

**IN THE HIGH COURT OF JUSTICE**

**CH 1998 -D- No. 2149**

**CHANCERY DIVISION**

**BETWEEN :**

**JOHN ALFRED DONOVAN**

**Plaintiff**

**- and -**

**SHELL UK LIMITED**

**Defendant**

**(By Original Action)**

**AND BETWEEN**

**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**

**JOHN ALFRED DONOVAN**

**JOHN ALFRED DONOVAN** of Maplebank, 4 Parkside, Ixer Lane, Bradfield Combust, Suffolk IP30 OLR, **WILL SAY** as follows:

1. I am a carer for my mother and father, Beryl and Alfred Donovan (with whom I live at the above address). I receive income support. Don Marketing UK Limited, the company that I founded, is not trading.

2. In 1966/7 I worked with my father on the origination, development and marketing of our first sales promotion venture, a promotional game supplied to petrol retailers designed to compete with Green Shield Stamps. Over 500 Cleveland and Fina petrol stations joined the scheme, called Freeline Football. The promotion ran soon after the original "Make Money" game, which was a huge success for the Shell/BP Group. They both ended for the same reason - concern over legality. In the meantime, the garage group continued to flourish and in the same year, at the age of 20, I took tenancies on two petrol stations. One, a Fina station in Colchester, Essex and the other a Cleveland station in Chadwell Heath, Essex.

3. In 1968 my father retired from the day-to-day management of the garage group because of ill health and I took over running the garage group. I had the ultimate responsibility for all forecourt promotional activity. This involved a succession of promotions and competitions. During the subsequent years, apart from being a joint owner of the garage group, I also traded in commercial properties by purchasing potential sites, obtaining planning permission when necessary and selling the sites on to developers, including Heron Service Stations Ltd and Conoco (Jet Petroleum). In 1976, I turned my attention back to promotional games and was able to devise a legal way of operating promotional games on petrol forecourts.

4. In 1979, I sold the last garage owned by my family, having previously disposed of all of the other properties. During the same year I founded a sales promotion agency (Don Marketing Management Limited), with my father, his brother and a Chartered Accountant. We traded under the name of "Don Marketing" (DM). I was appointed as Managing Director. We specialised in petrol promotions, initially "Freeline Football" and subsequently "Top Cash". These were supplied to independent petrol retailers and small chains such as the Blue Boar Group. The games were marketed via monthly A4 advertisements in the petrol retailing trade press in an advertising campaign that continued over several years. We also supplied eleven small-scale promotions to Conoco for their Jet Stations. We worked for BP Oil on a consultancy basis devising contingency plans and supplied tactical promotions to Texaco. None of the petrol promotions supplied at that time were operated on a national basis.

5. Also in 1979, we obtained advice regarding a proposed promotional game linked to "Coronation Street", the TV popular serial. To the best of my knowledge, it was the first promotional game designed to interact with a TV programme. The subject of protecting DMML concepts was also discussed. We were advised that if a promotional idea was genuinely novel and of potential commercial value, it could qualify for protection under the law of confidence.

6. This advice was taken into account when DMML's Trading Terms & Conditions were originated in or around 1980. In addition, we normally printed a confidentiality warning on all proposals whether in the form of a letter or a formal proposal document. At a later date, probably in 1982, we also decided

to print a notice on all Don Marketing letters to prospective or existing clients stating: "Important: All business undertaken in accordance with our Trading conditions, a copy of which may be obtained on request".

7. Our business subsequently expanded outside petrol promotions and we devised and supplied promotions that were conducted across the retail spectrum for major brands, such as Cinzano, Guinness, Carling Black Label, Carlsberg, Schweppes, Argos, Terry's, Osram, Knorr, and many more. We also devised promotions for an Australian Newspaper, a UK supermarket chain and for the brewery trade.

8. I devised most of the basic ideas, which were then developed in collaboration with Roger Sotherton who joined the company in 1979. We spent a considerable amount of time in trying to develop games that had what the Americans call "pizzazz" - the novelty and appeal that can have a huge effect on the success of a promotion. These elements make the difference between a "run of the mill" promotion and one which catches the public imagination, thereby increasing consumer participation and purchase. This is very important when multi-million pound budgets can be invested in a single promotion.

9. Roger Sotherton and I had our first meeting with Shell in May 1981. We met with Mr Paul King to present a proposal for Shell to run a matching halves game. The term "STRICTLY CONFIDENTIAL" was printed on a cover page of the proposal. Our Standard Terms And Conditions were printed on a page inside the proposal. Clause 3 (a) set out the basis on which proposals were submitted to potential clients as follows: "All promotional game concepts and ideas submitted to a prospective customer are submitted in accordance with the terms stated on the proposal and on the understanding they will be considered in strictest confidence and that no use shall be made of the relevant concepts and ideas, or any game format variation thereof, without the express prior consent of Don Marketing. Design, formats and mechanics illustrated on visuals supplied with or without a proposal, are proprietary to Don Marketing and are provided as initial examples of possible executions of the basic proposed concepts and ideas." Clauses 13 and 20 also covered our proprietary rights. Mr King made it plain that Shell insisted on confidentiality being attached to all discussions about promotional plans.

10. The meeting stemmed from my realisation that the new legal format we had devised for small scale petrol promotions would allow Shell to run on a national basis a new version of the USA devised "Make Money" matching halves game that they had used with spectacular success in 1966. All of the elements in the new Make Money concept, including the legal format of the game pieces being issued on a "no purchase necessary" basis, were already in the public domain. Nonetheless, no one had combined the elements to form the Make Money concept that we put forward to Shell. I used my expertise and ingenuity to create a legal Make Money game. Mr King was sceptical about the legal position but at the same time keen on the prospect of Shell running a Make Money game again if we had truly cracked the legal problem. Shell had ended the 1966 promotion earlier than planned because of fears that the Police would bring a prosecution. The 1966 game involved a combination of skill and chance. DM's new concept was based solely on chance, with game pieces being distributed on a "no purchase necessary" basis.

11. We offered to supply a legal opinion at our cost confirming that our new format made the game legal. Mr King accepted the offer on the basis that Shell would contribute towards design costs in return for joint rights to the new version of the game. This agreement was recorded in an exchange of letters. Right from the outset, confidentiality was the cornerstone of the relationship between Shell and DM.

Shell respected the confidentiality attached to our ideas. We respected the confidentiality attached to their promotional plans. The letter I received from Mr King setting out the joint rights agreement between Shell and Don Marketing was marked "CONFIDENTIAL", as was the envelope in which it was delivered. In both instances the word was double underlined. Both items are in discovery.

12. During 1981, I devised a skill based scratch card game with a "Space Invaders" theme for the "Shredded Wheat" breakfast cereal brand. A game card supplier printed some sample cards to our initial design. The design and format was subsequently changed after we received instructions from the client, Nabisco. The game was featured on 6 million packs. To the best of my knowledge, this was the first instant win scratch card game in the world with a video game theme. Mr Dudley George, the relevant Nabisco brand manager, subsequently advised us that the concept had generated the largest participation ever achieved in a Shredded Wheat promotion. He also said that he had received a letter from Rear Admiral Sir "Sandy" Woodward, the Commander of the Falklands Invasion Force, praising the game, which had been hugely popular with his naval forces and as such, helped to keep their minds occupied at a time of high tension. A report about his letter was published in the November 1982 edition of Incentive Marketing and Sales Promotion magazine.

13. In 1983, I devised the "Great Guinness Challenge" that was launched in over 25,000 pubs and clubs. The game was printed in the USA using computer controlled ink-jet technology, which allowed us to print a different combination of questions and answers on every one of 10 million cards. Because the promotion format was unique and the scratch card had mechanical aspects we were able to obtain a Patent both in the UK and in some overseas markets. Guinness acknowledged that the concept increased sales of draught Guinness by 30%. Mr Earnest Saunders, the then Chairman of Guinness, credited the idea (in his biography) as being one of the two promotions that turned the fortunes of Guinness around. The promotion won an Institute of Sales Promotion award. Don Marketing has produced over a dozen major promotions using the basic idea, which had the generic name of "Match the Experts".

14. On or around October 1983, Mr Paul King contacted me regarding the Make Money proposal. Shell had decided to adopt our legal format and opted for a scheme in which imitation currency half notes were hidden in sealed envelopes. Basically, drivers had to obtain two matching halves, a left and right hand half note of the same value, to win the relevant prize. Although we were not entirely happy with the terms that were agreed for our involvement, we anticipated that the game would lead to further work from Shell, which it did, and that we would be able to improve on the financial arrangements in respect of subsequent promotions. We also successfully achieved the latter objective.

15. Our responsibilities to Shell for the Make Money scheme included: -

- Advice on the design and construction of the game pieces
- Drafting the rules
- Devising a prize fund structure
- Arranging game insurance
- Security marking of high value prizes at the printers
- Advice on security at all stages of production and distribution
- Advice on handling the verification and payment of low value prizes
- Handling verification and redemption of major prizes

16. The Make Money promotion was launched in February 1984 and ran for around six weeks. It should have run for longer, but the promotion caught the imagination of the media and the public to the degree that Shell had problems keeping their stations supplied with enough fuel to meet demand. They soon discovered that they had not ordered enough game pieces. Several members of our staff appeared on the Michael Aspel TV programme in a feature about the lengths to which some motorists were going in their attempt to obtain matching halves. John Chambers, who had joined DMML as its Managing Director, was interviewed on the Today programme on BBC Radio. There were numerous articles in the National Press. News of its huge success even reached USA publications. Shell graciously gave DMML full credit for the promotion. One article quoted Shell UK's Advertising Manager as saying that Shell had accepted the argument Don Marketing had been putting to them in favour of Make Money for as much as two and-a-half years. In March 1985, the promotion won DMML an award from the Institute of Sales Promotion. DMML's Make Money game has been acknowledged by leading figures in the sales promotion profession as one of the most successful promotions ever conducted in the UK.

