

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

CASS RIESE : CIVIL ACTION  
v. :  
QVC, INC. : NO. 97-4068

**MEMORANDUM AND ORDER**

BECHTLE, J.

MARCH 30, 1999

Presently before the court is defendant QVC, Inc.'s ("QVC") motion for summary judgment and plaintiff Cass Riese's ("Plaintiff") response thereto. For the reasons set forth below, QVC's motion will be granted in part and denied in part.

**I. BACKGROUND**

Plaintiff, a citizen of California, is an entrepreneur and businessman. QVC is a Delaware corporation with its principal place of business in the state of Pennsylvania. QVC produces and airs cable television programs primarily designed to sell consumer products to the viewing public.

Plaintiff sent identical letters, dated August 26, 1993, to two QVC executives, Barry Diller ("Diller") and Douglas Briggs ("Briggs"). The letter outlined Plaintiff's idea for a new weekly television program entitled "Best of the U.S.A." for broadcast on QVC's cable channel. (Pl.'s Mem. Ex. B.) The letter explains that Plaintiff expected to receive employment and earn compensation from the proposed program. Id. The letter also describes the basic premise for the show as a series of

broadcasts highlighting products from a specific state, ending in a competition between the best selling products from the programs. Id. The letter ends "[i]f you think this idea has merit, I would be most happy to come meet with you." Id.

Following Plaintiff's submission of the letters to Diller and Briggs, their secretary telephoned Plaintiff to inquire whether he would like to meet with QVC officials to discuss his program idea. On October 29, 1993, Plaintiff met with Briggs and another QVC executive, Jim Held ("Held"), to discuss his idea. Plaintiff brought a written proposal which further detailed and outlined his idea for the television show and marketing strategies. (Pl.'s Mem. Ex. D.) According to Plaintiff's deposition, at the meeting, Briggs and Held discussed Plaintiff's ideas for "Best of the U.S.A." in detail and discussed Plaintiff's expectation of compensation and employment as a producer on the program. (Pl.'s Mem. Ex. A at 175.) Plaintiff also testified that Briggs asked for a copy of the proposal as he left the meeting. Id. at 193. Plaintiff further testified that Brigs told him "you've got great ideas here, these are great ideas, don't go anywhere with these ideas." Id. at 192.

In late 1994, QVC informed Plaintiff that it would not use his "Best of the U.S.A." idea. Subsequently, QVC aired "Quest for America's Best," a weekly program featuring remote broadcasts from a tour bus which traveled to a different state each week to sell products affiliated with those states. The

program culminated in a contest between the best selling products. Plaintiff alleges that the concept of "Quest for America's Best" and many of the features used therein were directly taken from his proposal for "Best of the USA."

On August 7, 1996, Plaintiff commenced this civil action in the Superior Court of the State of California for the County of Los Angeles. 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). Plaintiff's Complaint contained seven causes of action which included: (1) breach of implied contract; (2) breach of duty of confidence and trust; (3) common law fraud; (4) unfair competition and business practices; and (5) violation of the Lanham Act. The sixth and seventh causes of action stated prayers for relief rather than substantive claims. QVC filed a motion to dismiss Counts Two through Seven of Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). By Order dated March 31, 1998, the court granted the motion in part and denied it in part, dismissing the unfair competition and business practices claim and the Lanham Act claim. Riese v. QVC, Inc., No. 97-4068, 1998 WL 151026, at \*6 (E.D. Pa. Mar. 31, 1998). The court denied the motion in other respects, but limited the fraud claim to the specific facts alleged in the Complaint and noted that Counts Six and Seven did not state substantive causes of action. Id. QVC now brings this motion

for summary judgment on Plaintiff's three remaining substantive claims: (1) breach of implied contract; (2) breach of duty of confidence and trust; and (3) common law fraud.<sup>1</sup>

## II. LEGAL STANDARD

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

To defeat a motion for summary judgment, the non-moving party must produce evidence to establish prima facie each element of its claim. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Such evidence and all justifiable inferences that can be drawn from it are to be taken as true. Anderson, 477 U.S. at 255. However, if the non-moving party fails to establish an essential element of its claim, the moving party is entitled to a judgment dismissing that claim as a matter of law. Celotex, 477 U.S. at 322-23.

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1. This court has diversity jurisdiction because the amount in controversy exceeds \$75,000.00 and the parties are citizens of different states. 28 U.S.C. § 1332(a)(1).



