6). The Representative Good Answers are not “average” passing answers nor are they necessarily “perfect” answers. Instead, they are responses which, in the Board’s view, illustrate successful answers written by applicants who passed the UBE in Maryland for this session. These answers are reproduced without any changes or corrections by the Board, other than to spelling and formatting for ease of reading.

MPT 1

Representative Good Answer No. 1

TO: Zoe Foss

FROM: Examinee

DATE: February 21, 2023

RE: Jasmine Hill Matter

MEMORANDUM I. Introduction

Below, please find my analysis regarding (1)The potential claims that Ms. Hill has against Reliant under the Franklin Deceptive Trade Practices Act (DTPA).

II. Analysis

The DPTA prohibits false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. FR. BUS. CODE section 204. The elements of a DTPA claim are (1) the plaintiff is a consumer, 2) the defendant engaged in one or more of the false, misleading, or deceptive acts enumerated in section 204, 3) the act(s) constituted a producing cause of the plaintiff's damage and 4) the plaintiff relied on the defendant's conduct to his or her detriment. Gordon. A "producing cause" under the DTPA is a substantial factor that brings about the injury, without which the injury would not have occurred. Gordon citing Diaz. If a violation is committed knowingly, the plaintiff is entitled to receive three times his or her actual economic damages (treble damages), as well as damages for mental anguish. Gordon citing FR. BUS. CODE Section 205(b)(2).

A thorough review of each of the four elements of a DTPA claim are required to determine if there are any potential DTPA claims as the burden is on the Plaintiff consumer to each element.

1. Whether Jasmine Hill is a consumer under DTPA.

The first inquiry to establish a DTPA claim (or claims) is whether Jasmine Hill is a consumer under the DTPA. Pursuant to DTPA 203 (d), a consumer is an individual who seeks or acquires any goods or services.

In Gordon v. Valley Auto Repair Inc., the Franklin Court of Appeal established that the Plaintiff, Jack Gordon, was a consumer under the act as he asked the Defendant, Valley, to perform repairs on his truck.

Here, we can certainly establish that Jasmine Hill was a consumer. Her email correspondence with Greg Stevens indicates that she can come by the shop to purchase the Envoy. Further, we have the boat bill of sale and the invoice noting the services performed to the boat shortly after her purchase of the boat. These documents should establish that Jasmine Hill is a consumer under DTPA with regard to her purchase of the boat.

In conclusion, Jasmine Hill's purchase of the boat from Reliant will be enough to establish that she is a consumer under DTPA.

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

2. Whether the Defendant, Reliant, engaged in one or more of the false, misleading, or deceptive acts enumerated in section 204 of the DTPA.

The second inquiry for us to establish a DTPA claim is determining whether Reliant engaged in one or more of the false, misleading, or deceptive acts enumerated in Section 204 of the DTPA. Pursuant to Section 204 of the DTPA, the acts by a Defendant that are included as a potential violation include 204(d) representing that goods or services i. have characteristics or uses they do not have, or ii. are of a particular standard, quality, or grade if they are of another; (f) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced and g) failing to disclose information concerning goods or services that was known at the time of the transaction if such failure was intended to induce the consumer to enter into a transaction into which the consumer would not have entered had the information had been disclosed.

In *Gordon v. Valley Auto Repair, Inc*, the Plaintiff, Gordon, alleged that the Defendant, Valley's, conduct violated the DTPA by representing that the goods and services were of a particular standard, quality, or grade when he testified that he stressed the need for quick repairs to his truck to ensure the success of his business. Specifically, Gordon testified, that a mechanic assured Gordon personally "We'll get it done, we'll get it fixed, we'll get it right back out on the road.". Valley responded and noted that these representations were merely puffing and thus not actionable under the DTPA. The court explained that "mere puffing" is not actionable under the DTPA and that three factors determine whether a representation is mere puffing.

A. Were Defendant Reliant's comments to Jasmine Hill "Mere Puffing".

As the facts here regarding potential misleading statements may be similar to the facts in *Gordon*, the issue is that for establishing the second requirement to bring forth a DTPA claim, we must determine if Reliant's comments to Jasmine Hill were "mere puffing" or were "false, misleading or deceptive acts" pursuant to Section 204 of the DTPA.

Three factors determine whether a representation is "mere puffing":

(1) The specificity of the alleged misrepresentation: vague or indefinite representations, statements that compare one product to another and claim superiority, and mere opinions are not actionable misrepresentations under the DTPA;

(2) The comparative knowledge of the consumer and the seller or service provider: representations made by a service provider with greater knowledge and experience than the consumer are more likely to be actionable; and

(3) whether the representation relates to a past or current condition as opposed to a future event or condition: statements about past or current conditions are more likely to be actionable than statement about the future. *Gordon*.

In *Gordon*, the court opined that Valley's representations about repair time were too general and indefinite to be actionable. In making this conclusion, the court acknowledged how none of the statements guaranteed a precise time frame for completion of repairs. Specifically, the court opined that the last statement acknowledged that some repairs would take longer than the "one to three days" "normally" required. The court opined that this rendered the statements too indefinite to be actionable.