17. While the promotion was still in progress, John Chambers and I suggested in strictest confidence a multibrand version of Make Money in 1984 to Mr John Smeddle, Shell's Retail Sales Manager, and Mr Ken Danson, Shell's Sales Development Manager. They agreed to respect the confidentiality attached to the informal proposal. The idea was that a number of other major retailers, such as Woolworth's, would all give away Make Money half notes with the effect that a half note received in a Shell station might match with one received at Woolworth. We suggested the concept during lunch at a French restaurant in Covent Garden. We were there as Shell's guests because they were delighted by the increase in petrol sales generated by the Make Money promotion. The success was so immense that they were cautious about adopting the multibrand concept because they feared Shell's tanker fleet would have even greater difficulty in keeping up with demand for a massive scheme likely to have even greater impact. No one had previously conducted such a promotion. In the same year, 1984, DMML developed Make Money games for Shell Singapore and Irish Shell which when launched, produced substantial additional revenues for DMML and great success for Shell in both markets.

18. When the UK Make Money game was coming to a close, Shell was considering how they could capitalise on its huge impact by launching a follow-up game. A director of their artwork design company suggested a promotional game based on "Mastermind", the popular BBC TV series. Shell liked the idea, but was faced with the apparently insurmountable problem of translating the ultimate game of skill into a format suitable for a promotion on petrol forecourts. The last thing Shell wanted was for drivers to be sitting in their vehicles whilst trying to solve a brainteaser on a game card. When neither Shell nor the design agency were able to find a way of achieving this objective, the challenge was passed on to DMML. During a "brainstorming" creative session at DMML, we hit on the creative solution. We devised a simple concept, which fully exploited the Mastermind theme. To the best of my recollection all of the documents we submitted to Shell in respect of the Mastermind project were routinely marked as being confidential and were accepted by Shell on that basis. Shell Mastermind was launched in the summer of 1984 for a ten-week promotion. I negotiated a licensing fee on Shell's behalf with Invicta Plastics, the company who owned the rights to Mastermind. Because the Design Company had proposed the theme, DMML did not claim a concept fee. We did however receive a print commission on the 96 million game pieces printed for the promotion. Over 3 million prizes were on offer. The promotion was supported by a national advertising campaign, which included a series of humorous commercials on the ITV network.

19. Media interest in promotional games, as a result of the spectacular success of DMML's Make Money game, led to DMML and their work for Shell on the Mastermind game being featured in "The Money

Programme" on BBC TV. A number of DMML staff appeared in the programme that also featured an interview with John Chambers. By this time, Shell had become far and away our most important client.

20. While the Mastermind game was in progress, Shell invited us to present proposals for a promotion to run in the Christmas period of 1984. Roger Sotherton and I devised a "Make Merry" scratch card game linked to Harrods, with the idea that Shell would give away on their forecourts millions of Harrods food prizes. Before we disclosed the concept to Shell, Roger Sotherton discussed initial arrangements with Harrods for the design of the card and the supply of Harrods food product prizes. The concept was enthusiastically accepted by Shell. Again, to the best of my recollection our proposal to Shell was made on a strictly confidential basis with the documents marked accordingly. We negotiated the purchase of over £2 million pounds worth of goods from Harrods on behalf of Shell, including 6 million mince pies. The promotion was launched in the last quarter of 1984. Shell agreed to pay DMML a print commission plus a concept fee of £15,000 if I recollect correctly. Shell subsequently agreed that DMML's name be printed on the reverse of the scratch cards, so that DMML was given due credit for devising the game. The legend on the scratch cards stated: "A DON MARKETING GAME". There was no mention of a pre-existing similar concept. We would not have sought a concept fee if there had been one. Nor would we have asked or expected the above credit to be printed on 76 million scratch cards.

21. The novelty of a scratch card game on Shell forecourts offering £2.5 million of Harrods Xmas themed prizes again caught the attention of the national media, including the press and TV. Channel 4 News broadcast a feature on the promotion including a segment filmed at Harrods, which showed the type of goods available to someone winning the £10,000 Harrods Shopping Spree prize. The feature also included an interview with John Chambers, filmed at Shell-Mex House, in which Roger Sotherton also appeared.

22. Consumer research conducted following these promotions and a host of games launched by Shell's competitors indicated that the public was becoming sceptical about the chances of winning a prize in promotional games. As economics dictate that most game cards are pre-determined "losers", on average, only about 1 in 30 game cards contained a prize. To counter such pessimism, I devised a unique concept for an "Every Card Can Win game in which every card contained a hidden winning combination. It was called "Bruce's Lucky Deal", a playing card themed game linked to Bruce Forsyth, the host of the TV game show, "Play Your Cards Right". To the best of my recollection all of the DMML proposal documents to Shell relating to the concept were routinely marked as being strictly confidential and were accepted by Shell on that basis. Over £4.5 worth of prizes were on offer. The novelty of the promotion launched in the summer of 1985 once again generated media interest. An article in the Financial Times mentioned that the order for 4 million packs was the world's largest ever purchase of playing cards.

23. For Bruce's Lucky Deal – a further short-term promotion, DMML received the sum of £50,000 as a concept fee, plus a print commission of 17.65% on the game cards. We were also paid fees totalling £48,000 in respect of drafting the rules, developing the prize fund, originating scratch card variations, and for handling the verification and payment of major cash prizes. Shell again agreed that credit should be given to Don Marketing for devising the concept. The legend: "A GAME DEVISED BY DON MARKETING" was printed on every game card. There was no mention by Shell of a pre-existing similar concept. We would not have sought a concept fee if there had been one. Neither would we have asked or expected Shell to agree, as they did, to the above credit being printed on 85 million scratch cards.

24. Because of the close working relationship which had been established, we often became very heavily involved in a Shell UK project, as we did with "Bruce's Lucky Deal", before terms had even been agreed. This is evident from the wording of the Shell Special Field Order issued to DMML dated 26.2.85 when it stated "Final Fee Costs yet to be agreed".

25. Shell never had an on-going contract with us. Consequently they were open to promotional ideas submitted by other agencies from home and overseas. Our proposals were assessed on sheer merit. My colleagues and I were therefore extremely proud that Shell had opted for a series of DMML concepts, which were all secure and achieved an excellent reputation for Shell as having the most memorable promotions on UK forecourts. We enjoyed a friendly working relationship with Shell managers. An assessment of their high regard for our work can be made from the letter we received from Mr Danson thanking us for our work. Shell also recommended DMML to colleagues within the Shell group. Shell Advertising Manager, Mr Michael Beach, kindly recommended our services to the Bass Brewery Group.

26. DM regularly placed whole page advertisements in trade magazines such as Marketing Week. A marketing magazine informed me in or around 1985 that when they had carried out a survey to establish the best known promotional agencies, DM's name topped the poll.

27. In the autumn of 1985, DMML presented a "Lets Go Racing" concept to Shell UK that I had devised. To the best of my recollection the proposal was marked as being "STRICTLY CONFIDENTIAL" and was accepted by Mr Ken Danson of Shell on that basis. The idea was well received but budget was unavailable. Since Shell were anxious to hold the idea it was agreed in an exchange of letters that Shell would pay the unused balance of the Bruce's Lucky Deal prize fund of some £15,000 for an option on the idea. The letter from Shell was dated 12th November 1985. There was no mention by Shell of a pre-existing similar concept. We would not have sought or expected an option fee if there had been one.

28. In 1985/6, competition for petrol sales grew more intense. As a result, we again put forward the multibrand version of Make Money to Shell. This time they gave us permission to put together a consortium of major retailers with a view to mounting the largest promotional game ever conducted in the UK. We approached Woolworth, Bass, Express Newspapers and Sketchley. All agreed to participate in meetings with Shell. DMML organised and chaired numerous meetings between the parties over several months. Consumer research was carried out and when the promotion reached an advanced stage of development, the prospective partners attended a presentation by Leo Burnett advertising agency (for whom John Chambers now worked) with a view to appointing them to handle the publicity campaign. We also obtained at our cost a legal opinion confirming the promotions legality. Extensive market research of the possible prizes in the promotion was also carried out. The main prize, which all the potential partners accepted, was a free readymade multi-line entry on the football pools. DMML had arranged to receive a commission from Zettors International Pools in respect of every prepaid pool's coupon issued. This element alone would have generated a substantial income to DMML.

29. It is interesting to note that even at his time, our thinking was turning towards the possibilities of a Multibrand Loyalty Concept. The proposal entitled "Project 100" presented to the consortium in June 1986 specifically included a brief proposal for a Multibrand Loyalty Concept, which amounted to a single paragraph at the end of a 41-page presentation of the MegaMatch concept. Every page was marked "STRICTLY CONFIDENTIAL". We had enhanced the confidentiality aspect of the proposal because of a leak to Marketing Week magazine about the project. The relevant paragraph stated: "Successful co-

operation in this promotion may also lead to future joint promotional projects for premium or continuity programmes which could also take advantage of the vast purchasing power of the Project 100 consortium to minimise unit costs. Such a joint venture would provide consumers with an opportunity to collect a particular premium item or a full set of items in a relatively short time". There was no mention of a loyalty card element. It predated ALL multi-collection schemes, including Air Miles and Premier Points. It also predated Shell's "Collect & Select" scheme. Although DM had organised a consortium involving Shell, Woolworth, Bass Brewers, The Daily Express and Sketchley, the scheme had to be shelved when Shell decided to move into a long-term collection scheme.

30. The prospective partners were on the verge of signing a participation contract that had been prepared by our lawyers when Shell decided against proceeding. Their withdrawal brought the project to an abrupt end. Shell had decided on a major change in marketing policy from short-term promotions, to a long-term voucher collection scheme, which they were perfectly entitled to do. However, the sudden abandonment of the multibrand project, which we had developed without any financial commitment from Shell, and the termination of any other business from them as a further consequence of their change in policy, left DMML in an exposed financial position. Within a few months of Shell's withdrawal, DMML ceased trading. The decision by Shell was therefore an important factor in the demise of the DMML.

31. In the autumn of 1986 I put the company into voluntary liquidation. I negotiated the purchase of the rights to all Don Marketing concepts from Radford Sons & Co, who were appointed as liquidators. The rights included the goodwill attached to the name "Don Marketing" and the patents for scratch card games.

