

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASS REISE : CIVIL ACTION
 :
 v. :
 :
 QVC, INC., et al. : NO. 97-4068

MEMORANDUM AND ORDER

BECHTLE, J.

March 31, 1998

Presently before the court is defendant QVC, Inc.'s ("QVC") motion to dismiss and/or for a more specific pleading and plaintiff Cass Reise's ("Plaintiff") opposition thereto. For the reasons set forth below, QVC's motion will be granted in part and denied in part.

I. BACKGROUND

Plaintiff is an entrepreneur and businessman who resides in California. Defendant QVC is a Delaware corporation with its headquarters in the state of Pennsylvania. QVC produces and airs cable television programs primarily designed to sell various products to the viewing public. In August of 1993, Plaintiff sent identical letters to QVC officials Barry Diller ("Diller") and Douglas Briggs ("Briggs") outlining his idea for a new weekly cable television program entitled "Best of the U.S.A." The program would showcase several products affiliated with one particular state each week, eventually covering all fifty states in order to create local interest in the program and the various

products advertised for sale. In addition, the show would be co-hosted by a famous personality from the state showcased that week.

Plaintiff alleges that, following the submission of the letter to Diller and Briggs, their secretary telephoned him to inquire whether he would like to meet with QVC officials to discuss his program idea. On or about October 29, 1993, Plaintiff met with Briggs and another QVC official, Jim Held ("Held"), to discuss his idea. Plaintiff brought a written proposal expanding on his idea for the television show. According to Plaintiff's allegations, Briggs and Held made implied and express representations to him in order to induce him to further disclose ideas for the program. Allegedly, Briggs and Held told Plaintiff that they would request his permission before his ideas were used, that he would continue to have some creative involvement in the program if it were produced and that he would be compensated if they used his ideas.

In addition, Plaintiff alleges that he returned to QVC several times in the months following his initial meeting with Briggs and Held to meet with several unnamed QVC representatives and discuss his ideas for the program. Plaintiff further alleges that the unnamed representatives from QVC affirmed the promises previously made to him by Briggs and Held. However, in late 1994 QVC informed Plaintiff that it would not use his program idea. Shortly thereafter, QVC aired "Quest for America's Best," a weekly program designed to sell products affiliated with an

individual state, from which state the program was broadcast that week. Plaintiff alleges that the concept of "Quest for America's Best" was directly taken from his concept for "Best of the USA." Plaintiff was not compensated for his part in developing that program, nor was he credited in the show for his role in creating the show.

On August 7, 1996, Plaintiff commenced this civil action in the Superior Court of the State of California for the County of Los Angeles, alleging that QVC breached an implied contract by misappropriating Plaintiff's idea for a cable television program without requesting his permission or compensating him. In addition, Plaintiff alleged breach of duty of confidence and trust, fraud, unfair trade practices and violations of the Lanham Act. Defendant QVC removed the action to the United States District Court for the Central District of California on the grounds of federal question and diversity jurisdiction. Thereafter, the action was transferred to this venue pursuant to 28 U.S.C. § 1404(a). QVC filed this motion to dismiss Counts Two through Seven of Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). On October 14, 1997, Plaintiff filed a response to the motion to dismiss. For the reasons set forth below, defendant QVC's motion will be granted in part and denied in part.

II. STANDARD FOR MOTION TO DISMISS

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in the plaintiff's complaint, construe the complaint in a light most favorable to the plaintiff and determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989)(citations omitted). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). If "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief," the complaint will be dismissed. Conley, 355 U.S. at 45.

III. DISCUSSION

Plaintiff's claims include breach of implied contract, breach of duty of confidence and trust, common law fraud, unfair competition and business practices and violation of the Lanham Act. QVC moves to dismiss all of the claims except Plaintiff's claim for breach of implied contract. The claims which QVC moves to dismiss will be addressed in the order which they appear in the Complaint.