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Here, unlike in Gordon, the Plaintiff, Jasmine Hill, would be buying and owning a boat for the first time. Gordon, however, was purchasing a used diesel pickup truck to use in his business hauling goods to locations in three states. While Gordon likely has more knowledge about the effectiveness of a truck and the quality of the work that a mechanic or repair shop would do, Jasmine Hill, as a first-time buyer, would be more susceptible to a reliance on the assurances of a Defendant. Reliant will likely argue that when Greg Stevens stated that the boat would be a "real gem" and would be a "perfect fit" for Jasmine and her family was merely puffery under the Gordon court analysis. However, Jasmine Hill noted that "I'm a little concerned about its age and "this would be a big purchase for me. I don't want to buy a boat that's going to need repairs." These comments can arguably show that Jasmine Hill is not a frequent buyer or user of boats. Further, and more importantly these comments indicate Jasmine Hill's anticipated reliance on the quality of the boat when she receives correspondence back from Greg Stevens. Greg Stevens responded and stated that "The Envoy is a few years old, but it's in excellent condition and runs just like new". These comments were relied upon by Jasmine Hill and the boat being in "excellent condition" was not mere puffery but likely an assertion that the boat was indeed in "excellent condition" and not in need of any major repairs. This comment was false, misleading, or deceptive act pursuant Section 204(d)(ii) of the DTPA as it is a statement indicating that the boat is of a particular standard, quality or grade, excellent condition, when in fact it was in need of major repair. Further, and arguable, Section 204(g) can be established as the mechanic said that it's not uncommon for a motor vehicle with a cracked engine block to run for a few minutes under test conditions and this was the exact action completed by Greg Stevens before Jasmine bought the boat. This indicates that Greg Stevens likely knew (or acted "knowingly") that the engine would run for a limited time and stopped running it prior to a showing of the damage to induce Jasmine to make the purchase.

In conclusion, the comments made by Greg Stevens in the email correspondence and the mechanic's opinion of the running of the engine block are likely enough to establish several qualifications that we may use to show that element two necessary to bring a DTPA claim is established. A defense by the Defendant that the comments were mere "puffery" would likely be insufficient.

3. Whether the act(s) done by Reliant constituted a producing cause of Jasmine Hill's damage and whether Jasmine Hill relied on Greg Stevens, on behalf of Reliant's, comments to her detriment.

A. Producing Cause

The third element of a DTPA claim requires that the act(s) constituted by the defendant constituted a producing cause of the plaintiff's damage. A producing cause under the DTPA are when the representations of a Defendant were enough to entice the defendant to rely upon those representations. See Abrams at 16. If a producing cause is found, a Defendant may be liable for its failure to disclose information. See Abrams. Under the DTPA, the Plaintiff must show that 1) The defendant failed to disclose information about goods or services 2) Known by the defendant at the time of the transaction and 3) Intended to induce the consumer to enter into a transaction and 4) Into which the consumer would not have entered had that information been disclosed. Abrams. A defendant cannot be liable for failing to disclose information about which the buyer has actual notice; such information could not be a producing cause of the buyer's loss. Abrams citing Ling v. Thompson.

In Abrams v. Chesapeake, the Defendant, Chesapeake, argued that the statements in its catalogue could not have been a producing cause of Abrams damages because Abrams read the catalogue (which contained alleged false misrepresentations) after she signed the contract. The court opined that the unrebutted proof showed that the catalogue contained representations that substantially contributed to Abrams's decision to enroll in the college. Abrams, the Plaintiff, proved that the CBC's representations in its catalogue were false and misleading and that she relied upon these representations in deciding not to cancel the agreement and instead to pay additional tuition. The court opined, with regard to the four-part test, that there was ample evidence

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

that shows that CBC knew that its catalogue contained misrepresentations and that Abrams relied on those statements when she enrolled and paid tuition. The court specified that this was not a situation where statements were made without knowledge of their falsity or where information was withheld innocently.

Further, in Gordon, the court emphasized the "knowingly" aspect of a producing cause when they stated that actual awareness does not mean that a person, a Defendant, knows what he's doing. See Gordon. Rather, it means that a person knows that what he is doing is false, deceptive, or unfair. See Gordon. "The person must think at some point 'Yes, I know this is false, deceptive, or unfair, but I'm going to do it anyway'".

Here, we can successfully establish that Greg Stevens's email correspondence was a producing cause of Jasmine Hill's damage. As established in section 2 of this analysis, Jasmine Hill emphasized her concern about the age of the Envoy and her need for a boat that is not going to need repairs. This was not a face-to-face communication which required an immediate response or indication from Greg Stevens. Rather, Greg Stevens had time to review the email and make a decision on how he would respond to her concern. Greg Stevens decided to state that the Envoy is in excellent condition and runs just like new. While Greg Stevens may argue that Jasmine Hill knew that she was buying a used boat and assumed the risk of minor repairs, his comments provided exceptional faith in the functionality of the boat when he stated "excellent" condition. He likely knew that this comment would entice Jasmine to buy the boat. Further, on the boat bill of sale, it states that the Seller has "no knowledge of any defects in and to the Boat". Greg's comments and the assertion of the bill of sale would acknowledge that Greg not only knew that his comments would be a producing cause for Jasmine to buy the boat but also that Greg, on behalf of Reliant, knew that he had to sign an affirmation that he knew of no defects for which Jasmine likely further relied. Greg had several instances to ensure that he was not knowingly producing cause for Jasmine to buy the boat but disregard them anyway.