32. Roger Sotherton started a sales promotion agency and I worked with him from 1987 using the Don Marketing business name for any game promotion proposals that were put forward using concepts that I had originated. We dealt mainly with brewery companies in the following years. We also had lunch from time to time with Mr Paul King (by then appointed as Shell's National Promotions Manager) whenever he visited our offices at the Bentall Centre in Heybridge, Essex. Some time during this period (I cannot recall the date) I supplied Mr King with research results that indicated that motorists were losing interest in long term collection schemes. The main problems being the time taken to collect up enough points for a worthwhile gift and the aversion to sticking stamps on a collector card. It was these findings that led me to think further about the possibility of a Multibrand Loyalty Card Scheme which built on the idea of a Shell led MegaMatch consortium of major retailers all distributing a common promotional currency. Research subsequently commissioned by Shell produced similar findings. The independent research had been carried out at my suggestion.

#### The Multibrand Loyalty Concept

33. In the latter part of 1989, probably in September, Paul King contacted me and arranged a meeting to brief us on the latest possibilities for Shell promotions, which included a potential return by Shell to the short-term promotions in which DMML had specialised. He asked if it would be possible to inject some immediate excitement to Collect & Select by introducing a game element. He also invited proposals for "sweeping up" unclaimed points in case Shell decided to terminate Collect & Select. In addition, he wanted ideas for short-term promotions that could be topical and flexible. In particular, he was seeking a "blockbuster" to mark any such return to short term activity. He also invited us to propose a new long-term collection scheme, which could address the failings in schemes such as Collect & Select, which the research had identified. Given the business opportunities in prospect with Shell, I immediately took

steps to set up Don Marketing UK Limited and invited Roger Sotherton to join the company, which traded initially from offices at 27 Ipswich Street, Stowmarket, Suffolk.

34. By way of further background information, I worked closely with Roger Sotherton in every aspect of the company's activities. It became standard practice for him to be involved in all letters sent out by DM. I normally drafted them. He contributed towards the content and normally carried out the final proof reading. While I concentrated on trying to devise new ideas and took prime responsibility for preparing draft proposals, Roger Sotherton helped to devise a workable mechanic to exploit each idea and also dealt with the design aspect. In addition he had over the years become an expert on print production of secure game pieces and the video verification of prize claims. He also normally made all presentations to potential clients. The only exception was Shell, when we always made joint presentations.

35. In response to the verbal briefing from Paul King two DM proposals were prepared. All of our accumulated knowledge about the failings in past loyalty schemes gained by our research was carefully taken into account when creating the Multibrand Loyalty Card Scheme. Our staff carried out some informal market research in Stowmarket shopping centre, which although limited confirmed the previous findings. Our thinking also took into account our assessment that Shell would prefer to organise its own multipartner loyalty scheme rather than a third party company being in control i.e. Air Miles. We also wanted to bring loyalty schemes into the electronic age by dispensing with any paper collection involvement i.e. stamps or tokens. All of these important factors were taken into account in devising an answer to the brief.

36. A proposal dated 23<sup>rd</sup> October 1989 contained three concepts for short-term promotions plus one for a long-term loyalty scheme. They were initially discussed with Mr King and his assistant, Mr Tim Hannagan, at the Veccia Riccione Restaurant in Upper St Martins Lane, London on or around 23<sup>rd</sup> October 1989. I have a vague recollection that the date may have been put back by a week. Mr Hannagan arrived first, about half an hour in advance of Mr King, who had been delayed on a journey. We understood from Mr Hannagan that his function was to deal with all matters relating to point of sale display. He said that he worked closely with Paul King. We engaged in further small talk until Mr King's arrival. I then reminded Mr King and Mr Hannagan that the ideas were being put forward on a strictly confidential basis. The proposal was marked accordingly on the cover page. We discussed the various ideas in general terms. They were receptive to concept 1, the Disneytime scheme, but had little interest in concept 2, a Monte-Carlo themed game, nor in concept 3. With regard to Concept 4, they liked the idea of an accelerated means of collecting points and the high visibility of the multibrand aspect involving a number of major partners issuing a common promotional currency. Mr Hannagan expressed some concern about the prohibitive costs of setting up a loyalty card operation, particularly if smart card technology was adopted. The MegaMatch concept was raised during the discussions and it was agreed that it shared many of the virtues of the Multibrand Loyalty Concept - economies of scale, greater visibility and enhanced participation. Roger Sotherton and I walked back to Shell-Mex House with them and continued the discussions with Mr King. Mr Hannagan had other business. We discussed the Multibrand Loyalty Concept again with Mr King and eventually left two copies of the proposal document with him. Mr King said that Shell was more likely to move to short term promotional activity but an eventual return to a loyalty scheme was probable and that would be the time when our multibrand idea could become very attractive to Shell.

37. On or about 19<sup>th</sup> February 1990, Paul King visited our Stowmarket offices and provided a verbal brief during a discussion with Roger Sotherton and myself. He informed us that the Disneytime game was

the most popular of the concepts researched, but he had reservations about the licensing fee likely to be demanded by the Disney Company. The initial visual used in the research had no Shell branding. It was agreed that we would prepare a revised format and include it within a raft of the alternative concepts that we had discussed. Mr King volunteered to pay £1,500 towards our artwork costs. He also asked us to develop some ideas for the new "Select" stations being opened. He subsequently supplied us with an undated background-briefing document for the "Select" project. Mr King also decided during the meeting to give serious consideration to our MegaMatch multibrand concept formally known as Project 100. He thought that it was a further prime candidate for the "blockbuster" promotion. He gave the concept the working name of "Project Harbour". We also had a brief discussion about the Multibrand Loyalty Concept regarding its distinct advantages over the Collect & Select scheme. Mr King still viewed it as a future prospect but asked for our permission for him to approach Tesco Stores for exploratory discussions on both concepts. We gave our consent on the basis that he would ensure that the idea was disclosed in confidence. I have no knowledge of whether the Multibrand Loyalty Concept was in fact ever put to Tesco. Certainly Mr King's primary interest at the time was in the MegaMatch proposal. Because Mr King remained uncertain about Shell's future plans, he requested more ideas.

38. On 19<sup>th</sup> March 1990 I sent Paul King a letter regarding Project Harbour, Mr King had by then approached Tesco via their retained promotional agency ("FKB" - Francis, Killingbeck, Baines). I do not know whether Mr King informed FKB about the loyalty scheme or whether FKB put it forward to Tesco (FKB subsequently went into liquidation). Having received a favourable response from Tesco in regard to the MegaMatch concept, Mr King had asked us to supply an indication of the estimated costs. He needed the information in advance of putting the scheme up for Shell management approval. The information was supplied in another DM letter that I sent to Mr King also dated 19<sup>th</sup> November 1989. Tesco was the "original potential partner" referred to in my letter. Mr King subsequently advised us that Shell Retail Manager, Mr Jim Slavin, had turned down the MegaMatch multipartner proposal on the basis that Tesco was "too downmarket" to be a partner of Shell. The letter of 19<sup>th</sup> March also dealt with "THE POINTS SWEEP-UP" objective in relation to the potential termination of the "Collect & Select" scheme.

39. On 14<sup>th</sup> May 1990, I faxed a reminder letter to Paul King about a "Sherlock Holmes" themed game concept we had proposed. By that time, Mr King had opted to step down as National Promotions Manager and instead, acted as a Promotions Co-ordinator. A favourable response came in the form of a letter dated 30<sup>th</sup> May 1990 from the new National Promotions Manager, Mr Stuart Carson. On a separate compliment slip, Mr Carson requested a copy of our trading terms and conditions, which we subsequently supplied in a letter to Mr Carson from Roger Sotherton, dated 31<sup>st</sup> May 1990.

40. In or around June 1990 we heard from Paul King that a licensing deal had come unstuck on a Disneytime concept that we had put forward to Shell. We had also lost the MegaMatch multibrand promotion because Shell had decided that Tesco would be an unsuitable partner. The news was devastating, particularly in view of the considerable amount of time we had invested in both projects on a speculative basis. We immediately circulated a mail shot teaser letter to UK retailers, including J Sainsbury Plc. Mr Brian Horley of Sainsbury replied on 20<sup>th</sup> JUNE 1990.

41. I had a telephone conversation with Stuart Carson regarding the response received from Sainsbury's. He gave me his approval on behalf of Shell for DM to explore with Sainsburys the prospect of a Shell led consortium for a MegaMatch game. My letter to Stuart Carson dated 25<sup>th</sup> June 1990 confirmed the details of my telephone discussion with him.

42. On 10<sup>th</sup> July 1990, I sent a letter to Sainsburys with details of the Disney themed "Every Card Can Win" game. The letter also invited Sainsburys to enter into exploratory discussions about the multibrand game. It correctly stated that DM's approach was made with the knowledge and approval of Shell. The statement "STRICTLY CONFIDENTIAL" was printed on the first page of the letter together with the legal notice about our trading conditions. A few days later I telephoned Mr Brian Horley, the Advertising and Marketing Manager of J Sainsbury plc. He had not had time to consider the proposals and asked for a few more days. I reminded him that both ideas Disneytime and the multibrand game were highly confidential. I said that my colleague, Roger Sotherton, or myself would call him after a few more days to set up a meeting.

43. On or around 20<sup>th</sup> July 1990, Roger Sotherton advised me of the outcome of a telephone discussion with Mr Horley of Sainsbury's. Although the discussions were initially about the MegaMatch game, Roger Sotherton had decided to disclose the Multibrand Loyalty Concept having concluded that it would be more appropriate for Sainsbury's. He said that Mr Horley had undertaken to respect the confidentiality of the concept. To ensure that the results of the discussions were accurately recorded, Roger Sotherton and I drafted a letter to Sainsburys, which Mr Sotherton faxed to Paul King at Shell on or around 20<sup>th</sup> July 1992 on the basis of seeking his approval of the draft.