### **III. DISCUSSION**

As noted above, Plaintiff's remaining claims are: (1) breach of implied contract; (2) breach of duty of confidence and trust; and (3) common law fraud. QVC moves to dismiss all three of these claims. Initially, the court will address the concept of misappropriation which is raised in both of the parties' briefs. The court will then review the motion for summary judgment regarding the three remaining claims.

#### **A. Misappropriation**

The parties agree that, in essence, this case involves the misappropriation of an idea. In order for an idea to be granted legal protection, Pennsylvania<sup>2</sup> law requires that the idea be novel and concrete. Silver v. Television City, Inc., 215 A.2d 335, 337 (Pa. Super. Ct. 1965) (requiring "a new and novel idea reduced to concrete form" in order to warrant legal protection); Thomas v. R. J. Reynolds Tobacco Co., 38 A.2d 61, 64 (Pa. 1944) (stating "[o]nly where ideas have been reduced to a concrete form have they been protected by the courts" and that ideas "must be novel and new"). Typically, a claim for misappropriation proceeds under an underlying legal theory, such

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2. In its Order dated March 31, 1998, the court applied California choice of law rules and determined that the court should apply Pennsylvania substantive state law to its analysis of the claims alleged. The court found that Pennsylvania has strong governmental interests in applying its law to the case as QVC is headquartered in Pennsylvania and all of the alleged contacts QVC had with Plaintiff occurred within Pennsylvania. Riese v. QVC, Inc., No. 97-4068, 1998 WL 151026, at \*2-3 (E.D. Pa. Mar. 31, 1998).

as the breach of contract and confidential relationship theories asserted here. See, e.g., Giangrante, et al. v. QVC Network, Inc., et al., No. 89-8535, 1990 WL 124944, at \*1 (E.D. Pa. Aug. 23, 1990) (reviewing plaintiff's allegation that defendant misappropriated his marketing technique as one for "misappropriation of services" under theories of breach of implied contract and breach of fiduciary duty). Plaintiff states that his claims for breach of implied contract and breach of duty of confidence and trust are, in essence, alternative methods of establishing a legal relationship for a claim of misappropriation. Much of QVC's memorandum in support of its motion is dedicated to demonstrating Plaintiff has not set forth a cause of action for misappropriation of an idea. QVC makes three main arguments to refute Plaintiff's claim that QVC misappropriated his "Best of the U.S.A." proposal: (1) QVC's "Quest for America's Best" is fundamentally different than Plaintiff's "Best of the U.S.A." and therefore was not copied from Plaintiff's proposal; (2) Plaintiff's ideas are not unique or novel and should not be granted legal protection; and (3) QVC staff independently created "Quest for America's Best" and did not use Plaintiff's "Best of the U.S.A." proposal in doing so.

The court finds that the issue of whether "Quest for America's Best" is fundamentally different than Plaintiff's "Best of the U.S.A." involves issues of fact to be resolved by a jury. Under QVC's view, the heart of "Quest for America's Best" is the use of a tour bus and it argues that Plaintiff's proposal never

contemplated remote broadcasts via a tour bus. (QVC Mem. at 25-26.) It also states that "Quest for America's Best" varies from the "Best of the U.S.A." proposal in that local personalities did not serve as co-hosts or regularly appear on the show, that QVC did not issue certificates of authenticity for products sold on the program and that the products featured were not necessarily manufactured in or otherwise associated with the state from which the broadcast aired. Id. at 26-27. QVC also states that many of the similarities between "Best of the U.S.A." and "Quest for America's Best" exist because they were "plagiarized" from other QVC programs or were standard marketing devices in use prior to Plaintiff's proposal. Id. at 27-28. QVC argues that "there are such substantial differences between 'Quest for America's Best' and plaintiff's 'Best of the U.S.A.' proposal that a jury could not reasonably conclude that it was copied from or influenced by plaintiff's programing concepts." Id. at 25. The court disagrees. Plaintiff argues that the fundamental concept involved in both "Best of the U.S.A." and "Quest for America's Best" is the 50 state contest culminating in a final program featuring the "best" products from each state. (Pl.'s Mem. at 42-47.) Plaintiff also notes the similarities between his proposal and the execution of QVC's program, which include appearances by state representatives, the use of maps and state flags on screen, a local/hometown emphasis to the products, sponsorship of a major airline and the sale of a specific product mentioned in his proposal. Id. While these features may not

individually show that "Quest for America's Best" was copied or influenced by "Best of the U.S.A.," when they are viewed in their totality, a reasonable jury could conclude that many core features are substantially similar and copied from "Best of the U.S.A." Thus, the court finds sufficient grounds exists to warrant that a jury hear the evidence on whether QVC's "Quest for America's Best" is fundamentally different than Plaintiff's "Best of the U.S.A."