B. Whether the Plaintiff relied on the Defendant's conduct to his or her Detriment and the specific relief that Jasmine is entitled to through Damages.

The fourth requirement is whether the Plaintiff relied on the Defendant's conduct to her detriment. Pursuant to Section 205(a) A consumer may maintain an action against any person who engages in any one or more of the false, misleading, or deceptive acts or practices enumerated in Section 204 of this chapter if such act or practice is a producing cause of the consumer's damages and the consumer relied upon such act or practice to the consumer's detriment. 205(b) then states that "In a suit filed under this section, a consumer who prevails may obtain 1) The amount of economic damages found by the trier of fact; or 2) If the trier of fact finds that the conduct of the defendant was committed knowingly: i) exemplary damages of three times (treble) the amount of economic damages and ii) damages for mental anguish. Lastly, under 205(c) the DTPA states that "each consumer who prevails shall be awarded court costs and reasonable and necessary attorney's fees.

In Abrams, the court opined that to justify an award of treble damages and damages for mental anguish, the plaintiff must prove that the defendant's actions were taken "knowingly". The court in Abrams, establishing that the Defendant knew that its representations in the catalogue were false, was liable for damages and that mental anguish awards may include "severe disappointment".

Here, we have sufficiently established above in section A, part 3 of the analysis that Jasmine Hill relied on the Defendant's conduct to her detriment. Therefore, with regard to damages in the amount paid by Jasmine Hill to have the mechanic remove the broken motor and install a refurbished motor in the amount of \$3,000.00. Further, additional damages for mental anguish can be established for "severe disappointment". The email correspondence establishes that Greg Stevens knew that Jasmine would be buying the boat to have plenty of room for her and her family. Jasmine intended to stay the weekend at Lake Franklin with the boat. The severe

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

disappointment in not being able to use the boat properly can be of severe disappointment to Jasmine Hill under DTPA 205 due to her reliance on the Defendant's statements about the boat being in excellent condition.

In conclusion, there is sufficient evidence to prove that Greg's email correspondence and signature on the boat bill of sale were enough to indicate a knowing statement that was a producing cause in Jasmine buying the boat. Further, the mechanic invoice and interruption of Jasmine's boat trip with her family, which Greg Stevens knew that Jasmine would be using the boat with her family, is enough to satisfy element four that the Jasmine's reliance on Greg's comments were a detriment to her. She can obtain specific relief under DTPA for mental anguish, economic damages and the court costs and reasonable and necessary attorney's fees.

III. Conclusion -

Thank you for allowing me to complete the above analysis. If you need anything further, please do not hesitate to contact me.

Representative Good Answer No. 2

TO: Zoe Foss

FROM: Examinee

DATE: February 21, 2023

RE: Jasmine Hill Matter

MEMORANDUM I. Introduction

Below, please find my analysis regarding (1)The potential claims that Ms. Hill has against Reliant under the Franklin Deceptive Trade Practices Act (DTPA).

II. Analysis

The DPTA prohibits false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. FR. BUS. CODE section 204. The elements of a DTPA claim are (1) the plaintiff is a consumer, 2) the defendant engaged in one or more of the false, misleading, or deceptive acts enumerated in section 204, 3) the act(s) constituted a producing cause of the plaintiff's damage and 4) the plaintiff relied on the defendant's conduct to his or her detriment. Gordon. A "producing cause" under the DTPA is a substantial factor that brings about the injury, without which the injury would not have occurred. Gordon citing Diaz. If a violation is committed knowingly, the plaintiff is entitled to receive three times his or her actual economic damages (treble damages), as well as damages for mental anguish. Gordon citing FR. BUS. CODE Section 205(b)(2).

A thorough review of each of the four elements of a DTPA claim are required to determine if there are any potential DTPA claims as the burden is on the Plaintiff consumer to each element.

1. Whether Jasmine Hill is a consumer under DTPA.

The first inquiry to establish a DTPA claim (or claims) is whether Jasmine Hill is a consumer under the DTPA. Pursuant to DTPA 203 (d), a consumer is an individual who seeks or acquires any goods or services.

In Gordon v. Valley Auto Repair Inc., the Franklin Court of Appeal established that the Plaintiff, Jack Gordon, was a consumer under the act as he asked the Defendant, Valley, to perform repairs on his truck.

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Here, we can certainly establish that Jasmine Hill was a consumer. Her email correspondence with Greg Stevens indicates that she can come by the shop to purchase the Envoy. Further, we have the boat bill of sale and the invoice noting the services performed to the boat shortly after her purchase of the boat. These documents should establish that Jasmine Hill is a consumer under DTPA with regard to her purchase of the boat.

In conclusion, Jasmine Hill's purchase of the boat from Reliant will be enough to establish that she is a consumer under DTPA.

2. Whether the Defendant, Reliant, engaged in one or more of the false, misleading, or deceptive acts enumerated in section 204 of the DTPA.

