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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

1:08-cv-0408-DFH-WTL
No.
COMPLAINT

(Patent Infringement; False Advertising;
Misappropriation of Advertising Ideas
and/or Style of Doing Business; and
Conversion)

Demand For Jury Trial

GRIFFINVENT, INC., an Indiana
corporation, and

Matthew L. Griffin, an individual,

Plaintiffs,

v.

QVC, Inc., a Delaware corporation,

Defendant.

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Main (503) 224-3380 Fax (503) 220-2480

For their complaint against Defendant QVC, Inc. ("QVC"), Plaintiffs Griffinvent, Inc. d/b/a Baker's Edge and Matt Griffin (collectively "Baker's Edge") allege as follows:

PARTIES

1.

Griffinvent, Inc. is an Indiana corporation having a principal place of business in Marion County at 6337 Maple Drive, Indianapolis, Indiana 46220. Griffinvent, Inc. is in the business of, among other things, providing kitchen equipment including bakeware.

1 2.

2 Matthew L. Griffin is an individual residing in Indiana, in Marion County at 6337
3 Maple Drive, Indianapolis, Indiana 46220. Griffin is an inventor and founder of Griffinvent,
4 Inc.

5 3.

6 Defendant QVC is, on information and belief, a Delaware corporation having a
7 principal place of business in Chester County at 1200 Wilson Drive, West Chester,
8 Pennsylvania 19380-6262.

9

10 **JURISDICTION AND VENUE**

11 4.

12 This is a civil action for patent infringement under the patent laws of the United
13 States, 35 U.S.C. §§1, *et seq.* This Court has subject matter jurisdiction over such claims
14 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

15 5.

16 This is also a civil action for false advertising and misappropriation of advertising
17 ideas and style of doing business under the federal Lanham Act, 15 U.S.C. §§ 1121, 1125, *et*
18 *seq.* This Court has subject matter jurisdiction over such claims pursuant to 15 U.S.C. §
19 1121, *et seq.*

20 6.

21 This is also a civil action for misappropriation of advertising ideas and style of doing
22 business pursuant to Indiana law, and conversion under Indiana Code 35-43-4-1 *et seq.* This
23 Court has subject matter jurisdiction over such claims pursuant to 28 U.S.C. § 1367.

24 7.

25 Defendant QVC is subject to the personal jurisdiction of this Court under Ind. Trial
26 Rule 4.4 because QVC purposefully avails itself of the benefits of conducting business in the

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1 State of Indiana, and has committed acts of patent infringement, unfair competition, and
2 related state law violations as alleged herein in this judicial district (and elsewhere in Indiana
3 and in the United States).

4 8.

5 Venue is proper in this Court under 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b).

6
7 **FACTUAL BACKGROUND**

8
9 **Griffin Came Up With a Way to Bake the Perfect Brownie**

10 9.

11 In 1998, because he loves the corner brownies that each have two edges contacting
12 the side of the pan during baking, Griffin began developing a new baking pan to overcome
13 traditional pans' ability to produce only four corner brownies. Griffin's new pan provides
14 each brownie with at least two edges and offers other baking advantages.

15 10.

16 Griffin filed a provisional patent application for his new baking pan on October 12,
17 1999, and a utility patent application claiming priority to his provisional patent application on
18 October 10, 2000.

19
20 **Griffin's Efforts to Start His Business**

21 11.

22 Griffin contacted QVC via email on or about August 20, 2001, to submit his new pan
23 as a possible item that QVC may be interested in selling. Griffin informed QVC that the new
24 pan was patent pending. On or about August 23, 2001, Griffin also submitted information
25 about his patent pending pan to QVC through the mail.

26

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1 12.

2 On July 2, 2002, the United States Patent and Trademark Office duly and legally
3 issued U.S. Patent No. 6,412,402 B1 entitled “Edge Making Baking Pan” (the ’402 patent).
4 A true and correct copy of the ’402 patent is attached as Exhibit A.

5 13.

6 Matthew L. Griffin is the inventor, and owner of all right, title, and interest in and to
7 the ’402 patent with full and exclusive rights to bring suit to enforce it, including the right to
8 recover for past infringement.

9 14.

10 In 2002, Griffin and his wife invested part of their savings to have prototypes of the
11 patented pan made, with the goal of bringing the patented pan to market.

12 15.

13 QVC wrote to Griffin on or about September 12, 2002, informing him that QVC
14 would evaluate and document his product information, and that QVC would contact him if
15 there was interest in his product.

16 16.