44. Roger Sotherton subsequently had a telephone discussion with Paul King after Mr King had spoken with his managers. Roger briefed me on the outcome of the discussion. Mr King had asked for some minor changes to be made to the letter and also requested an option on the Multibrand Loyalty Concept because he did not want another oil company to replace Shell. I agreed an option basis with Roger Sotherton, which I thought would satisfy Shell because they would not have to find any extra budget to secure the option. Basically, if Shell contracted with us for the multimillion pounds Star Trek project that we had just put forward to them, Shell would automatically secure an option on the Multibrand Loyalty Concept. We put no time limit on the option because of the uncertainty of Shell's plans and the likelihood that they would be running short-term promotional activity for a few years. Roger Sotherton telephoned Paul King to advise him of the option terms. As we expected, Mr King agreed.

45. On 24<sup>th</sup> July 1990, Roger Sotherton wrote to Mr Brian Horley at J Sainsbury plc. Roger Sotherton and I had amended the letter in accordance with the instructions that Mr King had given over the telephone to Roger Sotherton. The statement "STRICTLY CONFIDENTIAL" was printed on the first page. We also supplied Sainsburys with a copy of Concept 4 from the 23 October 1989 - the Multibrand Loyalty Concept, plus the cover page of the proposal, which contained notices regarding confidentiality and our trading terms. The reference in the letter to being "too down market" was in relation to the comment about Tesco made by Shell Retail Manager, Mr Jim Slavin. Stuart Carson had asked Mr King to deal with the matter because Mr Carson was heavily involved in the Star Trek project. Mr Sotherton was dealing with the loyalty scheme on DM's behalf, because I was extremely busy co-ordinating the implementation with Stuart Carson of a Star Trek themed multimillion pounds promotion that I had put to Shell and which Shell decided to adopt.

46. I was however involved in drafting the letter that Roger Sotherton sent to Paul King on 24<sup>th</sup> July 1990 confirming the basis on which the letter to Sainsburys had been agreed by Shell. He also confirmed the terms of the agreed option on the Multibrand Loyalty Concept. We also supplied to Mr King a copy of the finalised letter to Sainsburys together with a Leo Burnett memorandum concerning rights to the Project 100 proposal that Roger Sotherton and I had put to Shell in June 1986.

47. In October 1990, I received a telephone call from Mr Mark Foster, Shell's Marketing Communications Manager. He advised that Stuart Carson had left Shell. Mr Foster indicated that since Shell now had time to reconsider matters (due to the Gulf War), he wanted DM to put some ideas up for comparative research against the Star Trek concept. Shortly thereafter, Mr Sotherton and I met with Mr Foster at Shell-Mex House. As Shell's entire plans seemed to be under review we mentioned that Shell still also had an option on the Multibrand Loyalty Card Scheme. Mr Foster clarified the situation by indicating that Shell was still intent on short-term activity but would keep the Multibrand Loyalty Concept in reserve.

48. On 13<sup>th</sup> March 1991, I wrote to Alan McNab regarding further prospective concepts. Roger Sotherton and I had a meeting with him at Shell-Mex House on or around March 1991 and discussed future prospects. We raised the subject of the Multibrand Loyalty Card Scheme during the course of the meeting but were advised by Mr McNab that he was focusing on short-term activity. We also discussed Shell's loyalty scheme for truckers.

49. Promotions & Incentives magazine ran a cover story on the Star Trek promotion in their July/August 1991 edition. A 5-page "case study" was printed under the headline "Hang on! I've got a new idea." The content of the article is relevant to the origination of the Star Trek concept and the key events in which I was involved that led to the origination of the Shell Smart Multibrand Loyalty Concept. A copy of the article is in discovery.

50. Mr King advised me in April 1992 that a new National Promotions Manager, Mr Andrew Lazenby, had been appointed. He suggested that I should get into contact with Mr Lazenby to ensure that he was fully aware of our successful track record with Shell and of the ideas available, including the multibrand schemes.

51. On 27<sup>th</sup> April 1992 I sent an introductory letter to Mr Lazenby. It was marked "strictly confidential" and "IMPORTANT: All business undertaken in accordance with our Trading Conditions, a copy of which may be obtained on request". I followed up the letter with a telephone call to Andrew Lazenby who readily agreed to a meeting to be held at Shell-Mex House on 12<sup>th</sup> May 1992. As far as I was concerned Mr Lazenby was just one of many Shell managers who we came across in our business dealings with Shell. We expected that his conduct would be in keeping with the high ethical standards and the mutual trust that we had always enjoyed at Shell with all of Mr Lazenby's predecessors.

52. On or around 12<sup>th</sup> May 1992, Roger Sotherton and I presented to Mr Lazenby a proposal headed "PROPOSAL FOR NATIONAL PROMOTION ACTIVITY" (dated 12<sup>th</sup> May 1992). These were the only people present during the entire presentation and discussions. The proposal was marked "Strictly Confidential" and contained our claim to proprietary rights and the normal reference to our Trading Conditions. As was the normal practice, Roger Sotherton spoke initially with a general introduction and then I co-operated with him in presenting the proposals and the visuals. Roger Sotherton took some notes. The two promotional options put forward in the proposal were the "MegaMatch" multibrand scheme and a "Treble Chance". Mr Lazenby described them as "competitions".

53. It was at this meeting that we first discussed the loyalty card consortium proposal with Mr Lazenby, as is evident from the hand-written notes made by Roger Sotherton during the meeting, on the

last page of DM's copy of the 12 May proposal document. When Mr Lazenby said that Shell management had some reservations about running "competitions", Roger Sotherton mentioned that there was an alternative way of implementing a Shell led multibrand scheme using a common promotional currency, which would not be a competition. Mr Lazenby expressed an interest and agreed, at our request, to treat the idea as being strictly confidential. We pointed out that it was being disclosed under the same confidentiality provisions as the other ideas that we had put to him. We explained that it worked on the same basic premise as MegaMatch. A group of major businesses with national representation could all issue and redeem a common promotional currency. The difference would be that the currency would be points or tokens instead of game pieces. Because a variety of outlets would be involved, consumers could save up points much more quickly than by participating in a loyalty scheme operated by a single retailer. This would enable more attractive gifts to be offered in the scheme. We explained how the concept came into being - the Project 100 link and the more recent research findings subsequently confirmed by Shell's own research. Smart card technology could provide a data capture facility. We advised him that Paul King had a copy of the relevant proposal and had retained an option on the Multibrand Loyalty Concept. We also mentioned the related discussions with Sainsburys, which had taken place with Shell's approval. He asked if it would be like an electronic form of trading stamps, but with Don Marketing taking the place of Green Shield. We explained that we had no such ambitions. Shell would be in the driving seat in developing its own Multibrand Loyalty Scheme. We would seek a normal agency role in the promotion, plus a licensing deal and agency commission on promotional materials and merchandise sourced for the scheme. We discussed the possibility of Shell setting up the scheme on a consortium basis in which other partners could share the costs and perhaps even become joint owners with Shell in the scheme. Mr Lazenby said that he might well be interested at a later date. In the meantime, he would obtain a copy of the proposal from Paul King and would ensure that it was retained on file.

54. Because of the interest that Mr Lazenby had expressed during the presentation on 12<sup>th</sup> May, I wrote to him on 14<sup>th</sup> May 1992 enclosing a copy of DM's 1989 proposal that contained Concept 4, "A MULTIBRAND LOYALTY PROGRAMME". It included the cover page of the proposal dated 23<sup>rd</sup> October 1989 marked "Strictly Confidential" and carrying the standard warning, "IMPORTANT: All business undertaken in accordance with our Trading Conditions, a copy of which may be obtained on request". The proposal mentioned "proposed partners" and that the proposed scheme could involve "third parties as co-promoters".

55. On 4<sup>th</sup> June 1992, Roger Sotherton and I had another meeting with Mr Lazenby at Shell-Mex House during which Mr Lazenby specifically thanked me for supplying a copy of the Multibrand Loyalty Concept, which he again confirmed was being retained on file. We had a brief discussion on the subject focused mainly on our research in respect of loyalty schemes.

56. On 16<sup>th</sup> July 1992, Mr Lazenby gave a verbal brief to a Mr Mike McMahon of Concept Systems Limited to approach a variety of potential partners for a Multibrand Loyalty Scheme. Mr McMahon wrote to Mr Lazenby the following day confirming the instructions he had received from Mr Lazenby. The term "complimentary" used in our proposal appeared in the letter confirming the brief. The documents relevant to Mr McMahon were placed in the massive discovery supplied by Shell, which amounted to tens of thousands of pages. I was eventually able to trace Mr McMahon by using an enquiry agent. He subsequently supplied a statement to my solicitors. Mr McMahon has testified that the brief given to him by Mr Lazenby on 16<sup>th</sup> July 1992 the eventual Smart multibrand scheme and DM's multibrand loyalty proposal, "appear to be one and the same". Mr McMahon has also stated that Mr Lazenby mentioned the name of Don Marketing in connection with the Multibrand Loyalty Concept and that Mr Lazenby said

that Shell had an option on the concept. According to Mr McMahon's testimony, Mr Lazenby said in what appeared to be a reference to DM "that he preferred to work with agencies he had chosen not ones that were trying to trade on past relationships". I draw attention in this regard to Mr Lazenby's hand-written note dated 24<sup>th</sup> June 1993. In the note he said that DM was "trading on old boy network + old relationships (PK)". The initial in brackets presumably being a reference to Mr Paul King.

57. As a result of Shell's discovery documents I was also able to trace another individual, Mr John Armstrong-Holmes, who also had dealings with Mr Lazenby during the relevant period. Mr Armstrong-Holmes has supplied a witness statement. He testifies that Mr Lazenby made reference to Don Marketing apparently in connection with a Multibrand Loyalty Concept on which Mr Lazenby had "inherited an option from a predecessor". In the course of checking the entire massive discovery supplied by Shell I found no evidence of an option taken by Shell on any other concepts.

58. On 4<sup>th</sup> August 1992, Mr Lazenby sent me a letter advising that he would not be proceeding for the time being with the MegaMatch promotion. He also stated that he was "speaking directly to a variety of suitable partners..." Since he had not sought our permission, this was a clear breach of confidence. Shell's discovery documents indicate that Mr Lazenby was in fact speaking at that time to suitable partners for the Multibrand Loyalty Scheme.