The second inquiry for us to establish a DTPA claim is determining whether Reliant engaged in one or more of the false, misleading, or deceptive acts enumerated in Section 204 of the DTPA. Pursuant to Section 204 of the DTPA, the acts by a Defendant that are included as a potential violation include 204(d) representing that goods or services i. have characteristics or uses they do not have, or ii. are of a particular standard, quality, or grade if they are of another; (f) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed, or the parts replaced and g) failing to disclose information concerning goods or services that was known at the time of the transaction if such failure was intended to induce the consumer to enter into a transaction into which the consumer would not have entered had the information had been disclosed.

In *Gordon v. Valley Auto Repair, Inc*, the Plaintiff, Gordon, alleged that the Defendant, Valley's, conduct violated the DTPA by representing that the goods and services were of a particular standard, quality or grade when he testified that he stressed the need for quick repairs to his truck to ensure the success of his business. Specifically, Gordon testified, that a mechanic assured Gordon personally "We'll get it done, we'll get it fixed, we'll get it right back out on the road.". Valley responded and noted that these representations were merely puffing and thus not actionable under the DTPA. The court explained that "mere puffing" is not actionable under the DTPA and that three factors determine whether a representation is mere puffing.

A. Were Defendant Reliant's, comments to Jasmine Hill "Mere Puffing".

As the facts here regarding potential misleading statements may be similar to the facts in *Gordon*, the issue is that for establishing the second requirement to bring forth a DTPA claim, we must determine if Reliant's comments to Jasmine Hill were "mere puffing" or were "false, misleading or deceptive acts" pursuant to Section 204 of the DTPA.

Three factors determine whether a representation is "mere puffing":

(1) The specificity of the alleged misrepresentation: vague or indefinite representations, statements that compare one product to another and claim superiority, and mere opinions are not actionable misrepresentations under the DTPA;

(2) The comparative knowledge of the consumer and the seller or service provider: representations made by a service provider with greater knowledge and experience than the consumer are more likely to be actionable; and

(3) whether the representation relates to a past or current condition as opposed to a future event or condition: statements about past or current conditions are more likely to be actionable than statement about the future. *Gordon*.

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

In Gordon, the court opined that Valley's representations about repair time were too general and indefinite to be actionable. In making this conclusion, the court acknowledged how none of the statements guaranteed a precise time frame for completion of repairs. Specifically, the court opined that the last statement acknowledged that some repairs would take longer than the "one to three days" "normally" required. The court opined that this rendered the statements too indefinite to be actionable.

Here, unlike in Gordon, the Plaintiff, Jasmine Hill, would be buying and owning a boat for the first time. Gordon, however, was purchasing a used diesel pickup truck to use in his business hauling goods to locations in three states. While Gordon likely has more knowledge about the effectiveness of a truck and the quality of the work that a mechanic or repair shop would do, Jasmine Hill, as a first-time buyer, would be more susceptible to a reliance on the assurances of a Defendant. Reliant will likely argue that when Greg Stevens stated that the boat would be a "real gem" and would be a "perfect fit" for Jasmine and her family was merely puffery under the Gordon court analysis. However,

Jasmine Hill noted that "I'm a little concerned about its age and "this would be a big purchase for me. I don't want to buy a boat that's going to need repairs." These comments can arguably show that Jasmine Hill is not a frequent buyer or user of boats. Further, and more importantly these comments indicate Jasmine Hill's anticipated reliance on the quality of the boat when she receives correspondence back from Greg Stevens. Greg Stevens responded and stated that "The Envoy is a few years old, but it's in excellent condition and runs just like new". These comments were relied upon by Jasmine Hill and the boat being in "excellent condition" was not mere puffery but likely an assertion that the boat was indeed in "excellent condition" and not in need of any major repairs. This comment was false, misleading, or deceptive act pursuant Section 204(d)(ii) of the DTPA as it is a statement indicating that the boat is of a particular standard, quality or grade, excellent condition, when in fact it was in need of major repair. Further, and arguable, Section 204(g) can be established as the mechanic said that it's not uncommon for a motor vehicle with a cracked engine block to run for a few minutes under test conditions and this was the exact action completed by Greg Stevens before Jasmine bought the boat. This indicates that Greg Stevens likely knew (or acted "knowingly") that the engine would run for a limited time and stopped running it prior to a showing of the damage to induce Jasmine to make the purchase.

In conclusion, the comments made by Greg Stevens in the email correspondence and the mechanic's opinion of the running of the engine block are likely enough to establish several qualifications that we may use to show that element two necessary to bring a DTPA claim is established. A defense by the Defendant that the comments were mere "puffery" would likely be insufficient.

3. Whether the act(s) done by Reliant constituted a producing cause of Jasmine Hill's damage and whether Jasmine Hill relied on Greg Stevens', on behalf of Reliant, comments to her detriment.

A. Producing Cause

The third element of a DTPA claim requires that the act(s) constituted by the defendant constituted a producing cause of the plaintiff's damage. A producing cause under the DTPA are when the representations of a Defendant were enough to entice the defendant to rely upon those representations. See Abrams at 16. If a producing cause is found, a Defendant may be liable for its failure to disclose information. See Abrams. Under the DTPA, the Plaintiff must show that 1) The defendant failed to disclose information about goods or services 2) Known by the defendant at the time of the transaction and 3) Intended to induce the consumer to enter into a transaction and 4) Into which the consumer would not have entered had that information been disclosed. Abrams. A defendant cannot be liable for failing to disclose information about which the buyer has actual notice; such information could not be a producing cause of the buyer's loss. Abrams citing Ling v. Thompson.

