

CHANCERY DIVISION

B E T W E E N:

JOHN ALFRED DONOVAN

Plaintiff

- and -

SHELL UK LIMITED

Defendant

(by Original Action)

AND B E T W E E N:

SHELL UK LIMITED

Plaintiff by Counterclaim

-and-

- (1) JOHN ALFRED DONOVAN**
- (2) DON MARKETING UK LIMITED**
- (3) ALFRED ERNEST DONOVAN**

Defendants to Counterclaim

(by Counterclaim)

**WITNESS STATEMENT
OF JEREMY CHARLES TAYLOR**

I, JEREMY CHARLES TAYLOR of Tequila Payne Stracey of 82 Charing Cross Road,
London WC2H 0BA **WILL SAY** as follows:

1. Since 1990 I have been an employee and subsequently a director of Option One which following a merger has now become Tequila Payne Stracey. Option One was a marketing agency whose business included providing sales promotion, customer loyalty and direct marketing services to its clients (which include such

companies such as Orange, Kelloggs and Chrysler). Option One was a market leading company in this field, widely respected for its strategic marketing skills.

2. My colleague Tim Bonnet and I were involved on behalf of Option One in a consultancy capacity in the development of the Shell UK SMART loyalty programme from January 1993 until Autumn 1998. During this period we assisted Shell UK Limited in shaping the scheme through its interim stages when it was known as Project Hercules.
3. I know of Mr Donovan, his company Don Marketing UK Limited and some of the promotional games he has devised. I understand that he has brought this legal action on the basis of his claims that the SMART programme was derived from confidential information supplied by him to Shell UK Limited. He appears to accuse Option One of receiving that information from Shell and assisting Shell (either deliberately or perhaps as unwitting 'dupes') in exploiting that information.
4. These claims are simply not consistent with my experience of working on the SMART programme. Tim Bonnet and I were not asked to copy what Mr Donovan now says are his confidential proposals for multi-brand loyalty promotion. On the contrary, we were given a broad and flexible brief to assist Shell UK Limited in the development of a 'next generation' long-term loyalty programme that would put Shell UK Limited ahead of its competitors. Over the considerable period that we were involved in the project, ideas evolved and changed through discussions between ourselves and Shell. However, at the outset Tim and I had no pre-

conceptions and as far as I was concerned we were starting from scratch. We certainly did not work to any pre-existing blueprint.

The beginning of Option One's relationship with Shell

5. My involvement with Shell UK Limited started in 1992. In or around the middle of that year I wrote to David Watson, the then Retail Marketing Manager of Shell UK Limited, introducing Option One and putting forward our suggestions for the promotional strategy which Shell UK Limited might like to adopt in 1993. Our primary recommendation was that they should move towards some sort of long-term promotion, though avoiding the pitfalls of their previous long-term promotion, Collect and Select, of which we offered a critique. We also put forward some proposals for short-term promotions. Two of our ideas for short-term promotional activity contained in that letter were 'Comic Relief' (a promotion involving tokens awarded when Shell fuel was purchased, the tokens could be redeemed for Comic Relief merchandise including the red noses for cars and 'UK Travel' (a promotion involving tokens awarded for purchases of Shell fuel which could be redeemed for travel offers with Sealink, Avis and Intercity).

6. Mr Watson referred us to Andrew Lazenby, Shell's National Promotions Manager. We were invited to present our proposed promotional strategy to Shell and we did so on 22 July 1992, as part of a competitive 'pitch'. The presentation was attended by Tim Bonnet, Bob Bayley and I from Option One and Andrew Lazenby and David Watson from Shell. I knew that Shell had phased out its Collect and

Select promotion and turned its attention to short-term tactical promotions, and we pitched Comic Relief and UK Travel along with other ideas on that basis. However, I also made it clear that despite the deficiencies of Collect and Select, short-term promotions would only ever be a stop-gap measure and that Option One would also be able to assist Shell in devising a new and improved long-term promotion.

