

Ordinary Writ (Unliquidated Demand) (0.6 r.1)

IN THE HIGH COURT OF JUSTICE

CH 1994 -D- N 2254

P269

CHANCERY DIVISION



**B E T W E E N :**

**DON MARKETING UK LIMITED**

Plaintiff

- and -

**SHELL UK LIMITED**

Defendant

**ORIGINAL**

To the Defendant, SHELL UK LIMITED whose registered office is situate at Shell-Mex House, Strand, London, WC2R ODX

This Writ of Summons has been issued against you by the above named Plaintiff in respect of the claim set out overleaf.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office mentioned below the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued from the Chancery Chambers of the High Court this day 21<sup>st</sup> of April 1994.

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**Note:-** This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with that date unless renewed by order of the Court.  
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**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

The Plaintiff's claim is for:-

1. A declaration that the Plaintiff's Nintendo concept is confidential information the property of the Plaintiff and that the Plaintiff's said confidential information was misused by the Defendant.
2. An inquiry as to damages for misuse of confidential information and/or breach of contract with payment of all sums due to the Plaintiff upon taking such inquiry together with interest thereon pursuant to Section 35A of the Supreme Court Act 1981 or under the inherent jurisdiction of the Court.
3. Costs.
4. Further or other relief.

MARY VITORIA

This Writ was issued by ROYDS TREADWELL of 2 Crane Court,  
Fleet Street, London, EC4A 2BL

Solicitors for the said Plaintiff whose registered office is  
situate at Riverside House, 1-5 Como Street, Romford, Essex,  
RM7 7DN.

RM2/132  
21.04.94

WRIT ISSUED THIS 21ST DAY OF APRIL 1994

B E T W E E N :

DON MARKETING UK LIMITED

Plaintiff

- and -

SHELL UK LIMITED

Defendant

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STATEMENT OF CLAIM  
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1. The Plaintiff is a company incorporated under the Companies Act 1948 to 1989 which carries on the business of originating, designing, planning and managing promotional games under the trading style Don Marketing. Prior to 1986 this business was carried on by an associated company, Don Marketing Management Limited ("DMML"), under the same trading style.

2. Since about 1981 the Plaintiff or DMML has originated the following promotional games that is to say:

- |     |                        |   |      |
|-----|------------------------|---|------|
| (a) | "Make Money"           | - | 1981 |
| (b) | "Mastermind"           | - | 1984 |
| (c) | "Make Merry"           | - | 1984 |
| (d) | "Bruce's Lucky Deal"   | - | 1985 |
| (e) | "Star Trek : The Game" | - | 1991 |

and offered the same to the Defendant for use by the Defendant to promote its products through garages and petrol stations and the Defendant so used the said promotional games and each of them in consideration of a fee known as a "concept fee" and a commission based on the cost of printing the promotional material involved paid by the Defendant to the Plaintiff.

3. In addition DMML originated the promotional game "Let's Go Racing"

in 1985 for which the Defendant paid a concept option fee of £15,000. The option was never taken up.

4. Since about 1991 the Plaintiff has offered promotional games to prospective clients including the Defendant in accordance with its Standard Terms and Conditions. The said Standard Terms and Conditions include the following express terms:-

3. (A) TERMS ON WHICH PROPOSALS ARE SUBMITTED TO PROSPECTIVE CLIENTS. All promotional game concepts and ideas submitted to a company, organisation or individual are submitted in accordance with the terms stated on the proposal and on the understanding that they will be considered in strictest confidence and that no use shall be made of the relevant game concepts or ideas, or any game format variation thereof, nor any disclosure made to any third party, without the express prior consent of Don Marketing [i.e. the Plaintiff]. Designs, 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.

10. No custom usage or course of dealing at variance with or contrary to the terms and conditions hereof shall constitute a waiver or estoppel with respect to the terms and conditions hereof, and in the event of any conflict with these terms and conditions and any custom, usage or course of dealing, the terms and conditions hereof shall govern.