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

In *Abrams v. Chesapeake*, the Defendant, Chesapeake, argued that the statements in its catalogue could not have been a producing cause of Abrams damages because Abrams read the catalogue (which contained alleged false misrepresentations) after she signed the contract. The court opined that the un rebutted proof showed that the catalogue contained representations that substantially contributed to Abrams's decision to enroll in the college. Abrams, the Plaintiff, proved that the CBC's representations in its catalogue were false

and misleading and that she relied upon these representations in deciding not to cancel the agreement and instead to pay additional tuition. The court opined, with regard to the four-part test, that there was ample evidence that shows that CBC knew that its catalogue contained misrepresentations and that Abrams relied on those statements when she enrolled and paid tuition. The court specified that this was not a situation where statements were made without knowledge of their falsity or where information was withheld innocently.

Further, in *Gordon*, the court emphasized the "knowingly" aspect of a producing cause when they stated that actual awareness does not mean that a person, a Defendant, knows what he's doing. See *Gordon*. Rather, it means that a person knows that what he is doing is false, deceptive, or unfair. See *Gordon*. "The person must think at some point 'Yes, I know this is false, deceptive, or unfair, but I'm going to do it anyway'".

Here, we can successfully establish that Greg Stevens's email correspondence was a producing cause of Jasmine Hill's damage. As established in section 2 of this analysis, Jasmine Hill emphasized her concern about the age of the Envoy and her need for a boat that is not going to need repairs. This was not a face-to-face communication which required an immediate response or indication from Greg Stevens. Rather, Greg Stevens had time to review the email and make a decision on how he would respond to her concern. Greg Stevens decided to state that the Envoy is in excellent condition and runs just like new. While Greg Stevens may argue that Jasmine Hill knew that she was buying a used boat and assumed the risk of minor repairs, his comments provided exceptional faith in the functionality of the boat when he stated "excellent" condition. He likely knew that this comment would entice Jasmine to buy the boat. Further, on the boat bill of sale, it states that the Seller has "no knowledge of any defects in and to the Boat". Greg's comments and the assertion of the bill of sale would acknowledge that Greg not only knew that his comments would be a producing cause for Jasmine to buy the boat but also that Greg, on behalf of Reliant, knew that he had to sign an affirmation that he knew of no defects for which Jasmine likely further relied. Greg had several instances to ensure that he was not knowingly producing cause for Jasmine to buy the boat but disregard them anyway.

B. Whether the Plaintiff relied on the Defendant's conduct to his or her Detriment and the specific relief that Jasmine is entitled to through Damages.

The fourth requirement is whether the Plaintiff relied on the Defendant's conduct to her detriment. Pursuant to Section 205(a) A consumer may maintain an action against any person who engages in any one or more of the false, misleading, or deceptive acts or practices enumerated in Section 204 of this chapter if such act or practice is a producing cause of the consumer's damages and the consumer relied upon such act or practice to the consumer's detriment. 205(b) then states that "In a suit filed under this section, a consumer who prevails may obtain 1) The amount of economic damages found by the trier of fact; or 2) If the trier of fact finds that the conduct of the defendant was committed knowingly: i) exemplary damages of three times (treble) the amount of economic damages and ii) damages for mental anguish. Lastly, under 205(c) the DTPA states that "each consumer who prevails shall be awarded court costs and reasonable and necessary attorney's fees.

In *Abrams*, the court opined that to justify an award of treble damages and damages for mental anguish, the plaintiff must prove that the defendant's actions were taken "knowingly". The court in *Abrams*, establishing that the Defendant knew that its representations in the catalogue were false, was liable for damages and that mental anguish awards may include "severe disappointment".

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Here, we have sufficiently established above in section A, part 3 of the analysis that Jasmine Hill relied on the Defendant's conduct to her detriment. Therefore, with regard to damages in the amount paid by Jasmine Hill to have the mechanic remove the broken motor and install a refurbished motor in the amount of \$3,000.00. Further, additional damages for mental anguish can be established for "severe disappointment". The email correspondence establishes that Greg Stevens knew that Jasmine would be buying the boat to have plenty of room for her and her family. Jasmine intended to stay the weekend at Lake Franklin with the boat. The severe disappointment in not being able to use the boat properly can be of severe disappointment to Jasmine Hill under DTPA 205 due to her reliance on the Defendant's statements about the boat being in excellent condition.

In conclusion, there is sufficient evidence to prove that Greg's email correspondence and signature on the boat bill of sale were enough to indicate a knowing statement that was a producing cause in Jasmine buying the boat. Further, the mechanic invoice and interruption of Jasmine's boat trip with her family, which Greg Stevens knew that Jasmine would be using the boat with her family, is enough to satisfy element four that the Jasmine's reliance on Greg's comments were a detriment to her. She can obtain specific relief under DTPA for mental anguish, economic damages and the court costs and reasonable and necessary attorney's fees.