7. We were was informed by Andrew Lazenby at the beginning of August 1992 that Shell were interested in running the Comic Relief. Shell went on to run the Comic Relief promotion from 11th January 1993 to 28th March 1993. Whilst liaising in the run-up to Comic Relief, Tim Bonnet and I built up a good working relationship with Andrew Lazenby, David Watson and the other personnel in the Shell Promotions Department. During the second half of 1992 we continued to discuss with Shell the possibilities afforded by long-term promotions, although nothing tangible came of this until early 1993.

Project Onyx

8. Andrew Lazenby sent me a briefing document in mid-January 1993 in relation to 'Project Onyx', which was the Shell in-house working title for their next intended long-term promotion.

9. The Project Briefing document set out the following information:

- the perceived shortcomings of short-term tactical promotions.

- what Shell's competitors were doing:
 - i. long-term promotions;
 - ii. increased use of technology; and
 - iii. strategic alliances with third parties (although the document mentioned that Air Miles were still the only multi-retailer loyalty scheme with a variety of participating companies all issuing mutual points)

- that Shell had been keeping a watching brief on the marketplace under Project Onyx specifically with a view to technological developments and had shortlisted three suppliers believed technically capable of delivering a technological solution

- that Shell wanted to "launch the next generation of strategic loyalty promotions", the attributes of which were defined in the document in wide and quite general terms. For example, the scheme's "currency" could take the form either of paper vouchers or "electronically collected on some form of card carrier". Similarly in terms of third party

participants, the question whether they would be redeemers or issuers of points, or both, was left open.

10. This was the only document with which Tim Bonnet and I were supplied at this stage. Although we became aware of some of the research Shell had undertaken prior to our appointment, neither at this stage nor subsequently did we see any presentations that had ever been made to Shell by other agencies in the past. In particular, neither of us was ever given a Don Marketing document dated 23rd October 1989 entitled "A Presentation of Promotional Ideas to Shell UK Oil" or a Don Marketing letter to Mr Brian Horley of Sainsburys dated 24th July 1990.
11. On 22nd January 1993 Tim and I met for the first time on this project with David Watson. He took us through the briefing document and we discussed the basis of our appointment. He wanted to engage us at the outset for a 3-month period at a fixed fee. We talked about further steps and it was agreed that Andrew Lazenby would brief us about what Shell had learned about developments in the electronics field.
12. On 1st February 1993 Tim Bonnet and I met with Andrew Lazenby. He explained to us (so far as he could within the bounds of confidentiality) the types of hardware and software technology available in the market and the different ways in which they could be applied to a long-term promotion. Part of our role would be to advise on the current technology and on how it should be sourced, manufactured and installed.

Project Hercules/SMART

13. On 5th March 1993 I, together with two of my colleagues, Bob Bayley and Peter Humphrey, met with David Watson and Andrew Lazenby to discuss our outline response document. One of the matters that we focused on at that meeting was the question of third party involvement. In our outline response document we had identified a large number of third party retailers that might be involved at some level. However, we were sceptical about the prospect of trying to launch a scheme with one or more major partners as an integral part from day one. We favoured, in the short-term, the idea of using third parties purely as providers of the rewards. There was nothing particularly original about this thinking, which was derived from our own experience and our observation of the market. When we met with David Watson and Andrew Lazenby we suggested that the way forward was to produce two short-lists of potential third party participants: one consisting of those who would simply be involved as reward-providers from launch; and another perhaps of more major players who might be suitable to get involved as redeemers and issuers of points at a later stage. We agreed to work on preparing such short-lists. We also discussed the idea of providing a brief to technology suppliers and the following week Tim Bonnet, Andrew Lazenby and I went to see Fortronic in Scotland when they gave us a demonstration of their technology and what it could do.
14. Over the next few weeks we were involved in presentations to a number of retailers, such as Woolworths, Boots, Forté and Safeway. In all these cases the

object of the initial meeting was to explain the sort of promotion we had in mind and to establish whether there was some initial interest in it. We did certainly elicit some interest from our various contacts with third parties but on the whole they confirmed our view as to the difficulty of persuading major retailers to enter into a scheme of this nature, particularly one that they saw led by Shell.