Similarly, the court finds that the issue of novelty and uniqueness is also one which should be presented to a jury. QVC states that a marketing focus on products from a particular state or region is not unique and that QVC itself had previously done so, including broadcasting shows focusing on Hawaii and Ireland. (QVC Mem. at 39.) It further states that many of the particular features of "Best of the U.S.A." utilize standard, well known marketing concepts. It argues that the combination of well known marketing techniques does not constitute a novel idea. For support, QVC cites Murray v. National Broadcasting Co., Inc., 844 F.2d 988 (2d Cir. 1988). In Murray, the plaintiff claimed the popular sitcom, "The Cosby Show," was based on his proposal for a show about a closely-knit middle-class black family in a contemporary urban setting. Id. at 990. The court found this idea to simply be a variation on a basic theme and held that it lacked the requisite novelty for legal protection. Id. at 992. However, in the case at hand, Plaintiff's "Best of the U.S.A." proposal contains more than just a broad idea, such as casting

persons of a particular race in a family-based sitcom. Plaintiff's proposal contained a somewhat detailed plan setting forth a number of elements for effectuating his basic idea. (Pl.'s Ex. D.) Plaintiff has testified that his meeting with Briggs and Held lasted over an hour and was devoted almost exclusively to discussing "Best of the U.S.A." in detail. (Pl.'s Ex. A at 191.) A reasonable jury could, upon review of the proposal as discussed at the October 29, 1993 meeting, find that the "Best of the U.S.A." proposal combined existing material into a concrete, clearly definable program which was, in its totality, a novel and unique idea. See Silver v. Television City, Inc., 215 A.2d 335, 337 (Pa. Super. Ct. 1965) (stating that "[i]t is no objection . . . that [plaintiff] takes existing material from sources common to all writers and combines and arranges them so long as he creates a new form and gives them an application unknown before in a different manner and for a different purpose resulting in a real improvement over existing modes.") The court finds that sufficient facts support the submission of the issue of novelty and uniqueness to a jury.

As to QVC's argument that its staff independently created "Quest for America's Best," the court finds that QVC has put forth evidence that would create questions of fact for a reasonable jury but that do not foreclose the jury from finding QVC misappropriated the "Best of the U.S.A." proposal. QVC cites depositions of its staff and corresponding internal documents which demonstrate that a QVC employee, Robb Cardigan

("Cardigan"), proposed obtaining a tour bus for remote broadcasts. In depositions, Mr. Cardigan discussed that QVC employees "brainstormed" ideas for using the tour bus and stated that Douglas Briggs "was the one who selected we should go to all 50 states in 50 weeks as the concept, and sell products from there . . . ." (QVC Mem. Ex. B at 39.) Cardigan could not remember when the concept of 50 states in 50 weeks arose, but he stated "[i]t was probably late '93 that we put a name to it or a handle, but . . . we had pretty much figured that we were going to do a tour of the states by early '93. We just didn't have a name for it, what we were going to do exactly." Id. According to internal memos which were drafted in May of 1993, QVC employees were developing programing ideas for use of the tour bus. (QVC Mem. Exs. C2-C5.) In several of the memos, the proposed program is referred to as "On the Road with QVC." (QVC Mem. Exs. C4 & C5.) The concept of broadcasting from different states is best demonstrated in a May 14, 1993 memorandum which outlines "a possible itinerary for 'On the Road with QVC'" setting forth several broadcasting events per month. (QVC Mem. Ex. C4.) For example, that memo suggests broadcasting from Boston on St. Patrick's day, from New Mexico or Southern California on the Mexican independence day of "Cinco De Mayo" and from Sonoma, California during the NASCAR "SAVE MART-300" stock car race. Id. However, the court finds that while the evidence proffered by QVC creates factual issues for a jury to weigh, it would not foreclose a reasonable jury from finding that QVC

misappropriated programing ideas from Plaintiff's "Best of the U.S.A." proposal. While it may demonstrate that QVC intended to obtain a tour bus which would travel to remote locations in different states, the documents and depositions do not show that the concept of a state-by-state contest showcasing products from each of the states was contemplated until after Plaintiff submitted and discussed "Best of the U.S.A." with Briggs. An internal memorandum to Diller from another QVC executive dated September 13, 1994 sets forth a "list of names for the bus tour . . ." (QVC Mem. Ex. F5.) That memo includes such names as "The QVC 50/50 Tour," "The Quest for the Best," "QVC Quest for the Best," and, notably, "QVC Best of the U.S." Id. The court finds the evidence that QVC had contemplated obtaining a tour bus and broadcasting from remote locations before Plaintiff submitted his proposal is not fatal to his claims, but rather raises factual issues which should be weighed by a jury. Having determined that Plaintiff has set forth the requisite facts to demonstrate a genuine issue of material fact as to whether he had a legally protectable interest in his "Best of the U.S.A." proposal, the court will now review Plaintiff's underlying claims.