17 On or about April 15, 2004, Griffin attended the 2004 QVC Product Search
18 Discovery Tour in Chicago, Illinois (“2004 Product Search”). At the 2004 Product Search,
19 Griffin showed QVC photographs and literature about his patented pan, which included the
20 ’402 patent number, and a prototype of the patented pan. At the 2004 Product Search,
21 Griffin presented a prototype pan and recipes; demonstrated the patented pan’s benefits,
22 features, and advantages; and explained how the patented pan could be presented on QVC’s
23 advertising if it were chosen by the QVC product evaluators.

24 17.

25 Griffin established Griffinvent, Inc. on or about April 20, 2004 and registered it as an
26 Indiana corporation.

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1 18.

2 On or about May 14, 2004, QVC sent an email to Griffin informing him that QVC
3 elected not to include his product in its current assortment. Griffin followed-up on or about
4 June 1, 2004, inquiring whether QVC could shed any light on shortcomings of his patented
5 pan so he could re-submit the pan for QVC's consideration. On or about June 1, 2004, QVC
6 responded via email informing that Griffin could resubmit his product under normal
7 procedures, and that his product had been reviewed three times during the 2004 Product
8 Search.

9 19.

10 QVC sent a letter to Griffin on or about August 26, 2004, informing him that his
11 product information had been carefully reviewed, but he would not be included in the current
12 list of vendors. QVC also informed Griffin that QVC had documented his information for
13 future consideration.

14
15 **Griffin's Business Develops**

16 20.

17 In November, 2004, Griffin entered his patented pan in Visa Corporation's Ideas
18 Happen contest hosted by MSN. Griffin's patented pan was one of over 19,000 entries. The
19 pan was among the entries shown to a panel of celebrity judges who voted Griffin's pan into
20 a final field of 10 entries for the entrepreneurial category. The finalists for the
21 entrepreneurial category were placed on the Internet and the public voted for the best entry.
22 Griffin's Internet placement included a 60 second recording promoting the pan's virtues,
23 explaining its patented status, and stressing the need for start-up funds. Of the four winning
24 entries for the entrepreneurial category, Griffin's patented pan received the most votes.
25 Among other things, the honor came with a \$25,000 prize.

26

1 21.

2 The Ideas Happen contest resulted in broad public exposure for the patented baking
3 pan. The pan received coverage in electronic, print, and television media, including
4 placement on MSN.com's homepage, Visa Corporation's web site, articles in AdWeek and
5 other publications. In addition, Baker's Edge was selected to be featured on Visa
6 Corporation's Business Breakthrough web site.

7 22.

8 Winning Visa Corporation's Ideas Happen contest created marketing buzz for
9 Baker's Edge and was a strong factor behind the ability of Baker's Edge to market and sell
10 its patented pan to retailers.

11 23.

12 Over the course of six months, Baker's Edge used its six year's of experience
13 identifying and developing a niche market for its patented pan to produce an infomercial and
14 several television commercials for marketing use. Baker's Edge emphasized that it was the
15 first to address unique bakeware for people who love chewy edges on food, especially
16 brownies. The infomercial and television commercials produced during the year 2005
17 contained Baker's Edge's advertising ideas and business strategy to excite people about its
18 patented pan and to further develop the niche market for Baker's Edge's new genre of
19 bakeware.

20 24.

21 Baker's Edge's advertising ideas included, but were not limited to, developing the
22 niche market and promoting the patented pan for, and/or demonstrating, (1) making brownies
23 with delicious, chewy edges because corner brownies are favorites, (2) making lasagna that
24 does not fall apart when cut, (3) creating multiple edges on every serving, (4) distributing
25 heat evenly, (5) baking a variety of dishes, (6) creating perfect portions with one slice, (7)
26 saving time, (8) easy cleaning, and (9) quality construction.

1 25.

2 The infomercial, commercials, photographs of the patented pan with various foods
3 baked in it, and contact information for Baker's Edge were collected together as a
4 promotional digital video disc ("DVD").

5 26.

6 Griffin's third presentation of his patented baking pan to QVC occurred at the 2005
7 QVC Product Search Event in St. Louis on or about February 10, 2005. Griffin's
8 presentation included the promotional DVD containing Baker's Edge's advertising ideas and
9 style of doing business. Griffin's presentation also included product literature describing the
10 patented pan and its features. Both the DVD and literature prominently displayed the patent
11 number, 6,412,402, in connection with the patented pan. A true and correct copy of the
12 promotional product literature shown to QVC in February, 2005, and related correspondence
13 are attached as Exhibit B.

14 27.