59. Early in November 1992, I telephoned Andrew Lazenby to set up a meeting to present further proposals. This was arranged for 24<sup>th</sup> November. During the course of the telephone discussion Mr Lazenby mentioned our approach to Sainsburys in respect of the Multibrand Loyalty Card Scheme and asked me to bring along a copy of the final letter to Sainsburys on the matter. Shell discovery documents show that Mr Lazenby had an intense interest in Sainsbury's at that time in direct connection with the Multibrand Loyalty Concept. He devoted a two page typewritten note to the subject a few days earlier (on 28<sup>th</sup> October 1992).

60. On 24<sup>th</sup> November 1992, Roger Sotherton and I presented two further concepts to Mr Lazenby during a meeting at Shell-Mex House. No one else was present. DM's "Hollywood Collection" and "Make Merry" proposals were the main focus of the discussions. At a later stage in the meeting, which lasted for well over an hour, the discussion moved on to the subject of DM's Multibrand Loyalty Concept. We took with us and supplied to Mr Lazenby, a copy of DM's letter to Sainsburys dated 24 July 1990, as per his request during the telephone conversation setting up the meeting. We went through the letter. Mr Lazenby asked a question about the contact with Tesco. We suggested that he should check with Paul King and explained the relevant circumstances. He asked what my personal stake was in the concept. I explained that I had devised the Multibrand Loyalty Concept following extensive research over a number of years. Notes made by Mr Sotherton at the meeting (on a copy of the same DM letter) detailed the understanding reached between Mr Lazenby and DM.

61. We also took with us some copies of the Multibrand Loyalty Card Proposal. Mr Lazenby asked us to justify our description of the proposed concept as being the "ultimate" loyalty card scheme. We explained the background circumstances - how the concept overcame the flaws revealed in Collect & Select type schemes by the research we had disclosed to Shell. That it would put Shell in control of its own multipartner scheme and the way it was developed with partners. We again mentioned the option that Shell had on the concept. We offered to supply a copy of the relevant letter but Mr Lazenby said that this was not necessary. We did not press the point because Mr Lazenby gave a categorical assurance

that although a Multibrand Loyalty Concept would be too ambitious at that time, if Shell adopted it at a later date, he would contact DM to negotiate arrangements for the basis on which we would be rewarded. We could then work with Shell International on any overseas exploitation as per the Make Money game. There was no point in getting into negotiations at that stage.

62. Fortronic's name came up briefly during the conversation. We discussed the possibility of a multi-purpose smart card that could cope with dual promotional currencies – Shell's own currency plus Air Miles, and the possibility of adding a game element to the Multibrand Loyalty Concept. Mr Lazenby was interested in our long experience with schemes involving the football pools and in related legal issues. However, at the conclusion of the discussion we were left with the impression that if Shell did launch their own loyalty card scheme, it would be of the single retailer type, not the launch of the first Multibrand Loyalty Scheme of its kind.

63. There were no further developments in relation to this proposal until I wrote to David Watson on 19<sup>th</sup> November 1993. By then we had been in dispute with Shell concerning our Nintendo promotion for some months and Shell were now threatening to disregard our rights to Make Money. To make our entitlement to the rights clear, I supplied Mr Watson with a copy of the letter from Paul King dated 3rd June 1981 recording the joint rights agreement between DM and Shell UK Limited in respect of the Make Money scheme. I was now very worried about the attitude of Shell's new personal to our rights. Consequently, at the end of the letter I reminded Shell that DM had also presented proposals whereby the common currency – points, vouchers, tokens, etc. are collected or awarded at outlets belonging to the various types of retailer participating in the activity. This was a reference to our Multibrand Loyalty Concept.

64. On 2nd December 1993, I received a letter from Mr Watson responding to my letter of 19<sup>th</sup> November 1993. In addition to rejecting the notion that DM had any rights to the Make Money concept, he went on to assert that the same applied to the Multibrand Loyalty Concept. He conceded that DM "may have rights over some particular promotions based on the concept of various retailers using a common promotional currency..." However, Mr Watson also maintained that the concept was the same type as Air Miles. Plain common sense suggests that Shell would not have spent tens of millions of pounds in the UK (over £17 million to one supplier alone) to duplicate a promotion which they already had. Shell has held the petrol franchise for Air Miles for many years and Air Miles is operated alongside the Smart Multibrand Loyalty Scheme.

65. On 20<sup>th</sup> December 1993, I replied to Mr Watson's letter and concluded the final paragraph by saying: "However, unless Shell is actively considering running one of the relevant promotions, it seems to me that further discussion is unwarranted at this moment. Discussions relevant to a particular concept could be undertaken at the appropriate time, should it ever become necessary". It confirms that I had not the least inkling that Mr Lazenby had been actively taking the multibrand loyalty project forward for many months.

66. On 17<sup>th</sup> February 1994, I received a response letter from Mr Andrew Lazenby. He wrote because Mr Watson had moved to Shell International. He took the same line of argument as Mr Watson in regards to the Make Money scheme. Part of the letter was unintelligible. I telephoned Mr Lazenby on 21<sup>st</sup> February 1994 to discuss matters further. Mr Lazenby claimed that his letter of 17<sup>th</sup> February 1994 "was purely to keep things above the board". As the subject of the Multibrand Loyalty Scheme had

apparently been left to rest on the basis suggested in my letter of 20<sup>th</sup> December 1993, we discussed the matter that appeared to be of current interest to Mr Lazenby – the Make Money scheme.

67. To the best of my recollection, I first became aware of the participation of the John Menzies group in the Shell Smart Multibrand Loyalty Scheme when on 21<sup>st</sup> July 1996, my father gave me a copy of the Sunday Times Business section published on that date. It contained an article about Shell's plans for the SMART card consortium.

68. In March 1997, Shell UK Limited launched an expanded version of the Shell Smart Multibrand Loyalty Scheme in Scotland. I immediately wrote to Dr Fay pointing out that the scheme was based on a concept that we had disclosed to Mr Andrew Lazenby between May and November 1992.

69. In mid May 1997, I met Mr Moody-Stuart and Mr John Jennings at the entrance door of the Queen Elizabeth Centre when I arrived to attend the 1997 AGM of Shell Transport and Trading Company Plc. Mr Jennings immediately recognised me, shook my hand and raised the SMART multibrand claim with me. Mr Moody-Stuart went into the building while I engaged in a friendly and constructive conversation with Mr Jennings. He offered to arrange for me to meet with Dr Fay to discuss the matter. Mr Jennings was exceptionally kind and fair as he always was when I had discussions with him. I explained that after supplying Shell with relevant documents, we had agreed to delay issuing proceedings in return for Shell supplying a report identifying the origin of the scheme and supplying us with associated documents.

70. On or around 1<sup>st</sup> April 1998, I wrote to Mr Mark Moody-Stuart, who had taken over from Sir John Jennings. Mr Moody-Stuart replied in a letter dated 9<sup>th</sup> April 1998 and declined to intervene in the multibrand loyalty claim, so, on 9th April 1998, I issued a High Court Writ against Shell UK Limited after the rights to the DM Multibrand Loyalty Concept had been assigned to me.

#### STAR TREK: THE GAME

71. After hearing the bad news from Shell about the Disneytime and MegaMatch projects I fortunately had the inspiration for a Star Trek themed promotion. It was immediately taken up by Shell. They paid DM a £50,000 concept fee plus a print commission of 17.65% on the scratch cards and additional fees for other services. Shell also agreed that a credit to Don Marketing would be printed on the cards. There was no mention at any time by Shell of a pre-existing Star Trek concept. We would not have sought or expected a £50,000 concept fee if there had been one nor would we have asked or expected Shell to agree, as they did, to the above credit to DM being printed on 100 million scratch cards.

72. Towards the end of August 1990, the Gulf War threatened market stability and Roger Sotherton and I were asked by Stuart Carson to attend a meeting at Shell-Mex House. My faxed letter to Mr Carson dated 31<sup>st</sup> August 1990 dealt with what had been discussed at the meeting. In the penultimate paragraph, I confirmed an arrangement for Shell to hold an option on the Star Trek concept until the end of 1991 without any further concept fee being payable to DM. In my letter to Stuart Carson dated 4<sup>th</sup> September 1990 I again confirmed the points discussed at the Shell-Mex House meeting, but this time on a revised basis agreed in advance with Stuart Carson. It set out proposed DM cancellation fees. The option arrangement remained unchanged from the previous draft. Stuart Carson's response letter dated

7<sup>th</sup> September 1990 confirmed acceptance of the terms, which included a fee of £62,000, plus a "reactivation" fee of £37,500, should Shell decide to proceed with the Star Trek concept. The agreement made by Mr Carson on Shell's behalf, allowed Shell to retain an option to the DM Star Trek concept until the end of 1991. The £4.5 million Star Trek promotion was eventually launched in the third week of March 1991.

### THE AQUA VALET PROMOTION

73. On or around 1<sup>st</sup> July 1992, I wrote to Mr King about a game that we were supplying to Shell to promote its Aqua-Valet car wash units. I stressed on page 2 of the letter that our Standard Trading Terms applied. The letter contained a reference to a previous occasion when we had supplied Mr King with a copy of our trading conditions (in connection with the "Shell Shop Game" or in relation to "Project Harbour"). As a result of a subsequent telephone call received from Mr King, Roger Sotherton sent a letter to him dated 2<sup>nd</sup> July 1992 which enclosed a copy of DM's Trading Conditions.

### THE MEGAMATCH PROJECT

74. As a result of a meeting with Mr Lazenby on 12<sup>th</sup> May 1992, he gave me permission to try to put together a consortium of partners to join with Shell to run a MegaMatch multibrand game. This was the game version of the multibrand principle of a group of retailers all participating in the same epic promotion by issuing a common promotional currency. It involved game pieces instead of loyalty points.