**B. Plaintiff's Remaining Claims**

**1. Breach of Implied Contract**

Plaintiff alleges a breach of implied contract. Under Pennsylvania state law, "a contract may be implied if the parties' agreement, rather than being stated in words, is apparent from their conduct." Giangrante, et al. v. QVC Network,

Inc. et al., No. 89-8535, 1990 WL 124944, at \*1 (E.D. Pa. Aug. 23, 1990) (citing Martin v. Little, Brown & Co., 450 A.2d 984, 987 (Pa. Super. Ct. 1981)). Furthermore, "[a] promise to pay the reasonable value of [a] service is implied where one performs for another, with the other's knowledge, a useful service of a character that is usually charged for, and the latter expresses no dissent or avails himself of the service." Martin v. Little, Brown & Co., 450 A.2d 984, 987 (Pa. Super. Ct. 1981) (quoting Home Protection Bldg. & Loan Assoc. Case, 17 A.2d 755, 756-57 (Pa. Super. Ct. 1941)). In Plaintiff's initial letters to Briggs and Diller, Plaintiff sets forth the basic premise for his proposal and noted that he expected to be employed on the show. In response to that letter, Briggs contacted and, with Held, met with Plaintiff. In that meeting, Plaintiff discussed his ideas for the "Best of the U.S.A." at length and again discussed his expectation that he would act as a producer of the show. A reasonable jury could find that, in this context, Plaintiff's full disclosure of his "Best of the U.S.A." proposal was the performance of a service for the benefit of QVC, performed with the knowledge and at the invitation of QVC executives. A jury could also find that the service was useful, that it was performed with the understanding that Plaintiff would receive compensation and that QVC availed itself of that service without providing Plaintiff with compensation. Thus, the court will deny the motion for summary judgment on Plaintiff's breach of implied contract claim.



## 2. Breach of Confidence and Duty of Trust

Plaintiff alleges a breach of confidence and duty of trust claim. Under Pennsylvania law, a confidential relationship exists when "'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).

QVC argues that Plaintiff attempts to "transform a routine business transaction into a confidential relationship by contending that he surrendered substantial control of his 'Best of the U.S.A.' proposal to QVC finds no support in the record." (QVC Mem. at 37.) QVC cites several cases in support of its argument, including Giangrante, et al. v. QVC Network, Inc. et al., No. 89-8535, 1990 WL 124944, at \*2 (E.D. Pa. Aug. 23, 1990). The court finds Giangrante demonstrates why Plaintiff's claims warrant review by a jury.

In Giangrante, the plaintiff ("Giangrante") met with a QVC shareholder ("Stern"), who was a relative of a QVC executive, to discuss a business proposal for a marketing technique that Giangrante claimed to have developed. Id. at \*1. Giangrante

asked Stern to keep the proposal confidential and to forward it to QVC. Id. Stern forwarded a copy of the proposal to a QVC executive on behalf of Giangrante. Id. Giangrante also handed a QVC executive a business plan in the lobby of QVC's offices, but had no other direct contact with QVC. Id. QVC later notified Giangrante that it was not interested in his proposal. Id. After learning that QVC was using what Giangrante claimed was his idea, he brought suit asserting breach of a contractual or confidential relationship. Id. The court granted QVC's motion for summary judgment on Giangrante's claims. Id. at \*2. The court noted that there was a lack of "evidence that Stern had actual or apparent authority to act for QVC or that in fact Stern so acted or that he promised anything to Giangrante in agreeing to meet with him." Id. The court also found that "Giangrante's testimony discloses that his alleged encounter with [the QVC executive] lasted only a few moments and consisted of his leaving the tape and business plan. There is no evidence that possible future business dealings were discussed or that a confidentiality agreement was considered." Id. In conclusion, the court stated that "the evidence shows that Giangrante's overtures were unsolicited and evoked little, if any, interest on the part of QVC and that [there existed] uncontroverted evidence that defendants were given the tape and business plan by Giangrante unconditionally and as a volunteer." Id.