III. Conclusion -

Thank you for allowing me to complete the above analysis. If you need anything further, please do not hesitate to contact me.

MPT 2

Representative Good Answer No. 2

To: All Attorneys

Re: Happy Frock's Liability for Award of Profits

Date: February 21, 2023

I. Caption [omitted]

II. Statement of Facts [Omitted] III. Legal Argument

(1)Happy Frocks was an innocent trademark violator because they did not know that Quality Clothes was not using trademarked buttons, and therefore this weighs heavy against an award of profits for B&B.

The holding in Romang Fasteners v. Fossil Group Inc. makes it clear that the innocence of the infringing party is a very important factor to consider when determining if an award of profits is proper in an infringement action. They state "without question, a defendant's state of mind may have a bearing on what relief a plaintiff should receive." Other courts also have gone further to bar relief if a plaintiff cannot show that the defendant's infringement was willful. While the holding of the other courts is not mandatory, and the Supreme Court also weighs other factors, it was still persuasive to the Supreme Court's holding that the defendant's state of mind is a highly important consideration.

In the District Court's holding in Spindrift Automotive Accessories, Inc. v. Holt Enterprises, Ltd., which is a mandatory holding, the District Court also discuss the willfulness state of mind factor in an infringement action. While the District Court held that willfulness need not be found to justify an award of profits, they still found that the Defendant's state of mind is a factor that weighs heavily in their analysis of whether to award Profits, and that a culpable defendant is more likely to be subjected to an award of profits. In Spindrift, the Court found

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

that the defendant knowingly and deliberately sold infringed parts. Even your Honor acknowledged in the Post-Trial hearing that Happy Frocks did not imitate the infringement.

That is not the case for Happy Frocks. Though liability has already been determined against Happy Frocks, it is clear that they did not willingly infringe upon B&B products. The Direct Examination of Samuel Harris shows that Happy Frocks played no part in the infringement and did not learn about the infringement until B&B notified them. The action to use cheaper buttons was completely done by Quality Clothing, and Happy Frocks did not authorize it. This is further shown because upon learning of the infringement, Happy Frocks completely cut ties with Quality Clothing. Further, Happy Frocks learned that they also were being harmed by Quality Clothing because Quality Clothing was still charging them the full value of the original high-quality buttons, despite the fact that they had started using cheaper buttons. Even further, Happy Frocks had a quality control system in place just for instances like this, and despite the fact that the use of cheaper buttons eluded the quality control's analysis, there is no evidence that this elusion was willful, and it instead can be contributed to the high demand for their products.

Therefore, Happy Frocks did not purposely infringe on B&B's product, and quickly stopped infringing upon learning of the actions taken by Quality Clothes. Therefore, this factor weighs heavily against an award of profits.

(2) There is insufficient evidence that B&B suffered a great loss of profits due to Quality Clothes choice to infringe on their bottom design, or that Happy Frock's profits increased due to Quality Clothes' infringement.

Another important factor that the Court in Spindrifft weighed was whether there was a connection between the infringer's profits and the infringement. They weighed both the increase in the infringer's profits, and the decrease in the damaged party's profits.

As discussed above, there was no increased profits for Happy Farms due to the Happy Frock's use of the cheaper buttons. The actual source of the infringement, Quality Clothes, continued to charge Happy Frock the same rate for the cheaper buttons that they did for the proper buttons. They did not see any increased profits due to the infringement, and any increased profits can be attributed to the increase in demand, rather than the buttons. Also, it is important to note that this increase in demand came forth during the year when Happy Frocks was using the cheaper buttons, but there is no indication that this also led to an increase in profits because they were still paying the same manufacturing costs.

This is further shown by the expert testimony of Tiffany Chen, which shows that the quality of the buttons is not an important factor considered by consumers when choosing clothing. Only 3% of consumers even consider the logo on the button when purchasing the clothing.

Further, there is no indication that B&B suffered great loss due to the lower quality buttons. They had a 9-year relationship with Happy Frocks, and Happy Frocks continued to use their high-quality buttons in clothing made by their other 3 manufacturers. B&B did not even notice the use of cheaper buttons due to a loss of profits, rather they learned through actual examination of the clothing with cheaper buttons. Further, there was no decline in B&B's over the time of the infringement or that any customers chose to stop buying B&B because of the cheaper buttons, despite B&B's CEO's belief that customers could tell the difference during his cross-examination.

Therefore, since Happy Frocks did not receive increased profits during the infringement, and B&B did not see decreased profits, this factor also weighs heavily against the award of profits for B&B.

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

(3) B&B waited 9 months until an opportune time to bring an infringement claim rather than bringing the claim when they first learned of the infringement.

Another factor the Court considered in Spindrift is whether the defendant has equitable defenses. They held that if there were to be an unreasonable delay in pursuing legal remedy, it would weigh against the award of profits. In Spindrift, as soon as learning of the sale of the infringing parts, it took action to stop the sale.

In this case, it is true that B&B sent a cease-and-desist letter immediately upon learning of the infringement. Upon receiving this letter, Happy Frocks launched their investigation, and after completing their investigation, they promptly cut their relationship with Quality Clothing. However, it is noted that B&B did not choose to bring actual legal action until a time where it was more opportune for them, right before the Black Friday holiday. They had all the evidence available to show Happy Frocks about the infringement, but instead made Happy Frocks conduct their own investigation, and waited a full 9 months before actually taking action. This unreasonable delay stood to harm Happy Frock because it would not give them time to correct the unknown error until after the most profitable sale of the year.