75. The MegaMatch project provided classic examples of Mr Lazenby's blatant disregard for all ethical norms. When I approached Woolworth shortly after the meeting I was informed that another agency had just contacted them on behalf of Shell with the same concept. I asked Mr Lazenby for an explanation and he apologised profusely and said that a misunderstanding had occurred.

76. Some months later after I had put a considerable effort into successfully building a consortium involving Woolworth, Little Chef, the Sun Newspaper and others partners, Mr Lazenby sent me a letter putting the project on hold. To my horror, he causally stated in his letter that he was "speaking directly to a variety of suitable partners and when it looks as though we will be able to get together I will get back to you to develop MegaMatch further". Since he had not sought our permission, I viewed this as a clear breach of confidence. He did not disclose the identity of the "suitable" partners, nor the basis on which he had disclosed our idea when he approached them. As Mr Lazenby was still considering other DM proposals and bearing in mind the financial circumstances of DM, I decided against raising the matter. Shell's discovery documents show that Mr Lazenby was also speaking to potential partners for our Multibrand Loyalty Concept and apparently without any regard for maintaining confidentiality on either of the unique multibrand concepts that I had devised.

## **PREVIOUS LITIGATION WITH SHELL**

### **A. The Make Money Promotion**

77. On 18th June 1993, during a recorded telephone conversation between Mr Lazenby, and myself, he asserted that the Make Money promotion was Shell's property. I informed him of the joint rights agreement between DM and Shell. He replied "I don't care about that, what I'm saying is that if we want to run Make Money again, then we know how to do it, we can go out and do it".

78. It appears from documents disclosed by Shell in discovery that on 15th September 1993, one of Lazenby's assistants, Charlie Fox, sent a note (9653 in Shell's discovery) to a senior Shell manager concerning "OPERATION CUPID" – the project code name for the 1994 Make Money promotion. Under "Key Action" it stated "Finalise Don Marketing's position". On 22nd September 1993, Mr Fox sent a note to David Watson headed "CUPID AND DON MARKETING". In addition to other considerations, the note said: "Ask John Donovan whether he will consider working with Shell again in the future. If no, please put it in writing. If yes, decide if we want to use him for cupid". The correspondence and the recorded conversations provide evidence that no one ever put this question to me.

79. On 28th October, and 1st and 3rd of November 1993, I had telephone conversations with Mr Watson, as per the transcripts. During my telephone discussions with Mr Lazenby and Mr Watson, comments were made about the Make Money game that aroused my suspicion that Shell was surreptitiously moving forward with our Make Money proposal.

80. On 13th October 1993, David Watson wrote a note (10332 in Shell's discovery) recording a conversation he had with John Smeddle regarding the origin of the Make Money game. Mr Smeddle apparently advised "Tell John what we intend to do for running Make Money i.e. whether he will run it i.e. security, distribution of vouchers". I assume that the "John" being referred to was me. An undated Shell document (5274) apparently originated towards the end of 1993 has a hand-written note by an unknown author (probably David Watson) saying "But if Don Mktg suggested it, they may still have rts to it".

81. On 19th November 1993, I supplied Mr Watson with a copy of the letter from Paul King dated 3rd June 1981 recording the joint rights agreement between DM and Shell UK Limited in respect of the Make Money scheme. On 2nd December 1993, I received the letter from Mr Watson responding to my letter of 19th November 1993 rejecting the notion that DM had any rights to the Make Money concept. On 20th December 1993, I replied to Mr Watson's letter which related partly to Make Money and concluded the final paragraph by saying: "However, unless Shell is actively considering running one of the relevant promotions, it seems to me that further discussion is unwarranted at this moment. Discussions relevant to a particular concept could be undertaken at the appropriate time, should it ever become necessary". On 17th February 1994, I received a response letter from Mr Andrew Lazenby mainly in respect of the Make Money concept. He wrote because Mr Watson had moved to Shell International. Unsurprisingly, he took the same line of argument as Mr Watson.

82. I telephoned Mr Lazenby on 21st February 1994 to discuss matters. Mr Lazenby claimed that his letter of 17th February 1994 "was purely to keep things above the board". I mentioned that I had written to David Varney. He replied saying that "we're just drafting a response back on it". I asked Mr Lazenby outright whether a Make Money game was being produced. Mr Lazenby said: "the point is unfortunately John that if we wanted to do something in a years time then we'd have to get it resolved at that stage." I said: "Well I shall just send a short response to this letter confirming what I have

already told you that I have further information...evidence". To which Mr Lazenby replied "Then I'll just send a short response back to you saying I don't believe it". The extracts are in the relevant transcript. I was naturally staggered by his arrogant and dismissive response. Suspecting that Mr Lazenby was deceiving me about Shell's plans; I contacted a reliable source. They confirmed that a Shell Make Money game was into production in North Wales.

83. Our solicitors wrote to Shell's legal department and supplied copies of various documents including the 1981 proposal to Shell, which contained a copy of DM's Trading Conditions. The response letter they received led me to question whether the information I had received was correct. Consequently, I double-checked with the confidential source. The relevant individual again confirmed what they had previously stated.

84. On 21st April 1994, we issued the Writ against Shell UK Limited in relation to the Make Money promotion. Shell subsequently made an out of Court settlement with us. We accepted their offer only after Shell's Solicitors, Mackrell Turner Garrett, gave a 10 minute ultimatum to our solicitors on the evening of Friday 8th April 1994, saying that Shell would switch to an alternative promotion already at an advanced stage of development. Mr Stewart Wilkinson of Royds Treadwell relayed the ultimatum to me over the telephone. I decided under the circumstances to accept the offer. I subsequently deduced from the discovery documents that the alternative promotion was "Now Showing", which became the subject of our third claim against Shell UK Limited. With hindsight it is almost amusing that we were successfully bluffed with our own idea.

#### **B. The "Nintendo" & "Hollywood Collection" proposals**

85. On 4th June 1992, Roger Sotherton and I presented two proposals to Mr Lazenby. No one else was present. As usual, Roger Sotherton made an introduction and I then became involved in the detail as we proceeded through the two concepts that we presented. Both proposals were as usual marked "Strictly Confidential" and bore our claim to proprietary rights and the statement that our Standard Trading Terms & Conditions were available on request. My account of this meeting has been assisted by reading the notes taken by Roger Sotherton during our discussion with Mr Lazenby. If I recollect correctly, we presented the Nintendo game first because we thought that it was the most exciting. We mentioned that we had already approached David Patton at Bandai UK (Nintendo's advertising agents) and had received his approval to present the concept. Mr Lazenby asked whether I had disclosed Shell's name. I let him have sight of our two letters to Mr Patton so that he could see for himself exactly what I had stated. We also let Mr Lazenby read the information supplied by David Patton i.e. the faxed list of Game Pak titles and the brand plans brochure. We discussed the Mega Guide feature about Nintendo published in the Sun newspaper - we had a copy with us. Roger Sotherton showed Mr Lazenby a Nintendo Game Boy unit that we had purchased from Dixon's and mentioned that although he had never played a video game before, he had become hooked on a game called "Tetris". We mentioned that Mr Patton had indicated that he would fund some Nintendo product prizes as a trade off for advertising exposure in the proposed scheme. Mr Lazenby said that this could be a crucial element.

86. Mr Lazenby's own reaction to the idea was that Nintendo was "too child orientated" but he would discuss it with his colleagues to obtain a collective opinion, with a view to possible research and development at a later date. He mentioned that it was more constructive to collect several concepts together before seeking his colleague's reactions. There was little point in showing them one or two ideas at a time. The timing of our proposals was not currently appropriate because his senior management had reservations about "competitions". In any event, we would need to come up with an easier to play format. We explained that the initial visual was mainly to demonstrate that the promotional idea was realisable. He asked us to let Mr Patton know that Shell was retaining the proposal for consideration but that any decision to proceed with the promotion at a later date would hinge on prize support from

Nintendo, agreement on a simplified mechanic and exclusivity in the petrol retailing trade. There was no mention by Mr Lazenby of any pre-existing similar concept.

87. On 24th November 1992, Roger Sotherton and I presented two additional concepts to Mr Lazenby during a meeting at Shell-Mex House. No one else was present. In fact we never had a meeting with Mr Lazenby in which anyone else from Shell was in attendance. DM's "Hollywood Collection" and "Make Merry" proposals were the main focus of the discussions. Notes about Mr Lazenby's reaction to those proposals were hand-written by Mr Sotherton on DM's copies of the proposal. I used the notes to refresh my memory. One concept - "The Hollywood Collection" was for the Q3 period of 1993. The other, "Make Merry" was for the pre-Christmas period. The proposal was marked "Strictly Confidential" and contained our claims to proprietary rights and the reference to our Standard Terms & Conditions. We discussed both concepts at some length. We also discussed the multibrand loyalty scheme, as previously stated.

88. The Hollywood Collection visual was probably the most colourful and exciting that we had ever presented. Mr Lazenby could immediately see the attraction of the concept and commented that the promotion would also appeal to children. I informed him that I had already spoken to Mr Derek Mann, the Chairman of the Video Trade Association (VTA) and that he was keen for his members, including the Blockbuster/Ritz chain (corporate members) to be involved if the promotion got the go-ahead. Roger Sotherton and I had first met Mr Mann in 1991 in connection with a promotion proposal to the VTA that we prepared in association with another agency, Marketing Reflex. Roger Sotherton mentioned some of the additional movie themed merchandise that could be offered, including Film Director themed deckchairs, T-shirts and hats. With regard to the instant win game option, Mr Lazenby expressed some anxiety about whether his legal department would approve the provision for the free entry route. There was also a discussion over prospective partners and mention was made of the Cannon and Odeon Cinema chains. Mr Lazenby said that the concept would be considered for research and development. There was no mention by Mr Lazenby of any pre-existing similar concept.

89. We also discussed the Nintendo proposal. Mr Lazenby thought that the Nintendo concept was becoming more appealing and hoped to include it in the next research project. He still had to sell the idea of "competitions" to senior management. They were still considering making a fundamental decision on Shell's future promotional plans. He hoped that we would remain patient.