A. Choice of Law

The court must first determine whether the applicable law is the state law of California or Pennsylvania. In general, Federal district courts sitting in diversity jurisdiction must

apply the law of the state in which the court sits. However, because this case was transferred to this court by the United States District Court for the Central District of California in response to QVC's motion to change venue pursuant to 28 U.S.C. § 1404(a), this transferee court must apply the choice of law rules of the transferor state. See, e.g., Van Dusen v. Barrack, 376 U.S. 612 (1964); Ferens v. Deere & Co., 862 F.2d 31, 34 (3d Cir. 1988), rev'd on other grounds, 494 U.S. 516 (1990). Therefore, California's choice of law rules apply to our determination of whether California or Pennsylvania state law should apply to Plaintiff's Complaint.

California employs a governmental interest test in order to determine choice of law. Arno v. Club Med, Inc., 22 F.3d 1464, 1467 (9th Cir. 1994). The test first requires the court to consider whether Pennsylvania and California state law actually differ with respect to the instant case. If the laws differ, the court must then determine whether there is a true conflict between the states' individual interests in applying their own laws to the case. Finally, if each state has a legitimate conflicting interest in applying its laws to the case, the court must consider the potential impairment to each jurisdiction under the other's rule of law. Id.

In the instant case, the court finds that Pennsylvania state law should be applied to Plaintiff's Complaint. A significant difference in the law between Pennsylvania and California is the issue of standing under the statutory unfair

competition claims. While potential differences between California and Pennsylvania law on fraud and breach of trust may be more subtle, the court notes that Plaintiff relies more on Pennsylvania's case law, although he states that "California law is consistent with Pennsylvania" on the requirement for "fiduciary duty." (Mem. Opp. at 13 n.3.) Pennsylvania has strong governmental interests in applying its law to the case. Pennsylvania has a strong interest in determining the liability of QVC. QVC is headquartered in this state. All of the alleged contacts QVC had with Plaintiff occurred within this state. Plaintiff was not a resident of California at the time of his alleged contacts with QVC. The only interests of California Plaintiff points to are that Plaintiff is currently a resident of California and that California is the "center of the media industry in the United States." (Mem. Opp. at 11 n.2.) There does not appear to be a "true conflict" between the interests of the states and, to the degree they might be perceived as conflicting, the interests of Pennsylvania are stronger.

Based on the above, the court concludes that Pennsylvania has strong governmental interests in applying its law to the case and that California does not have sufficiently conflicting interests in applying its law to this case. Therefore, the court will apply Pennsylvania state law to its analysis of the motion to dismiss.

B. Count II: Breach of Confidence and Duty of Trust

Plaintiff alleges a breach of confidence and duty of trust claim. In its motion to dismiss, QVC argues that no confidential relationship existed between itself and Plaintiff from which fiduciary duties could arise. (Def.'s Mot. to Diss. at 19.) QVC states that the Complaint alleges unilateral actions by Plaintiff which would not create fiduciary duties in QVC. Id. at 20. The court finds that the allegations contained in Plaintiff's complaint sufficiently allege the existence of a confidential relationship to survive a motion to dismiss.

Under Pennsylvania state law, a confidential relationship exists where "'one person has reposed a special confidence in another to the extent that the parties do not deal with each other on equal terms, either because of overmastering dominance on one side, or weakness, dependence, or justifiable trust on the other.'" In Re Estate of Clark, 359 A.2d 777, 781 (Pa. 1976)(quoting Ringer v. Finfrock, 17 A.2d 348, 350 (Pa. 1941)). When the entities involved are engaged in a business association, there can be a confidential relationship "only if one party surrenders substantial control over some portion of his affairs." In re Estate of Scott, 316 A.2d 883, 886 (Pa. 1974).

Plaintiff's Complaint alleges that QVC officials made implied and express promises to him that his permission would be requested before his ideas would be used to create a television program and that he would be compensated if a program using his ideas were eventually aired. Plaintiff alleges he justifiably relied on those representations in developing his ideas with QVC.

(Compl. ¶ 6-10, 14.) Construing the Complaint in a light most favorable to Plaintiff, Plaintiff surrendered substantial control over those ideas to QVC, thus creating a confidential relationship. Contrary to QVC's position, Plaintiff asserts more than an unsolicited submission or unilateral action. Plaintiff asserts that the relationship between himself and QVC progressed beyond the initial submission of Plaintiff's idea and that additional ideas were elicited within the scope of that relationship. The court finds that dismissal of this claim would be premature if granted prior to determining whether evidence exists that could support the allegations of justifiable trust on the part of Plaintiff and the existence of a confidential relationship between Plaintiff and QVC. Therefore, QVC's motion to dismiss will be denied as to the breach of confidence and duty of trust claim.