15. By the middle of April we were producing a number of other discussion documents on various aspects of the scheme. On 15th April we produced a discussion document on the reward structure. As we said in the document, the recommendations that we put forward for discussion were based partly on research (Shell had carried out a research project simultaneously without being instructed) and on commonsense. We saw three broad ways in which reward structures could operate. One involved a system offering points against a conventional reward scheme but overlaid with short-term tactical offers. Our second structure involved travel benefits, which we saw as an important part of any scheme, bearing in mind the Air Miles connection. The third structure involved third parties operating as both issuers and redeemers of points. It was also possible for the eventual reward structure to be a combination of some or all of these elements. On 19th April we produced discussion documents on how the scheme should be launched and on how the offer should be targeted in relation to particular groups of motorists. The latter issue was something that I knew was being discussed internally at Shell. I was very keen on the possibility of the promotion operating on more than one level, so that there could be a standard offering for low-mileage motorists with a "gold" or "platinum" level for higher-mileage motorists. We also indicated that

the scheme could if required, use paper based points and subsequently migrate to electronic points.

16. The fruit of all our discussion documents was brought together in a paper that we produced on 21st April setting out our outline recommendations. I would emphasise again that, as the paper says, the presentation outlined our own recommendations for the project based on “consumer research, discussions with a sample of the retail trade and development work with [Shell]”. Our ideas did not have a single source and nor were they adopted in their entirety by Shell. The project continued to evolve all the way up until implementation and beyond. Our proposal for a multi-layered promotion was not eventually taken up but much of what we recommended about the reward structure found its way into the final scheme. We felt we were well advanced on the technology front, following our discussions with Fortronic, although it was still possible that other suppliers might produce a better deal. We favoured the use of a pilot scheme, which was eventually adopted by Shell, although the exact basis of the pilot was not clear at that time.
17. Following the production of our recommendations, the process of obtaining internal approval within Shell got under way. It was in the context of this process that modifications to what we had proposed in our recommendations were made, although I do not believe that much, if anything, of significance was added to the concept over the following months.

18. There was still, however, a very considerable amount of work for us to do. On 12th May I put forward our fee proposal for work for May and June (our original three month engagement having expired). I was envisaging two of our employees working effectively full-time on the project, Tim Bonnet working a very substantial majority of his time on it and myself doing 20 hours per week, as well as a number of others in smaller amounts. In fact I have no doubt that the work we actually did substantially exceeded those projections. As my letter set out, the main areas with which we were to be concerned were to finalise the technical requirement, to do what was necessary to get the reward structure set up and to work on the name and design of the card. On 13th May we produced a document setting out how we saw the mechanics of the scheme operating in practice. This was of great importance to those who were working on the technology side. Over the next few weeks the Option One team were heavily involved in the process of tendering by prospective IT suppliers. The scale of the project was massive and in a note to me of 26th May David Watson estimated that the number of cards likely to be issued, and for which we needed to budget, would be in the region of four million.

19. In relation to the mail-order side of the reward structure, we also conducted a tendering process, as a result of which Granby Marketing Services Limited were appointed to handle this aspect. In relation to the potential name, research was undertaken into a wide variety of names. None of them stood out as having particularly wide or favourable acceptance but the name "SMART" appeared by consensus to command general approval.