Therefore, B&B's unreasonable delay in enforcing their action weighs against the award of profits.

(4) B&B can be made whole by other remedies other than receiving profits from Happy Frocks.

The District court weighs whether the trademark owner can be made whole by other available remedies. If so, there would be no basis for an award of profits.

In this case, B&B has gotten their injustice relief that they requested. In B&B CEO's testimony, he indicated that B&B wanted Happy Frocks to stop producing the product. Happy Frock has stopped production of the infringing buttons and did so promptly. Happy Frock continues to use B&B as their button supplier but eliminated the infringing manufacturer.

Since B&B got full relief by Happy Frocks ending their relationship with Quality Clothes, this factor is very persuasive for the denial of awarding profits. The injunction by itself was adequate, especially because there was no increase in Happy Frock's profits or decrease in B&B profits.

(5) There is no public interest justifying an award of profits for B&B because there was no potential harm to consumers by Quality Clothes choosing to produce cheaper buttons without Happy Frock's knowledge.

Lastly, the Court weighs whether there is any risk to the public, such as safety concerns due to the infringement.

B&B CEO admitted that there was nothing patently dangerous or wrong with the cheaper buttons. There was no danger to the public, and the production of the cheaper buttons was promptly shut down by Happy Frocks after learning of the problem. Therefore, there is no public interest justification for the award of profits.

Given that all the factors considered in Spindrift weigh in favor of Happy Frock and against the awarding of profits to B&B, we ask your Honor to not grant profits as damages to B&B, the injunctive relief that has already occurred is enough.

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Representative Good Answer No. 2

BRIEF

I. Caption

[omitted]

II. Statement of Facts

[omitted]

III. Legal Argument

A. Because all five factors considered by the court in *Spindrift and Romag* point against, Happy Frocks Inc. is not liable for an award of profits.

An award of profits is justified by three rationales: (1) to deter the wrongdoer from doing so again, (2) to prevent the defendant's unjust enrichment, and (3) to compensate the plaintiff for harms caused by the infringement. *Spindrift Automotive Accessories, Inc. v. Holt Enterprises, Ltd.* In determining whether to award an infringer's profits as part of a recovery, the court must balance a number of factors, including: (1) the infringer's mental state, (2) the connection between the infringer's profits and the infringement, (3) the adequacy of other remedies, (4) equitable defenses, and (5) the public interest. *Id.*

1. Because Happy Frocks Inc. exhibited, at most, mere negligence in its lack of quality control measures and immediately ceased production after finding evidence of trademark infringement, its trademark infringement does not likely justify an award of profits.

In *Romag Fasteners, Inc. v. Fossil Group, Inc.*, the Supreme Court determined that the infringer's mental state is a highly important consideration in determining whether an award of profits is appropriate, but it is only one factor in the overall consideration. In analyzing the infringer's mental state, the court should look at factors such as willingness and recklessness as arguing for an award of profits. *Spindrift*. However, "mere negligence [. . .] would argue against an award of profits." *Spindrift*. In *Spindrift*, the defendant knowingly and deliberately sold automotive parts not made by *Spindrift* but containing its trademark and continued to do so even after notification. In contrast, here defendant did not originally know of the trademark infringement and immediately ceased upon corroborating plaintiff's claims after an internal investigation (despite B&B never being made aware of this fact). While plaintiff could argue that defendant did not adhere to its own quality control measures because it failed to notice the infringement until after four deliveries, at most it could be argued that defendant was negligent in maintaining its quality control.

Therefore, because Happy Frocks Inc. exhibited, at most, mere negligence in its lack of quality control measures and immediately ceased production after finding evidence of trademark infringement, its trademark infringement does not likely justify an award of profits.

2. Because B&B Inc. was minimally harmed (if at all) by lost or diverted sales due to Happy Frocks Inc.'s trademark infringement, there was a minimal connection between Happy Frock's profits and the infringement, and such a minimal connection would not justify an award of profits.

In cases in which trademark owners are harmed by lost or diverted sales due to the infringement, such as in *Spindrift*, it can be argued that profits should be awarded. However, this case is in contrast to *Spindrift* because as explained quantitatively by an expert during direct examination, an expert survey determined that the use of B&B's logo on Happy Frocks's buttons played a minimal role in consumers choosing to purchase

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Happy Frocks's products. Direct Examination of Chen. In said survey, only 3% of consumers noticed the B&B logo specifically and thought it contributed to the desirability of the clothes. Id. More generally, less than 1% of clothing consumers said that the appearance of a brand name on a button was the only reason for purchasing a particular item of clothing over another. While this particular survey was not conducted on consumers of the Happy Frocks closing, it is still a notable statistic. Id. Therefore, Happy Frocks's profits likely did not flow directly from the infringement. It is more likely that consumers would have purchased the Happy Frocks clothing regardless of the type of buttons used entirely, never mind the use of B&B's trademark. Additionally, it must be noted that B&B does not sell clothes with its buttons on its own, it only sells the buttons. Therefore, while B&B lost sales to Happy Frocks, it was not in direct competition with Happy Frocks in the sale of clothing (with use of the B&B trademark) and did not lose sales to consumers due to Happy Frocks's infringement. In fact, by B&B's own admittance, overall sales increased during the period the trademark infringement was occurring. Cross-Examination of Garcia.