C. Count III: Fraud

Plaintiff also alleges a fraud claim. QVC argues that Plaintiff has not stated a claim for fraud and that the claim lacks the required specificity under federal pleading rules. The court disagrees.

The court finds that the allegations contained in Plaintiff's complaint, if taken as true, could constitute fraud. Under Pennsylvania law, a claim of fraud requires a showing of "(1) a misrepresentation; (2) a fraudulent utterance; (3) an intention by the maker that the recipient will be induced to act; (4) justifiable reliance on the misrepresentation; and (5)

damage to the recipient as a proximate result." Tunis Brothers Co. v. Ford Motor Co., 952 F.2d 715, 731 (3d Cir. 1991).

Plaintiff alleges that QVC officials misrepresented to him that they would pay for any ideas they obtained from discussions regarding development of his proposed television program.

Plaintiff alleges that those officials did so with the intent of fraudulently inducing him to reveal those ideas. Plaintiff also alleges that he relied on those representations in developing his idea with QVC officials and suffered damages as a result. As such, it cannot be said that Plaintiff can prove no set of facts which would entitle him to relief. The court will not grant the motion to dismiss on this ground.

The court also finds that the fraud claim has been pled with the requisite particularity. Under the Federal Rules of Civil Procedure, the circumstances constituting fraud must be pled with particularity. Fed. R. Civ. P. 9(b). However, malice, intent, knowledge, and other conditions of mind of a person may be averred generally. Fed. R. Civ. P. 9(b). Plaintiff alleges in the Complaint with the requisite specificity that QVC officials Douglas Briggs and Jim Held made the alleged misrepresentations regarding compensation at their meeting with Plaintiff on October 29, 1993. However, Plaintiff has failed to allege with the required particularity the specific circumstances constituting fraud with respect to the alleged misrepresentations made to him by unnamed QVC representatives during his subsequent meetings at QVC.

Therefore, if Plaintiff intends to rely on those later misrepresentations made to him by the unnamed QVC officials in his subsequent meetings at QVC to further his fraud claim, he must amend his complaint to comply with Federal Rule of Civil Procedure 9(b). The court denies Defendants' motion to dismiss this claim with respect to the alleged misrepresentations made by Douglas Briggs and Jim Held on October 29, 1993 and grants Plaintiff leave to amend with respect to the subsequent alleged misrepresentations by QVC representatives.

D. Count IV: Unfair Competition and Business Practices

Plaintiff includes a claim for unfair competition and unfair business practices. In the Complaint, Plaintiff states his claim under the California Business & Professions Code. B & P Code § 17200, et seq. California and Pennsylvania statutes differ as to standing for bringing suit.¹ Because the court finds that Pennsylvania state law applies to Plaintiff's claim, the court will grant QVC's motion to dismiss Plaintiff's unfair competition and business practices claim. Plaintiff will be granted leave to amend, if he so chooses, in order to properly plead his unfair competition and trade practices claim under relevant Pennsylvania state law.

E. Count V: Violation of the Lanham Act

1. Under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, ("UTPCPL"), 73 P.S. § 201-1, et seq., a plaintiff must be a consumer who "purchases or leases goods or services primarily for personal, family or household purposes." 73 P.S. § 201-9.2.

Plaintiff alleges that QVC violated Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), by falsely designating the origin of its program, "Quest for America's Best." The court finds that Plaintiff's allegations fail to allege a violation of the Lanham Act. Therefore, the court will grant QVC's motion to dismiss Plaintiff's Lanham Act claim.