Giangrante differs from the case at hand in several important respects which illustrate why Plaintiff's claims should

proceed to a jury. First, Plaintiff testified at deposition that he submitted a second, more detailed proposal and attended a lengthy meeting upon QVC executives' request. At that meeting, Plaintiff met with two QVC executives, Briggs and Held, who had actual authority to act on behalf of QVC, rather than a shareholder as in Giangrante. According to Plaintiff, Briggs and Held discussed the proposal at length and in detail at the meeting and they demonstrated interest in Plaintiff's proposal. (Pl.'s Ex. A at 191.) Plaintiff also states that, at Briggs' request, he left a copies of that proposal with Briggs and Held. (Pl.'s Ex. A. at 193.) Cardigan, the executive QVC credits with conceiving "Quest for America's Best," acknowledged at deposition that Briggs played at least some role in the development of that program. (Pl.'s Ex. N at 37-39; 57.) Briggs also made similar statements at his deposition. (Pl.'s Ex. C at 96-97.) Also unlike Giangrante, Plaintiff has testified that compensation and future business dealings were explicitly discussed and that Briggs told him "don't go anywhere with these ideas." (Pl.'s Ex. A. at 192.) At deposition, Briggs stated: "I don't remember what we discussed at the meeting." (Pl.'s Ex. C at 93.) The court finds that the evidence at hand creates genuine issues of material fact for a jury to decide whether Plaintiff's proposal was submitted in good faith within the context of a confidential relationship and whether QVC subsequently breached that relationship. Thus, the court will deny the motion for summary

judgment on Plaintiff's breach of confidence and duty of trust claim.

### 3. Fraud

Plaintiff also alleges a fraud claim. 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).

As the court found in its Order dated March 31, 1998, Plaintiff's claims of fraud are limited to those that have been pled in the Complaint with the particularity required by Federal Rule of Civil Procedure 9(b).<sup>3</sup> Riese v. QVC, Inc., No. 97-4068, 1998 WL 151026, at \*4-5 (E.D. Pa. Mar. 31, 1998). The only allegation of fraud which the court found pled with the requisite specificity was that two QVC officials, Briggs and Held, made alleged misrepresentations that they would pay for any ideas they obtained from discussions regarding the development of Plaintiff's proposed television program at the meeting on October 29, 1993. In its instant motion, QVC states that Plaintiff has proffered no evidence that either Briggs or Held made any

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3. 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. Id.

statement which they knew to be false at the October 29, 1993 meeting with Plaintiff. The court agrees.

Plaintiff points out that Briggs testified at deposition that at the time of the meeting he knew Plaintiff expected compensation and that QVC never compensates individuals for their ideas. (Pl.'s Mem. 60-61.) However, Plaintiff's letter states that he expected to earn compensation from employment on the program. (Pl.'s Mem. Ex. C.) Thus, the statement that QVC never compensates individuals for their ideas does not demonstrate that Briggs solicited Plaintiff's ideas at the meeting without intending to compensate Plaintiff in some way, particularly when Plaintiff expected his compensation for his ideas to come through his involvement as a producer on the show. Plaintiff also points out that Briggs later told an acquaintance of Plaintiff that Plaintiff "had hit a home run but didn't run around the bases with it" and that Briggs possibly referred to Plaintiff as a "surfer-type guy." (Pl.'s Mem. at 62.) However, these facts also fail to establish that any statements made by Briggs or Held at the meeting were known to be false. To state a claim for fraud, Plaintiff would need to produce some evidence that, during the October 29, 1993 meeting, Briggs or Held intended to obtain information from Plaintiff regarding the proposal and not compensate Plaintiff therefore. Taken as a whole, the evidence does not make out a claim of fraud. Thus, the court will grant the motion for summary judgment on Plaintiff's fraud claim.

**IV. CONCLUSION**

For the reasons set forth above, QVC's motion for summary judgment will be granted in part and denied in part.

An appropriate Order follows.

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

CASS RIESE	:	CIVIL ACTION
	:	
v.	:	
	:	
QVC, INC.	:	NO. 97-4068

ORDER

AND NOW, TO WIT, this 30th day of March, 1999, upon consideration of defendant QVC, Inc.'s motion for summary judgment and plaintiff Cass Riese's opposition thereto, IT IS ORDERED that said motion is GRANTED IN PART and DENIED IN PART as follows:

1. with respect to the cause of action for breach of implied contract, the motion is DENIED;
2. with respect to the cause of action for breach of confidence and duty of trust, the motion is DENIED; and
3. with respect to the cause of action for fraud, the motion is GRANTED.

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LOUIS C. BECHTLE, J.