

**DON**  
MARKETING

# Promotional Games & Contests

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4 November 1993

2 Page Fax To:  
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Dear David

RE: SHELL NINTENDO PROMOTION

Following our telephone conversation yesterday, I am writing to confirm that for the reasons expressed in my recent letter, we see no point in proceeding with a meeting, as it appears Shell has no serious intention to settle the matter.

In this regard, I am sorry if I seemed rude by making no response to the settlement sum of £1,000 which you floated during our conversation, but it was totally inappropriate and you correctly anticipated my answer.

In my view, it is very unfortunate that John Smeddle's good advice is not being followed. We are still willing to attend a meeting on the basis suggested by Mr Brown provided the purpose is to "settle the matter" by realistic negotiation, and not purely an attempt to persuade us to abandon our claim. Our Solicitors letter made it quite clear we are not prepared to do so. Although you apparently thought that disclosure of more background details might persuade us otherwise, the reverse is the case. In my opinion, the information provided by you is very revealing.

For example, I note that although it was implied in the letter from Mr Varney dated 12 July 1993, that he had personally taken an interest in the matter, it has emerged from our discussions that it was not actually written by him. In fact, you were the author of the letter. A most inappropriate choice given the inaccuracies in your own letter of 1 July and its threatening nature.

Furthermore, contrary to the statements in Mr Varney's letter that the BDP proposal "package" required no input from Shell and was a fully developed Nintendo promotion, and your own comment that it was a fully finished proposal, you have now confirmed that in fact, Shell jointly developed the promotion with BDP.

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IMPORTANT: All business undertaken in accordance with our Trading Conditions, a copy of which may be obtained on request

Don Marketing is a business name of Don Marketing U.K. Limited.  
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This is more in line with Nintendo's view of the matter and closer to the comment by Andrew Lazenby that a colleague developed the whole promotion. It also undermines the credibility of the letter BDP prepared at your instigation to fend off any challenge from BP, which states that the concept was developed solely by BDP.

In addition, contrary to a further comment in Mr Varney's letter, that Mr Lazenby was "not involved with this particular promotion", in fact he was VERY much involved. The BDP presentation was made to him. He took the decision for Shell to proceed with the promotion. The promotion was his responsibility.

I have also noted a further inconsistency. Andrew Lazenby said that Shell did not pay any fees to BDP, but that they were paid by Nintendo. Indeed, he said we could have half of what Shell paid them - nothing. I was therefore surprised to learn from you that in fact Shell did pay fees to them.

You have said that three different people in your Legal Department have independently advised that we do not have a case against Shell. You have also indicated that in their view, the fact that we were the first agency to present a Nintendo themed promotional game concept to Shell is interesting, but irrelevant. This advise is so at odds with the advice we have received from specialist Counsel, that I wonder whether they are fully aware of the true facts.

Frankly, as a Director of an agency that has had a long relationship with Shell, I am becoming more and more appalled at the highly questionable way our proposal and subsequent claim has been handled. Regrettably, the response has at times been evasive, misleading, and threatening. We have ample evidence to support all of these contentions.

Our Solicitors will be in contact with your Legal Division very shortly regarding service of the Writ. In the meantime, I will tomorrow be sending a letter to the Company Secretary of Shell with copies to the Chairman and other Directors advising them of this matter.

However, at your request, I would be happy to delay taking the above actions, should you wish to discuss the content of this letter with your legal advisors.

Yours sincerely

  
John Donovan  
Managing Director

Q250

SJD/JAD/H96

Dr Chris Fay  
Chairman  
Shell U.K. Limited  
Downstream Oil  
Shell-Mex House  
Strand  
London WC2R ODX

12 November 1993

Dear Dr Fay

SHELL NINTENDO PROMOTION

I am writing directly to you as the last step to endeavour to avoid litigation between our respective Companies, and because I am concerned that correspondence that I and my Solicitors have had with senior Executives of the Company has not been dealt with in the open and considered way which I would have expected of Shell after all the years during which our respective Companies have done business together.

I enclose a selection of relevant correspondence in order that you will be aware of the background to this letter and I will not repeat the essential details. Suffice it to say, that before making our formal claim, my Company has gone to the trouble and expense of taking advice from a leading specialist in the area of law in question and her advice is that we have excellent prospects of success in the event that this matter were to come before the Courts.

You will note that throughout my previous correspondence and indeed that of my Solicitors it has been made abundantly plain, and I reiterate to you, that we do not want to have to become embroiled in litigation with your Company. Time and again I have offered Shell the opportunity of a less contentious form of resolving these issues and I again reiterate that we are prepared to consider any form of mediation or alternative dispute resolution that Shell might suggest.

It did seem to me that our suggestions in this regard had at last been favourably received when my Solicitors received a letter from your legal division dated 13th October, which is in the bundle of correspondence I have sent you. You will note the reference to the aim of the meeting being "to settling this matter".

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Since then I have been amazed to learn that the intention of this meeting was no such thing. Instead the aim was designed to persuade me that, notwithstanding the plain legal advice I have already received, in fact my Company has no valid claim against Shell and should withdraw the threat of litigation.

If my Company's claim ultimately succeeds (as, I repeat, I am advised it will) it will reflect very badly indeed on Shell's marketing department and the competence, conduct and ethics of members of that department. It was for this reason that I chose to write in July to the Company's Managing Director, Mr Varney, and apparently received a reply from him dated 12th July 1993. However, it now appears the letter was not written by Mr Varney at all but by Mr Watson, Shell's Marketing Communications Manager. What concerns me even more is that it now appears that despite what is stated in the letter, the promotion was jointly developed by Shell and Nintendo, and Mr Lazenby was very much involved.

It seems that all liaison with your Company's legal division has been at the behest of the marketing department and that the so called settlement meeting was also to have been with Mr Watson. But I am extremely concerned that the marketing department does not have an objective view of the circumstances and overall merit of my Company's claim and is motivated only by the desire to head off a potential embarrassment to it and its members. I am sure you would agree that this is hardly in the best interests of your Company - certainly it is not in my Company's best interest to be forced into litigation when it would seem that any reasonable assessment would support the wisdom of (some form of) negotiation.

I do hope that you will be prepared personally to review this matter and I look forward to hearing from you.

Yours sincerely

John Donovan  
Managing Director