

ROYDS TREADWELL  
SOLICITORS

21 MAR 1994

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OUR REF

RMW/LD

YOUR REF

UKLG

18th March 1994

BY HAND

Shell UK Limited,  
Legal Division  
Shell-Mex House,  
Strand,  
London, WC2R ODX

Dear Sirs,

Our Clients : Don Marketing UK Limited ("DM")  
Re: "Make Money"

As you know we act on behalf of the above Company which has consulted us in connection with your letter of the 1st March.

Dealing with the points you have raised regarding the 'Make Money' promotion we have the following observations:-

1. The penultimate paragraph on the first page of your letter is plainly wrong. We enclose, for your information, copies of the following:-
  - A. DM's Outline Proposal for a National Promotion dated 29th May 1981.
  - B. Letter Shell UK Oil (P. A. King) to DM dated 3rd June 1981.
  - C. Copy letter DM to Shell UK Oil (P. A. King) dated 5th June 1981.
  - D. Invoice DM to Shell UK Oil number D13518 dated 19th June 1981.
  - E. Copy letter DM to Shell UK Oil (Michael Beach) dated 9th November 1983.
  - F. Shell UK Limited Special Field Order dated 15th November 1983.
2. As to the Outline sent at 1A above you will note:-
  - (a) the notice on the title page to the effect that DM 'retain full intellectual proprietary rights' to the

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proposal contained in the document;

- (b) that our Clients' standard terms and conditions were expressly incorporated;
  - (c) on page 1 DM refers to ' a new 'Make Money' promotion;
  - (d) on page 2 DM refers to 'a novel Make Money game';
  - (e) the handwritten notes on page 3 (made at the 29th May 1981 meeting by DM's Roger Sotherton) state that Mr. King would pass Counsel's Opinion and DM's conditions to Shell's legal department.
  - (f) at page 4 DM suggests running the 'Make Money' promotion on a joint basis, possibly involving a daily newspaper;
  - (g) on page 5 DM refers to 'our new Make Money game' and 'Our new simplified concept'. The notes at this page record Mr. King's insistence that Shell have joint rights and that Shell would not run 'Make Money' without DM and DM would not offer it elsewhere.
3. By your Clients' letter of the 3rd June 1981 (written consequent upon the 29th May meeting) they confirmed instructions to our Clients to "work up" a promotional concept based on the 'Make Money' theme. Your Clients expressly agreed that "this promotional idea" would remain solely jointly owned by our respective Clients until "we agree mutually to differ this arrangement for this particular promotion". The letter concludes on the basis that your Clients look forward to "seeing your concept".
4. Our Clients' reply dated 5th June 1981 confirms the points made by Mr. King in a number of material respects, to which we refer in more detail below. No issue was ever taken by your Clients with anything in that letter and indeed our Clients' invoice D13518, paid by your Clients upon receipt, is expressly issued upon the terms of the letter of the 5th June 1981. We would draw your attention to the following relevant paragraphs of the letter of the 5th June:-
- Paragraph 2 : Our Clients agree to the "new concept" remaining solely and jointly owned by themselves and your Clients again "until such time as we mutually agree to differ the arrangement".
- Paragraph 3 : Our Clients refer, in the penultimate line, to "our concept".
- Paragraph 4 : You will note the agreed basis for the termination of the agreement namely upon six months advance written notice. No such notice has been served.

If it had the proprietary rights would have reverted back ?  
to our Clients. You will also note the express  
agreement to negotiate terms for the use of the  
concept "according to the scale of each game".

Paragraph 5 : Our Clients emphasise precisely why the new promotional game constitutes a new concept and you will note the specific reference, in the final sentence, to "a new game concept of major importance". We would emphasise again that there has never been any suggestion, whether upon receipt of this letter or at any time thereafter, by your Clients that this was not a correct statement of the position.

*are not retained  
in correspondence  
of my use*

5. Turning to our Clients' letter of the 9th November 1983 we would refer you in particular to the footnote as to proprietary rights which expressly incorporates reference to the exchange of correspondence on the 3rd and 5th June 1981 to which we have referred above.
6. As to your Clients' SFO of the 15th November 1983 we would draw your attention to the acceptance of the terms of the letter of the 9th November 1983 including of course the terms of the exchange of correspondence in 1981. This also includes acceptance of our Clients' standard Terms of Business which, as we have said above, were submitted to your Clients in the context of our Clients' Outline Proposal at the meeting on the 29th May 1981. You will also note that the SFO does not incorporate any of your Clients' general Conditions.
7. You should also be aware that, in compliance with the specific term referred to in the final sentence of the fourth paragraph of our Clients' letter of the 5th June 1981 our respective Clients did indeed negotiate terms for further use of the concept which was made thereafter by your Clients' subsidiaries in Ireland and Singapore.

Finally, we have enclosed a selection of extracts from Trade journals regarding the 1984 'Make Money' promotion from which you will see that our Clients have consistently been acknowledged by your Clients and the industry generally as the originators of the 'Make Money' concept which itself has been regarded as a classic campaign. Our Clients have an enormous amount of goodwill invested in the 'Make Money' concept and it is fair to say that a substantial part of their reputation has been based on its success.

You will recognise that, in these circumstances, our Clients do not lightly accept any suggestion that they have no proprietary rights in the 'Make Money' concept. We think that you will now agree that any such suggestion is absurd and we require your acceptance in open correspondence of the true position.

At the same time it is clear to our Clients that Shell is on the point of re-launching the 'Make Money' promotion but without recognising our Clients' rights. This is entirely

Shell UK Limited,  
Legal Division

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unacceptable and we demand that we receive a clear statement from you, within 48 hours, of precisely what is proposed with regard to the 'Make Money' promotion by Shell.

Yours faithfully,

  
ROYDS TREADWELL

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