90. On 3rd December 1992 I sent a letter to Mr Lazenby thanking for the time he gave to the presentation on 24th November and I made some points relevant to the discussions. On 19th February 1993, I faxed a letter to Mr Lazenby reminding him about two of the promotions in which he seemed most interested and had indicated might be put forward for research and development - the Nintendo game and The Hollywood Collection. On 22nd February 1993, Mr Lazenby faxed my letter back to me with a hand-written message at the bottom of the letter saying: "Thanks John. I'll be back in touch when we've made any further progress. Cheers. Andrew".

91. I telephoned Mr Lazenby on a monthly basis from January 1993 until June 1993. I made no record of the conversations nor do I recall which promotions were discussed in specific months. What I can recall is that he said on more than one occasion that our proposals were on hold pending a fundamental decision by senior management about whether to continue with short term activity or to switch to a long term promotion. Research and development depended on that decision, which was imminent

92. On 18th June 1993, I opened my Daily Mail newspaper and was devastated to read an advert for a Nintendo themed Shell scratch card game. Since I knew that such games could not be produced overnight, it was clear that the project must have commenced before or soon after Mr Lazenby's fax on

22 February 1993. I was shocked by the advert. My father, who is obsessed with electrical gadgets, had purchased a telephone-recording machine some years earlier. I found it and connected it up before telephoning Mr Lazenby soon after 9am on the launch date of the promotion - 18<sup>th</sup> June 1993. Because I was upset, as is evident from listening to the tapes, I had not at that stage properly refreshed my memory on the matter. Mr Lazenby's initial reaction was that he had forgotten that DM had ever put forward such a proposal. He gave a categoric acknowledgement of DM's expertise during the discussion (see page 10 of the relevant transcript). Mr Lazenby also said that he had "no agency relationships". Immediately after finishing the conversation, I telephoned Mr Patton. I was still angry at what had occurred. A transcript of that conversation is also in discovery.

93. I had a further conversation with Mr Lazenby on 18th June 1993 at around 6pm that I also recorded. Mr Lazenby said (on page 3 of the transcript) that he had received 9 or 10 proposals for linkages with Nintendo or Sega. Although I have carefully inspected the discovery documents submitted by Shell, I have not seen any evidence of any such proposals other than the one put forward by BDP, an agency working on the instructions of Mr David Patton of Bandai UK Ltd. On page 18 of the transcript Mr Lazenby said: "Under terms of confidentiality? I don't even know anything about this stuff, you're the expert." During the telephone conversation I also drew his attention to a serious security flaw in the Nintendo game that potentially enabled staff at Shell stations to identify prizes that were supposed to have been concealed under a latex (scratch-off) patch. He accepted that we had identified a problem. I subsequently noticed that Shell continued with the promotion for its full term. I have also seen information in the documents now placed in discovery, that Shell was aware even before I notified Mr Lazenby, that they had a problem with the print security.

94. I wrote to Mr Lazenby on 24th June 1993 setting out our position and, as he had requested, I put forward a settlement proposal in respect of the Nintendo claim. In the penultimate paragraph I stated: "We have always found Shell to be highly ethical and scrupulously fair. It is those fundamental qualities which I will rely on with regard to receiving a just hearing on this matter". A copy of the letter containing hand-written notes by Mr Lazenby is in discovery. On page 5, Mr Lazenby made a comment regarding the subject of agency commission, saying, "we don't now pay agency commission, for the obvious reason (ie £26000)". The sum in the brackets is indistinct but is definitely £26 followed by a series of zeros. Although Mr Lazenby successfully avoided paying agency commission, Shell's own discovery documents prove that Shell ended up with an insecure promotional game.

95. I had a telephone conversation with Mr Lazenby that evening as per the relevant transcript. As can be seen from the transcript (on page 27), Mr Lazenby said: "I'm very disappointed in this John because it looks badly on me when my managers have to keep dealing with this kind of thing. It looks very badly on me." This was the first time I realised that other parties may have had similar experiences with Mr Lazenby. I gave further details of the security flaw in the Nintendo game. During the discussion, Mr Lazenby informed me that some of DM's proposals (he could not recall which ones) were "thrown away"... when he moved offices within Shell-Mex House. He gave me the impression that this was his standard practice when he moved offices. During the same conversation, Mr Lazenby conceded that Nintendo's agents had presented the Nintendo proposal to him and that he, Mr Lazenby, had taken the decision to go ahead with it. This was shortly after his fax to me promising to let me know of any progress on the concept.

96. There then ensued a considerable amount of correspondence all aimed at resolving this dispute without the need for litigation - unfortunately to no avail. I had to issue a Writ but was very concerned when Shell's lawyers wrote that they would ensure that the process would be 'drawn out and difficult'. I tried to get Shell to agree to a mediation and, eventually, they agreed - on condition that both sides agreed to keep all matters concerning the dispute confidential. Unfortunately the mediation was not successful and the litigation continued.

97. On 11th July 1994, Shell launched a motion picture themed promotion called "Now Showing", which had a remarkable resemblance to our Hollywood Collection proposal, which Mr Lazenby had retained under consideration and in due course another Writ was issued.

98. On or around 17th October 1994 I was contacted by a "Marketing Magazine" reporter, Mr Alex Benady, asking questions about the Writ. Although I took the view that the 'confidentiality agreement' had ended with the failure of the mediation, I nevertheless refused to make any comment. I asked him where he had picked up the story. He said that a court reporter had contacted him. A front-page article appeared in the 20 October 1994 edition of the magazine, under the headline: "Shell struck by writ". The article was mainly based on information from the Writ. It did correctly state that I would not comment. However, despite maintaining that the confidentiality agreement was still in force, comments had been made by a Shell spokesperson. I therefore decided that we would henceforth co-operate in supplying information to the media. Many articles subsequently appeared in both the marketing and the petrol retailing trade press.

99. Because of the growing publicity, I was contacted by a number of Shell retailers. Some volunteered information about their experience of Shell's business practices. As a result of the interest, my father and I founded the Shell Corporate Conscience Pressure Group. The inspiration for the name of the pressure group arose from an article in the September 1994 issue of the Shell "Chairman's Bulletin" sent to Shell shareholders, which claimed a culture of "corporate conscience" at Shell. Our membership included Shell retailers, suppliers and shareholders. The pressure group undertook a series of Shell retailer surveys and published the results in whole page adverts in the forecourt trade press.

100. On or around 17th March 1995, Shell UK circulated to the media a press statement headed: "DON MARKETING LIMITED -V- SHELL UK LIMITED. The press release was in respect of the "Nintendo" and "Now Showing" claims. Shell said that: "Don Marketing has no case" and in regard to the activities of the pressure group, that "Shell believes these actions are an attempt to sully Shell's reputation with sensationalist allegations, in the hope that the company may be coerced into settling false claims". On 11th April 1995, my father, Alfred Donovan, issued a High Court Writ for Libel against Shell UK Limited.

101. On 18th May 1995, my father and I attended the Shell AGM and my father put a question to Mr John Jennings (now Sir John Jennings), the Chairman of Shell Transport And Trading Company Plc. He also asked if Mr Jennings would meet with him after the AGM, which Mr Jennings kindly agreed to do. A minute of the exchange during the Question & Answer session is in the document bundle. We had a friendly and constructive discussion with Mr Jennings. He confirmed that he had intervened on our behalf during the Make Money affair and that his intervention had led to a mediation attempt in July 1994. He was puzzled as to why the mediation had not succeeded. We explained the background circumstances and went on to complain that we genuinely felt that Mr Lazenby had treated us very badly and that Shell UK was acting oppressively against a small company. He said that he had spoken to a number of people at Shell and they had all said that I was a decent person. He could not understand why the dispute was still dragging on and on. He had intervened in response to my letter in June 1993 and would "put his shoulder to the wheel again". My letter to Mr Jennings dated 19<sup>th</sup> May 1995 confirming the meeting is in the document bundle.

102. Within a matter of days, I received a call from the Secretary of the Chairman and Chief Executive of Shell UK Ltd, Dr Chris Fay, to arrange a meeting with him, which took place on 25th May 1995. The discussions lasted for nearly two hours. Dr Fay's opening comment was along the lines that "I am absolutely fed up with your conduct". Dr Fay said that he had personally interviewed Andrew Lazenby. I asked him what conclusion he had reached about Mr Lazenby's conduct. Dr Fay responded by saying to the effect "You don't see him around here anymore do you". Dr Fay revealed that other

parties had made similar allegations and that he was concerned at setting a precedent by settling our claim. He offered a "walk-a-way" deal whereby the litigation would be withdrawn and each side would be responsible for its own legal costs. We also discussed the Make Money settlement. He said that Shell's solicitors were negligent in not insisting on an "all claims" clause which would have prevented me bringing the Nintendo legal action. He also thought that Shell had paid much too high a sum in settlement. If I recollect correctly, we also discussed the MegaMatch multibrand concept and possibly the multibrand loyalty scheme. The meeting ended on the basis that if I wanted to talk to him over the coming bank holiday weekend to accept the walk-a-way deal, he would instruct his secretary to take my call. I responded by saying that he could call me if he had a realistic offer to make. Dr Fay replied that I should not expect any such call.

103. On 31st May 1995, I arrived outside Shell-Mex House at around 10am with a number of our pressure group members to continue our protest. The receptionist said that Dr Fay was waiting to meet me. I then had a brief meeting with Dr Fay and the General Manager of Shell UK, Mr David Pirret. Dr Fay said that he could not understand why I had recommenced hostilities even though we had got on so well. We agreed to meet again at 2.15pm the same afternoon. My father accompanied me to the meeting. Mr Pirret was also present. I gave Dr Fay a letter dated 31<sup>st</sup> May 1995 concerning the meeting on 25<sup>th</sup> May 1995 and recording the impression that I had gained about his assessment of Mr Lazenby. Dr Fay read the letter and then said that it accurately reflected what had been discussed. Dr Fay said that he had a proposal to put to us about the Nintendo and Now Showing claims. He offered us "money or justice". We could not have both. It had to be one or the other. I said that we would opt for justice. The "money" aspect of the offer was never explored. Dr Fay said that Shell would pay all our legal fees to date and fund our litigation against them so as to "create a level playing field". He pledged to the effect that there would be "no smoke or mirrors" and "no hidden agenda".