Therefore, Because B&B Inc. was minimally harmed (if at all) by lost or diverted sales due to Happy Frocks's trademark infringement, there was a minimal connection between Happy Frocks's profits, and the infringement and such a minimal connection would not justify an award of profits.

3. Because only 3% of Happy Frocks consumers notice the B&B logo on Happy Frocks clothing and use that as a factor in their purchase, consumers are not likely to lose confidence in the B&B buttons and it is likely that B&B will be made whole by other available remedies and will not require an award of profits to be adequately remedied.

Like in Sprindrift, the consumers who purchased Happy Frocks clothing with fake B&B buttons likely will not lose confidence in B&B products due to the infringement. By the expert testimony discussed previously, surveys have found that consumers likely do not even pay attention to the buttons of a particular garment before purchasing it. Instead, only 3% of respondents said they noticed the B&B logo on Happy Frocks clothing and thought it added to the desirability of the clothing. Direct Examination of Chen.

Therefore, consumers purchasing Happy Frocks clothing likely do not take into account the B&B logo on the clothing buttons, consumers would not lose confidence in B&B products because of the trademark infringement, and B&B would receive adequate remedies by other available means not including an award of profits.

4. Because B&B purposely waited months to begin action against Happy Frocks for its trademark infringement so that it would coincide with Black Friday sales, it is likely that Happy Frocks has an equitable defense against B&B in the form of an unreasonable delay in pursuing a legal remedy and, therefore, an award of profits is not justified as it pertains to this factor.

Unlike in Sprindrift, in which plaintiff immediately took action against defendant, by its own admittance, B&B waited months after its initial discovery of Happy Frocks's trademark infringement to take action against Happy Frocks. Because B&B's action coincided with Black Friday sales, there is evidence to suggest that not only did B&B wait to take action, but it also did so purposely to affect Happy Frocks's sales during the holiday season. Additionally, B&B's delay in beginning action against Happy Frocks could even be argued as an acquiescence by B&B to the infringement because B&B (to its own knowledge because it did not know Happy Frocks had already made the order to cease) allowed the trademark infringement to continue for a significant period of time before making a complaint.

Maryland State Board of Law Examiners
FEBRUARY 2023 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Therefore, Happy Frocks likely has an equitable defense against B&B because B&B pursued an unreasonable delay in pursuing a legal remedy and, in some ways, acquiescence in the infringement due to its delay.

5. Because the fake buttons used by Happy Frocks did not contain any materials that would harm public safety and awarding profits would likely not deter other infringements in any way, there is likely no public interest that would be served by awarding profits here.

In this case, a Happy Frocks manufacturer used counterfeit buttons made with cheap plastic and infringed on the B&B trademark by using it on buttons that were not made by B&B. While the quality of materials used by the manufacturer is not up to standard for B&B buttons, no evidence in the record suggests that the plastic used would be harmful to the public in any way. Similarly, an award of profits would likely not deter other infringements any more than the other available remedies to B&B would.

Therefore, because the fake buttons used by Happy Frocks would likely not harm the public and awarding profits would likely not deter other infringements in an additional way, there is likely no public interest that would be served by awarding profits here.

Conclusion

Therefore, all five factors considered by the court in deciding if profits should be awarded, balanced together, determine that the court should not award profits to B&B in this case.

[While it was not meant to be discussed in this brief, both Happy Frocks and B&B likely have claims against the malfeasant manufacturer in this case, but that is another discussion entirely.]

MEE 1

Representative Good Answer No. 1

1. The issue is whether Joan's will is valid under the insane-delusion rule.

Under the insane-delusion rule, a testator's will may be invalidated by a court if it is determined that the testator, at the time of the will's execution, was debilitated by a mental disease which significantly affected their ability to reason, or if the testator was suffering from a delusion that affected their capacity to determine reality from fiction.

Applied here, it is clear that Joan suffered from a delusion as a side effect from the drug she was taking that made her believe her male descendants were cursed by Martians. However, weighing all factors in the fact pattern, a court is unlikely to find that this delusion had such an effect on Joan as to invalidate her will. Her male descendants were all criminals with extensive criminal histories. It does not matter that Joan thinks they were cursed by Martians; they son and grandsons are in fact criminals. When Joan told her lawyer she wanted to leave out her male descendants, she made no mention of the Martian theory and instead gave a valid reason to exclude them; their criminal histories. Further, Joan lied to her friends about her assets but that does not rise to the level of incapacity; people lie to impress their friends all the time. The facts are clear that Joan monitored her bank account, her only asset, closely and reconciled all of her bank activity every month. Finally, Joan was not insane; her delusion was brought on by the medication, which she could have stopped at any time, and it apparently had no other ill effects on her life.

When all factors are taken into account, the insane-delusion rule does not invalidate Joan's will.

2. The issue is whether the facts provide a basis for Joan's will to be invalidated due to a lack of mental capacity.