15 On or about March 18, 2005, QVC once again informed Griffin that QVC elected not
16 to include his product in its current assortment. QVC again informed Griffin that QVC
17 would keep his product information on file in the event QVC's needs were to change.

18 28.

19 On or about February 12, 2006 Griffin appeared on the Shop at Home television
20 network to present and sell his patented pan. The Shop at Home advertisement included
21 many of Baker's Edge's advertising ideas and style of doing business for developing the
22 niche market for the patented pan and capturing edge lovers' hearts and souls including, but
23 not limited to, promoting the patented pan for, and/or demonstrating, (1) making brownies
24 with delicious, chewy edges because corner brownies are favorites, (2) making lasagna that
25 does not fall apart when cut, (3) creating multiple edges on every serving, (4) distributing
26

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1 heat evenly, (5) baking a variety of dishes, (6) using the same recipes, that is, not changing
2 the quantities because of the pan, and (7) easy cleaning.

3

4 **QVC Steals Griffin's Business**

5 29.

6 Upon information and belief, QVC made and/or imported baking pans that infringe
7 the '402 patent.

8 30.

9 Upon information and belief, QVC's baking pans that infringe the '402 patent were
10 QVC's item number K14805 sold under the TECHNIQUE® name.

11 31.

12 TECHNIQUE® is a registered trademark of QVC. A true and correct copy of the
13 United States Patent & Trademark Office's Trademark Electronic Search System record for
14 QVC's TECHNIQUE® mark is attached as Exhibit C.

15 32.

16 Upon information and belief, on or about February 10, 2008, QVC advertised, offered
17 for sale, and sold through its television network and over the Internet the item number
18 K14805 baking pans that infringe the '402 patent.

19 33.

20 Upon information and belief, QVC viewed Baker's Edge's infomercial and
21 commercials prior to making QVC's advertisements.

22 34.

23 QVC possessed a copy of Baker's Edge's infomercial and commercials prior to
24 making QVC's advertisements.

25

26

1 35.

2 QVC’s advertisements misappropriated Baker’s Edge’s advertising ideas and style of
3 doing business by substantially copying Baker’s Edge’s infomercial and commercials. QVC
4 misappropriated Baker’s Edge’s advertising ideas and style of doing business related to, but
5 not limited to, promoting QVC’s pan and/or demonstrating (1) making brownies with
6 delicious, chewy edges because corner brownies are favorites, (2) making lasagna that does
7 not fall apart when cut, (3) creating multiple edges on every serving, (4) baking a variety of
8 dishes, (5) creating perfect portions with one slice, (7) using the same recipes, that is, not
9 changing the quantities because of the pan, and (8) easy cleaning.

10 36.

11 QVC’s advertisements falsely represented that “Technique, with Meredith Laurence,
12 ..., thought up, and this is brilliant, a way that brownies, ..., or anything, all can have an edge
13 everywhere.” QVC’s advertisements also asserted that the pans were “a clever idea.”

14 37.

15 Upon information and belief, QVC’s pans that infringed the ’402 patent garnered
16 consumer complaints because of poor materials and manufacturing.

17 38.

18 Upon information and belief, QVC’s advertisements and QVC’s pans that infringed
19 the ’402 patent have caused, and continue to cause, consumer confusion in the market, price
20 erosion, lost revenue, and lost good will for Baker’s Edge.

21

22 **FIRST CLAIM FOR RELIEF**
23 **(Infringement of the ’402 Patent)**

24 39.

25 Baker’s Edge realleges and incorporates paragraphs 1 through 38.

26

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1 40.

2 The '402 patent is valid and enforceable.

3 41.

4 Upon information and belief, in violation of 35 U.S.C. § 271, QVC made, used,
5 offered to sell, and sold within the United States, and/or imported into the United States,
6 products that infringe the '402 patent, including the Technique® 3 Piece Silicone Perfect
7 Edge Pan (QVC item number K14805).

8 42.

9 Upon information and belief, QVC willfully infringed the '402 patent.

10 43.

11 As a result of QVC's infringement, Baker's Edge has suffered and continues to suffer
12 damages.

13 44.

14 Baker's Edge is entitled to recover from QVC the damages sustained by Baker's
15 Edge as a result of QVC's wrongful acts in an amount subject to proof at trial.

16

17 **SECOND CLAIM FOR RELIEF**

18 **(False Advertising Under 15 U.S.C. § 1125(a)(1)(B))**

19 45.

20 Baker's Edge realleges and incorporates paragraphs 1 through 38.

21 46.

22 QVC, in its commercial advertisements starting on or about February 10, 2008, made
23 false or misleading statements of fact, including the statement that "Technique, with
24 Meredith Laurence, ..., thought up, and this is brilliant, a way that brownies, ..., or anything,
25 all can have an edge everywhere."