104. By the time the lawyers had converted the offer into an agreement in July 1995 (what has become known as the "Funding Deed"), it was very much a commercial transaction. In consideration of the funding of our legal fees, my father agreed to discontinue his libel action against Shell UK. We also had to withdraw the Small Claim Action and end the pressure group. We also had to write letters (to be approved by Shell) to all parties who had previously received letters from Don Marketing making allegations about Shell. We also agreed that the legal actions in respect of the Nintendo and Now Showing promotions should be consolidated in one case.

105. The Shell lawyers defending DM's claims against Shell were also given the responsibility to release staged payments to our lawyers to cover our legal fees in respect of the Nintendo/Now Showing litigation. It subsequently became evident that the people involved, Mr Richard Wiseman of Shell UK Limited and Mr Nigel Rowley of Mackrell Turner Garrett, were dead set against the funding agreement. At one stage Mr Rowley threatened that he would not release further funds. He subsequently notified DM that he considered the funding deed was at an end because contrary to the terms of the deed, we had allegedly conducted the litigation in an unreasonable and uneconomic manner. He offered in a separate letter accompanying the notification, that Shell would enter into "without prejudice" discussions.

106. On or around 14th June 1996, I attended "without prejudice" discussions at Shell-Mex House with my solicitor, Mr Richard Woodman. We met Mr Richard Wiseman and Mr Ian Brown, both from Shell's Legal Department. Mr Wiseman apologised on behalf of the board of directors of Shell UK for the way DM had been treated. Mr Brown acknowledged that we did have a valid claim in respect of the Make Money action. Mr Wiseman said that these matters were being decided at a very high level. Dr Fay was reporting to a Group Managing Director of Royal Dutch Shell. Mr Moody-Stuart, another Group Managing Director of Royal Dutch Shell, was also "in the loop". Mr Wiseman offered the sum of £35,000 to settle the claims. I rejected the offer. He then proposed putting the claims to mediation - an offer that because of the uncertainty attached to the funding deed, I had little option but to accept.

During the meeting Mr Wiseman described the Funding Agreement as being "bananas". A copy of my notes of the meeting is in the document bundle.

107. In September 1996, the Nintendo and Hollywood Collection claims were put to mediation. In a written submission to the mediators, Shell conceded that "DM had a perfectly valid claim" in respect of the Make Money concept. At the commencement of the mediation, Mr Wiseman apologised again to me on behalf of Shell UK's board of directors for the way DM had been treated. He said this in front of several witnesses. In any event Shell settled both claims in our favour in October 1996 as a result of the mediation. We were also offered and accepted an unsolicited letter of apology from Dr Christopher Fay, the Chairman and Chief Executive of Shell UK Limited.

### **CREATIVE CREDIBILITY**

108. As far as I am aware, the following concepts that I devised by myself (unless otherwise stated) were all the first of their kind in the world. I have listed them as evidence of my creative skills.

109. The first instant win game designed to interact with a TV programme.

110. In conjunction with my father, the first prepaid, ready made pools coupons - FREELINES.

111. The first bottle labels instant win game - CINZANO INSTANT ROULETTE.

112. The first video game themed scratch card - Shredded Wheat SPACE INVADERS game.

113. The first skill based scratch card - THE GREAT GUINNESS CHALLENGE, generating major cash prizes from an instant win feature.

114. In collaboration with Allen, Brady & Marsh, the first promotional mini-books featuring an instant win game - the GUINNESS PINT SIZE BOOK OF RECORDS.

115. The first MAKE MONEY promotion based solely on a game of chance format.

116. The first multi-brand promotional game in which game pieces could be collected and prizes redeemed from a number of major retailers all participating in the same promotion.

117. The first instant win scratch card game "MAKE MERRY", linked to HARRODS.

118. The first instant win game based on the BBC TV MASTERMIND programme (from an idea suggested by the McBain, Noel-Johnson design agency).

119. The first "Every Card Can Win" game format, which avoided the risks, associated with games involving a "probability" formula to generate prizes. I devised a unique format used solely by Shell for promotions in which some 200 million scratch cards were distributed.

120. "Bruce's Lucky Deal" - the first playing card themed instant win game promotion in which every game card contained a hidden winning combination.

121. The first ever scratch card game with a STAR TREK theme and the first to use character images as part of the game mechanic i.e. reveal 7 Captain Kirk symbols to win a share of £250,000.

122. Devised in collaboration with Roger Sotherton and put forward to Shell the first Nintendo themed

instant win game for a petrol sales promotion.

123. Devised in collaboration with Roger Sotherton and put forward to Shell the first movie themed loyalty scheme for petrol sales promotion.

124. Devised in collaboration with Roger Sotherton the first Trivia Quiz scratch cards in which information overprinted on to latex panels changed in unison with the hidden information. We sought and obtained a UK patent for the scratch card mechanic.

125. The first "multi-collection as partnership" loyalty card scheme. Loyalty card experts, Sue Rayner, David Christian, and Professor Steve Worthington have all described the Smart multipartner scheme as being "unique". Mr Christian and Professor Worthington have concluded that my multibrand loyalty concept and the Shell scheme are almost identical.

### **Confidentiality**

126. Mr Lazenby was well aware of the great emphasis that DM placed on confidentiality to protect its ideas. When I raised the subject of "confidentiality" with him during a recorded telephone conversation in June 1993, he claimed that he knew nothing about confidentiality and that I was the expert on the subject. His claim of ignorance of the term is puzzling, bearing in mind that Shell's discovery shows that he had been imposing confidentiality on numerous companies for several months in respect of Project Onyx. The mutual regard for confidentiality, which had existed with all of Mr Lazenby's predecessors, had ended with his appointment. Mr Steve King of Shell's retained agency, Senior King, stated in a document dated 21<sup>st</sup> November 1994: "My company has had first hand experience of working with Shell and Mr Lazenby and can confirm that Andrew appeared to adopt a very different approach to his predecessors, who in my experience more readily acknowledge the rights of agencies concepts and the copyright".

127. An e-mail circulated by Mr Lazenby to senior Shell managers on 4th November 1993 in relation to "Project Hercules" is very revealing about Mr Lazenby's mindset. It also says something about Shell UK. The following is an extract: "My note of 25/10 is the official position, my note of 9/9 expressed a personal and pragmatic view of how to handle the problem - it is in fact illegal and is certainly unofficial, and if we were discovered then we will enforce the official position..."

128. The record shows that right from the outset in 1993, we have consistently and repeatedly attempted to resolve matters without resorting to litigation. There are obvious commercial reasons for this but, equally as important, I have always believed that, when they appreciated the true facts, Shell Senior Management would ensure that I was dealt with fairly. Sir John Jennings' attitude exemplified what I had come to expect - but he has proved to be an exception. In the case of the current claim we have again gone to great lengths. Several months were spent in discussions and correspondence with Shell and its lawyers in an attempt to resolve matters. Unfortunately our strenuous efforts proved unsuccessful. I again reached a situation whereby Shell management had retreated behind its lawyers and refused to deal with me directly. The discovery documents show that whenever Shell has been prepared to deal with matters in a constructive way, we have reciprocated accordingly. We have only campaigned against Shell when it has thrown up the barriers.

129. Unfortunately, in every one of the four claims brought against Shell, its lawyers have dismissed them as being without any merit. It appears from my experience that this is Shell's standard practice for dealing with claims brought by small traders, irrespective of the merit of the claims. It is the sheer frustration at Shell's refusal to deal properly and honestly with legitimate claims that led to the campaigning activities directed at promoting the merits of the claims and more importantly, getting the

attention of Shell's most senior executives. We have only wanted them to honour the pledges of honest dealings given in Shell's Statement of General Business Principles, and review matters accordingly.

130. On or around 18th April 1998 I was surprised to learn from a reporter for the Financial Mail On Sunday, Ms Rachel Oldroyd, that Shell UK Limited had issued a press statement that clearly inferred that all the claims DM had brought against Shell (including the present action and those which had been settled in our favour) were bogus. On 19th April 1998 the Financial Mail On Sunday contained a report written by Rachel Oldroyd that quoted from the Shell press statement. This was the first of two such press statements. A magazine subsequently published the offending material. In view of the past history of the claims, including the various high level apologies, the insinuations were distressing and damaging. No one is likely to want to deal with an agency that brings bogus claims against its clients.

131. On 24th April 1998, my Solicitors, Royds Treadwell, wrote to DJ Freeman putting them on notice regarding the two press statements. Royds Treadwell sent a further letter to DJ Freeman on 28th April 1998 on the matter. I understood that as a result of Shell's actions in disregarding the confidentiality agreements, they were at an end. The websites for Don Marketing UK Limited and the Shell Shareholders Organisation were published on the Internet after the initial press statement had been released by Shell. The same applies to the letters, leaflets, and advertisements, cited in the Counterclaim. Despite Shell's breach we did not reveal the Funding Deed or its terms to anyone.

132. My father has set out the sequence of events relating to the Shell Counterclaim in more detail within his Witness Statement. He has mentioned the letter circulated by Mr Harley Barnard of Shell UK Ltd on 27th April 1998 and the notice posted by Shell Transport & Trading Co Plc on 23rd September 1998. I confirm that my recollection of the relevant matters in which I had any knowledge tallies with what he has said in his Statement.

#### **The Repercussions**

133. The series of legal disputes with Shell, has had a devastating impact on the company and on my family and I. If Don Marketing had received payment and due recognition in respect of all four promotions, the company would be thriving. In our efforts to seek justice, we have been embroiled for the last six years in a long and damaging series of battles against a multinational giant. Instead of enjoying the credit of being responsible for a further series of blockbuster promotions for Shell, we have been publicly wrongly accused of trying to coerce them into settling false claims.

134. This statement is true to the best of my knowledge, information and belief and I make it knowing it may be given in evidence.

Signed: .....



(J. A. Donovan)

Dated this

19<sup>th</sup> day of April 1999