Plaintiff alleges that QVC misappropriated his idea, used it to create "Quest for America's Best" and then misled the public by failing to acknowledge his part in the creation of the show in its credits. Courts addressing this issue, however, have concluded that mere concepts or ideas are outside of the purview of protections offered by the Lanham Act. See, e.g., Brown v. Armstrong, 957 F. Supp. 1293, 1301 (D. Mass. 1997)(Lanham Act does not afford protection to use of an idea regarding golf swing technique), aff'd 129 F.3d 1252 (1st Cir. 1997); Hoopla Sports and Entertainment v. Nike, Inc., 947 F. Supp. 347 (N.D. Ill. 1996)(Lanham Act does not provide claim for appropriation of idea for basketball game); Vantage Point Inc. v. Parker Brothers, Inc., 529 F. Supp. 1204, 1219 (E.D. N.Y. 1981)(Lanham Act does not encompass claim of misappropriation of game idea), aff'd, 697 F.2d 301 (2d Cir. 1982).

The court finds Hoopla especially persuasive. In that case, the plaintiff created and then produced the "Father Liberty Game" an international high school-aged all star basketball game. Hoopla, 947 F. Supp. at 350-51. Nike provided corporate sponsorship for the game. Id. at 350. The plaintiff alleges

that Nike also agreed to sponsor the tournament in the future. Id. The next year, Nike produced its own basketball competition that was "a nearly exact replica" of the "Father Liberty Game" created by the plaintiff. Id. The plaintiff alleged that Nike, by failing to acknowledge his role in the creation of the idea for the second tournament had, in effect, presented the game to the public as Nike's own creation, in violation of the Lanham Act. Id. at 351. The court rejected the claim, stating that the plaintiff "created two things: an idea for an international all-star high school boys' basketball game, and the 1994 incarnation of that idea, trademarked under the name 'Father Liberty Game.'" Id. at 352. The court noted that the plaintiff "expended no efforts on behalf of the 1995 game staged by Nike" Id. The court granted Nike's motion to dismiss the Lanham Act claim because Nike only appropriated Plaintiff's "idea for the event, not the labors involved with realizing that idea in the form of a particular game." Id. at 353. In doing so, the court concluded that "while a trademark can protect a product from misappropriation under the Lanham Act, it cannot protect the idea behind that product from being used by others." Id.

Plaintiff's Lanham Act claim is similar to that raised in Hoopla, in that he alleges that QVC stole his ideas and failed to inform the public of his role in creating the idea for the program which eventually aired, "Quest for America's Best." As in Hoopla, Plaintiff does not allege that he played a role in the actual production of the television program, only that he created

the concept or idea behind the production. QVC is only alleged to have appropriated Plaintiff's idea for a television program, not the actual labors involved with realizing that idea in the form of a particular television program. See id. at 353.

Plaintiff claims QVC adopted his concept in producing its own program, not that QVC misappropriated an actual program produced by Plaintiff. As in Hoopla, Plaintiff's idea for a television program is not protected by the Lanham Act. Accordingly, the court will grant QVC's motion to dismiss as to Plaintiff's Lanham Act claim.

F. Counts VI and VII: Equitable Remedies

Counts Six and Seven are inappropriately labeled causes of action in Plaintiff's Complaint. These counts are in actuality prayers for injunctive relief, the appropriateness of which the court declines to consider at this stage of the pleadings. Thus, QVC's motion to dismiss will be denied as to these remedies.

IV. CONCLUSION

For the reasons set forth above, QVC's motion to dismiss will be granted in part and denied in part.

An appropriate Order follows.

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ORDER

AND NOW, TO WIT, this 31st day of March, 1998, upon consideration of Defendant QVC's motion to dismiss and Plaintiff Cass Reise's opposition thereto, IT IS ORDERED that said motion is GRANTED IN PART and DENIED IN PART as follows:

1. With respect to Count Two, for breach of confidence and duty of trust, the motion is denied;
2. With respect to Count Three, for fraud, the motion is denied. Plaintiff is granted leave to amend with respect to the alleged misrepresentations made by QVC representatives to him subsequent to his initial meeting on October 29, 1993.
3. With respect to Count Four, for unfair competition and business practices, the motion is granted and the claim is dismissed without prejudice. Plaintiff is granted leave to amend in order to specify any applicable Pennsylvania law under which this claim may be cognizable.
4. With respect to Count Five, for violation of the Lanham Act, the motion is granted and the claim is dismissed.
5. With respect to Counts Six and Seven, the motion is denied.

LOUIS C. BECHTLE, J.