26

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1 47.

2 Upon information and belief, QVC's statements actually deceived, or tended to
3 deceive, a substantial segment of its audience into believing that the TECHNIQUE® 3 Piece
4 Silicone Perfect Edge Pan (QVC item number K14805) concept originated with QVC and/or
5 Meredith Laurence. Alternatively, upon information and belief, QVC's statements actually
6 deceived, or tended to deceive, a substantial segment of its audience into believing that the
7 TECHNIQUE® 3 Piece Silicone Perfect Edge Pan (QVC item number K14805) originated
8 from, or was associated with or connected to, Baker's Edge.

9 48.

10 On information and belief, QVC's deception had a material influence on consumers'
11 purchasing decisions.

12 49.

13 QVC caused its false or misleading statements to enter interstate commerce by
14 broadcasting its advertising over a national cable channel.

15 50.

16 Baker's Edge was injured as a result of QVC's false or misleading statements.

17 51.

18 Baker's Edge is entitled to recover from defendant for the injuries sustained by
19 Baker's Edge as a result of QVC's false or misleading statements in an amount subject to
20 proof at trial.

21

22

THIRD CLAIM FOR RELIEF

23

(Misappropriation of Advertising Ideas and/or

24

Style of Doing Business Under 15 U.S.C. § 1125(a))

25

52.

26 Baker's Edge realleges and incorporates paragraphs 1 through 38.

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1 53.

2 A promotional DVD containing Baker's Edge's advertising ideas was shown and
3 provided to QVC on or about February 10, 2005.

4 54.

5 On information and belief, QVC kept Baker's Edge's advertising ideas on the
6 promotional DVD on file.

7 55.

8 QVC's television advertisements, starting on or about February 10, 2008, were made
9 after QVC had possession of copies of Baker's Edges' infomercial and commercials
10 containing Baker's Edges' advertising ideas and displaying Baker's Edge's manner for
11 business operations.

12 56.

13 QVC wrongfully took Baker's Edges' manner for advertising its patented pan by
14 substantially copying Baker's Edges' advertising ideas and/or style of doing business for
15 QVC's television advertisements that began airing on or about February 10, 2008. QVC's
16 misappropriation of Baker's Edges' advertising ideas and style of doing business, included,
17 but is not limited to, promoting QVC's pan and/or demonstrating (1) making brownies with
18 delicious, chewy edges because corner brownies are favorites, (2) making lasagna that does
19 not fall apart when cut, (3) creating multiple edges on every serving, (4) baking a variety of
20 dishes, (5) creating perfect portions with one slice, (7) using the same recipes, that is, not
21 changing the quantities because of the pan, and (8) easy cleaning.

22 57.

23 Baker's Edge was injured as a result of QVC's misappropriating Baker's Edge's
24 advertising ideas and/or style of doing business. Baker's Edge, a small privately held
25 company starting from scratch, spent over nine years developing a new product, a niche
26 market for the product, and a solid reputation. Just as Baker's Edge was developing a market

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1 for its product, securing a good name for itself, and beginning to generate revenue, QVC, a
2 billion dollar multi-national company entered the market with an infringing, inferior product,
3 false advertising claiming to have thought up the product, and a facsimile of Baker's Edge's
4 advertising ideas and style of doing business to capitalize on the good-will established by
5 Baker's Edge. QVC eviscerated Baker's Edge's business. QVC stole sales from Baker's
6 Edge, deteriorated Baker's Edge's good-will by causing consumers to associate QVC's
7 inferior product with Baker's Edge, eroded the price Baker's Edge can charge for its patented
8 pan, and caused and continues to cause Baker's Edge to spend additional money and time to
9 correct the false impressions QVC left in the market.

10 58.

11 Baker's Edge is entitled to recover from QVC for the injuries sustained by Baker's
12 Edge as a result of QVC's misappropriation of Baker's Edge's advertising ideas and/or style
13 of doing business in an amount subject to proof at trial.

14
15 **FOURTH CLAIM FOR RELIEF**

16 **(Conversion)**

17 59.

18 Baker's Edge realleges and incorporates paragraphs 1 through 38.

19 60.

20 QVC has exerted unauthorized control over the the '402 patent, by making, using,
21 offering to sell, and/or selling within the United States, and/or importing into the United
22 States, products that infringe the '402 patent, including the Technique® 3 Piece Silicone
23 Perfect Edge Pan (QVC item number K14805).

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1 61.