20. While the mechanics of the scheme were gradually falling into place, the decision-making process within Shell was taking a long while. We had been told to aim for a launch date of 1st December 1993 but, as the summer drew on, it became apparent that this date was unlikely to be met. In order to help explain the scheme to those within Shell and outside who needed to understand what it was and how it operated, we produced, in August 1993, a document entitled "Hercules - A Generic Description" (which we produced in a slightly amended form the next month). This aimed at summarising the essential elements of the scheme and how it would work.
21. In the latter part of 1993 Option One continued to discuss with third party retailers the prospect of some involvement in Project Hercules. However, by this stage, the companies concerned tended mostly to be of the smaller scale retailers whom we had identified in our initial paper as being likely to be involved at launch on a redeemer-only basis. For example, there were ongoing discussions with UCI Cinemas and HMV, both of whom did join the scheme at launch on this basis. Another company with whom we were having discussions was BlockBuster Video, where in fact they did not join. With a view to helping us focus on the financial arrangements to be made with third parties, Andrew Lazenby wrote a note to my colleagues, Tim Bonnet and Leslie Jackson, on 11th October 1993, summarising the various types of arrangements that could be entered into, depending upon whether retail partners were going to be redeemers-only, redeemers and issuers without issuing their own cards, or redeemers and issuers also issuing their own cards. However, there was still scope for the project to evolve in a number of

different directions. During 1994 discussions took place with a number of financial companies including Visa, Barclaycard and Lloyds Bank. Shell were responsible for these discussions. The discussions eventually foundered, nevertheless, the fact that these discussions were pursued so seriously demonstrates that there was no preconceived idea of how the scheme might eventually work out and Shell were prepared to explore various opportunities to develop it.

22. We continued to be involved with the scheme up to launch and until Autumn 1998 but Shell's need for our services diminished and we have not been involved to a large extent with the project for some time now.

23. Together with Tim Bonnet and all the other Option One personnel who have contributed to Projects Onyx and Hercules, I have made use of my skill and experience of the promotions and direct marketing industries in the development of the Shell SMART programme. Option One and Shell UK Limited consulted widely, commissioned market research, kept abreast of the latest technology and ultimately created a tailor-made scheme suited to Shell's individual requirements. In summary, SMART has evolved in response to a number of stimuli; but those stimuli did not include Mr Donovan's 'multibrand loyalty concept'.

IV was suggested to Mr Caserby by DM in April 1992

Previous Litigation

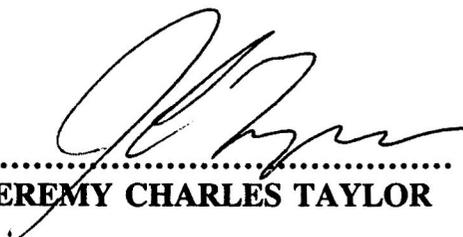
24. Finally, I am informed that Mr Donovan wishes to revisit some of his previous legal actions against Shell UK Limited. Below I briefly set out my involvement in relation to those matters.

25. Shell were looking for some short-term promotion in the immediate run-up to launch of SMART in 1994, which would maximise its customer base at launch. The revival of the successful Shell Make Money promotion was suggested by someone within Shell. Sarah Bruce and Karen Gillon of Option One worked on this promotion and Charlie Fox of Shell dealt with the promotion internally at Shell. Charlie Fox indicated that Don Marketing had claimed rights over the promotion and he was asked to look into this question. Institutional searches of the UK patent and trademark registers were undertaken. Karen Gillon of Option One dealt with the matter, on 5th October 1993 she received a letter from Withers & Rogers patent attorneys, confirming that the name Make Money was not registered as a trademark and there was no relevant patent protection. Option One suggested changing the name of "Make Money" and making some changes to the way it worked but in the end the name was retained and entirely new artwork was created for the promotion. It did not seem that Option One or Shell could run into any difficulty with Don Marketing, but I understand that in fact they did issue proceedings in relation to the proposed launch.

26. I am also aware that Don Marketing brought proceedings in 1994 over the Now Showing promotion. This promotion ran from July 1994. Shell asked five different agencies to tender for a promotion. Tequila UK were successful, their promotion included cinema tickets. Option One had also tendered for this promotion with a proposed link up with Blockbusters, this idea was incorporated into the Now Showing promotion and Option One were paid a fee for brokering the connection between Shell and Blockbusters.

I confirm that the contents of this statement are true to the best of my knowledge and belief.

SIGNED


.....
JEREMY CHARLES TAYLOR

DATED

..... 12th APRIL 1999