13. The promotional game concept and any development of it including all print plates, proofs, negatives, positives and computer software, shall remain the property of Don Marketing unless otherwise agreed in writing.

20. EXCLUSIVE AGREEMENTS, PATENT, TRADE MARKS AND COPYRIGHT - Don Marketing retain all proprietary interest in all promotions devised by them or proposed by them whether verbally or in writing. Don Marketing reserve the rights to offer such promotions or similar promotions to other customers. All Don Marketing games are copyright and may also be protected by exclusive agreements with

third parties including football pool companies and/or T.V. networks.

5. At a meeting held on or about the 4th June 1992 in the offices of the Defendant at Shell Mex House, Strand, London between one John Donovan, the Managing Director of the Plaintiff, one Roger Sotherton, the Plaintiff's Marketing Manager, and one Andrew Lazenby ("Mr. Lazenby"), the Defendant's Promotional Manager, the Plaintiff disclosed to the Defendant a proposal for a promotional game involving the use of Nintendo video games.

6. The said proposal was disclosed to the said Andrew Lazenby acting on behalf of the Defendant in strict confidence. Further the said proposal was set out in a document entitled "Proposal for a Nintendo Themed Promotional Game" which was handed to Mr. Lazenby by the said John Donovan during the said meeting. The front cover of the said proposal document bore the words "Strictly Confidential" and "Don Marketing retain full intellectual and proprietary rights to all promotional concepts, designs and all other relevant information detailed in this outline proposal document and any accompanying visuals. Proposal file Ref:F81" and "Don Marketing Standard Trading Terms & Conditions are available on Request.c Don Marketing UK Limited 1992". Hereinafter the said proposal is referred to as the "Plaintiff's Nintendo Proposal" and the basic concept disclosed therein as "the Plaintiff's Nintendo Concept."

7. Prior to the said disclosure to the Defendant and on or about the 29th May 1992 the Plaintiff disclosed the Plaintiff's Nintendo Proposal in strict confidence to one David Patton, the Product Manager of Bandai U.K. Limited, the exclusive sales agents for Nintendo games in the United Kingdom, for the purpose of obtaining his approval and permission to use the Nintendo theme for the proposed game.

8. The Plaintiff's Nintendo proposal was disclosed to the said David Patton acting on behalf of Bandai U.K. Limited in a document entitled "Proposal for Nintendo Themed Scratch Card Games". The front cover of the said document bore the words "Strictly Confidential" and "Don Marketing retain full intellectual and proprietary rights to all promotional concepts, designs and all other relevant information detailed in this outline proposal document and any accompanying visuals. Proposal file

Ref:F84" and "Don Marketing Standard Trading Terms & Conditions are available on Request.c Don Marketing UK Limited 1992".

9. The Plaintiff's Nintendo Concept comprises a family orientated game of particular appeal to children based on the Nintendo video games which were then and still are extremely popular amongst both children and adults, the game being suitable for forecourt promotion of the Defendant's products. The game proposed was an instant win game having a Nintendo game, and in particular the Nintendo "Gameboy" video game, as one of the prizes and was based on a scratch card.

10. The Plaintiff's Nintendo Proposal disclosed the Plaintiff's Nintendo Concept together with variations thereof and examples of possible executions of the same.

11. The Plaintiff's Nintendo Proposal and the Plaintiff's Nintendo Concept are each confidential information the property of the Plaintiff.

12. The Plaintiff's Nintendo Proposal was disclosed in confidence to the Defendant for the purpose of enabling the Defendant to decide whether or not it wished to use the Plaintiff's Nintendo Proposal and/or the Plaintiff's Nintendo Concept as part of its future promotional activities and for no other purpose.

13. Further the disclosure of the Plaintiff's Nintendo Proposal by the Plaintiff to the Defendant was governed by the said Plaintiff's Standard Terms and Conditions.