2 QVC has converted the patent of Griffin by making, using, offering to sell, and/or
3 selling within the United States, and/or importing into the United States, products that
4 infringe the '402 patent.

5 62.

6 QVC has exerted unauthorized control over Baker's Edges' manner for advertising its
7 patented pan by substantially copying Baker's Edges' advertising ideas and/or style of doing
8 business for QVC's television advertisements that began airing on or about February 10,
9 2008. QVC's misappropriation of Baker's Edges' advertising ideas and style of doing
10 business, included, but is not limited to, promoting QVC's pan and/or demonstrating (1)
11 making brownies with delicious, chewy edges because corner brownies are favorites, (2)
12 making lasagna that does not fall apart when cut, (3) creating multiple edges on every
13 serving, (4) baking a variety of dishes, (5) creating perfect portions with one slice, (7) using
14 the same recipes, that is, not changing the quantities because of the pan, and (8) easy
15 cleaning.

16
17 63.

18 QVC has converted Baker's Edges' manner for advertising by substantially copying
19 Baker's Edges' advertising ideas and/or style of doing business for QVC's television
20 advertisements.

21
22 64.

23 Baker's Edge is entitled to recover from QVC for the injuries sustained by Baker's
24 Edge as a result of QVC's conversion in an amount subject to proof at trial.

25
26

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PRAYER FOR RELIEF

WHEREFORE, Baker's Edge prays for judgment against QVC as follows:

1. On its First Claim for Relief:

- a. That QVC infringed the '402 patent;
- b. That QVC's infringement was willful;
- c. That QVC's infringement resulted in price erosion and otherwise harmed the market for Baker's Edge's patented pan;
- d. That QVC be ordered to pay damages adequate to compensate Baker's Edge for QVC's infringement of the '402 patent pursuant to 35 U.S.C. § 284, including an accounting;
- e. That QVC be ordered to pay treble damages pursuant to 35 U.S.C. § 284;
- f. That QVC be ordered to pay Baker's Edge's attorney fees pursuant to 35 U.S.C. § 285;
- g. That QVC be ordered to pay prejudgment interest at the rate of 9 percent per annum;
- h. That QVC be ordered to pay Baker's Edge's costs associated with this action; and
- i. That Baker's Edge be granted such other and additional relief as the Court deems just and proper.

2. On its Second Claim for Relief:

- a. That QVC used false or misleading statements of fact in its advertisements;
- b. That Baker's Edge sustained injuries because of QVC's false or misleading statements of fact in its advertisements;

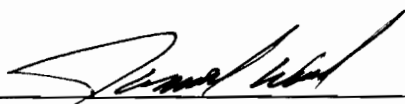
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- 1 c. That QVC be ordered to pay Baker’s Edge damages in an amount to
- 2 be proven at trial, plus late fees and accrued interest at the rate of
- 3 9 percent per annum;
- 4 d. That QVC be ordered to pay Baker’s Edge punitive damages in an
- 5 amount to be proven at trial;
- 6 e. That QVC be ordered to pay Baker’s Edge its costs and reasonable
- 7 attorney’s fees in prosecuting this action; and
- 8 f. That Baker’s Edge be granted such other and additional relief as the
- 9 Court deems just and proper.
- 10 3. On its Third Claim for Relief:
- 11 a. That QVC misappropriated Baker’s Edge’s advertising ideas;
- 12 b. That QVC misappropriated Baker’s Edges’ style of doing business;
- 13 c. That Baker’s Edge sustained injuries because of QVC’s
- 14 misappropriation of Baker’s Edge’s advertising ideas and/or style of
- 15 doing business;
- 16 d. That QVC be ordered to pay Baker’s Edge damages in an amount to
- 17 be proven at trial, plus late fees and accrued interest at the rate of
- 18 9 percent per annum;
- 19 e. That QVC be ordered to pay Baker’s Edge punitive damages in an
- 20 amount to be proven at trial;
- 21 f. That QVC be ordered to pay Baker’s Edge its costs and reasonable
- 22 attorney’s fees in prosecuting this action; and
- 23 g. That Baker’s Edge be granted such other and additional relief as the
- 24 Court deems just and proper.
- 25 4. On its Fourth Claim for Relief:
- 26 a. That QVC converted Baker’s Edge’s patent;

- b. That QVC converted Baker’s Edge’s advertising ideas and/or style of doing business;
- c. That QVC be ordered to pay to Baker’s Edge all relief available under Indiana Code 34-24-3-1 including its costs and reasonable attorneys’ fees; and
- d. That Baker’s Edge be granted such other and additional relief as the Court deems just and proper.

DATED: March 28, 2008.



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