14. By a letter dated 19th February 1993 from the said John Donovan to Mr. Lazenby, the Plaintiff reminded the Defendant of the Plaintiff's Nintendo Proposal, drew the Defendant's attention to the enormous and increasing popularity of Nintendo games and suggested that the Defendant give further consideration to the Plaintiff's Nintendo Proposal. Mr. Lazenby acknowledged the said letter by writing thereon a note saying "Thanks John, I'll be back in touch when we've made further progress. Cheers Andrew." and sending the said letter so endorsed back to the Plaintiff on or about the 22nd February 1993.

15. All written communications to Mr. Lazenby, including the said

letter, bore the words "IMPORTANT: All business is undertaken in accordance with our Trading Conditions a copy of which may be obtained on request."

16. The Defendant has not approached or asked the Plaintiff for permission to use the Plaintiff's Nintendo Proposal or the Plaintiff's Nintendo Concept.

17. On or about 18th June 1993, the Defendant launched and thereafter continued to run a Nintendo themed forecourt promotion comprising the issuing of game leaflets to purchasers of its products at garage or petrol station forecourts, each leaflet having a scratch area which on removal reveals that the recipient has obtained a prize, the prize being a Nintendo themed article with the or one of the main prizes being a Nintendo "Gameboy" video game. The promotion was structured such that every leaflet provided a prize. Further the Defendant's promotion has been marketed in such a way as to appeal in particular to children. The Plaintiff will, pending discovery, rely on the fact that the Defendant's Nintendo themed promotional game has been advertised in "The Funday Time" being the children's section of "The Sunday Times" newspaper.

18. In the premises the Defendant's said promotion has made use of Plaintiff's Nintendo Concept. Pending discovery and/or Interrogation herein the Plaintiff will rely on (i) the overall similarities between Plaintiff's Nintendo concept and the Defendant's said promotion; (ii) the fact that it was Mr. Lazenby who took the decision to proceed with the Defendant's promotion and jointly developed such promotion with B.D.]

19. By using the Plaintiff's Nintendo Concept in its said promotion Defendant has misused the Plaintiff's confidential information to detriment of the Plaintiff.

20. Further and in the alternative by using the Plaintiff's Nintendo Concept in its said promotion the Defendant has acted in breach of Plaintiff's said Standard Terms & Conditions and in particular in breach of clauses 3(A) and 13 thereof.

21. By reason of the Defendant's misuse of confidential information and/or breach of contract the Plaintiff has

suffered loss and damage.

#### PARTICULARS

Pending discovery the best particulars the Plaintiff can give are as follows:-

- (1) Loss of concept fee £ 50,000
- (2) 17.65% commission on the cost of printed materials

22. The Plaintiff is entitled to and claims interest pursuant to Section 35A of the Supreme Court Act 1981 or under the inherent jurisdiction of the Court at such a rate and for such a period as to this Honourable Court seems fit.

#### AND THE PLAINTIFF CLAIMS:-

1. A Declaration that the Plaintiff's Nintendo Concept was confidential information the property of the Plaintiff and that the Plaintiff's said confidential information was misused by the Defendant.
2. An inquiry as to damages for misuse of confidential information and/or breach of contract with payment to the Plaintiff of all sums due upon taking such inquiry together with interest thereon pursuant to Section 35A of the Supreme Court Act 1981 or under the inherent jurisdiction of the Court.
3. Costs.
4. Further or other relief.

MARY VITORIA

**SERVED** this 23rd day of September 1994 by Messrs. Royds Treadwell of 2 Crane Court, Fleet Street, London, EC4A 2BL. Solicitors for the Plaintiff.



CH 1994 -D- No. 2259

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

WRIT ISSUED THIS 21ST DAY OF APRIL  
1994

B E T W E E N:

DON MARKETING UK LIMITED

Plaintiff

- and -

SHELL UK LIMITED

Defendant

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STATEMENT OF CLAIM  
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ROYDS TREADWELL

2 Crane Court

Fleet Street

London

EC4A 2BL

Solicitors for the Plaintiff

RW1/016

23.09.94