

110. Once approval was secured and roll out confirmed, a Launch Committee was established and I, having previously been closest to the promotion had to start disseminating information and knowledge to other team members, especially Gary Anderton who was appointed to take over implementation of Hercules. Gary eventually became the manager of the scheme when it was up and running.
111. Although a great deal of work was done in the closing days of 1993, the timetable for moving towards launch was undoubtedly going to be tight. At the first meeting of the Hercules Launch Committee in 1994, which was held on 12 January 1994, we reported that the anticipated launch date had moved to 27 June and that as a worst case scenario it would fall back to 27 July. We would need to make a positive decision by 7 February as to which third party retailers were going to be included in the scheme. We also agreed at that meeting to embark on yet a further market research project to determine how best to communicate the new scheme to the public. Meanwhile we had negotiated terms of engagement as a consultant for Alan Davis who was appointed as project planner. By 19 January we had produced a detailed document setting out in full the business requirements of the scheme and the ways in which this affected what we in turn required from each of the suppliers with whom we were dealing. On 24 January we had a meeting to discuss the status of the parties. Although there were ongoing contacts and discussions taking place with several retailers, there were plainly only three or four that we had any realistic hope of involving at launch, even on a redeemer-only basis. However, some broader long-term linkages were beginning to come under consideration, particularly with the arrival of Ian Sutcliffe. He had a meeting on 26 January with Lloyd's Bank to try to identify areas of common ground and two

days later Option One had an initial meeting with Visa UK Limited. They of course had an existing widely-used points collection system known as Profiles and we started to explore what synergy there might be between that scheme and ours. This was the start of a discussion with them that extended over many months, continuing after I left the promotions department at the end of April 1994. Had those discussions come to fruition there would no doubt have been a fundamental change in the nature of the SMART scheme.

112. Quite aside from the status of third party participants I was still unsure as to whether we could meet our new launch target or whether we should accept a further delay. On 27 January I wrote a note summarising the advantages and disadvantages of further delay. I did not, however, reach any conclusion at that time and we continued to press forward as quickly as we could. Despite the extra resources in the Launch Committee I still felt it prudent that we should have some contingency plans in case the projected launch date could not be achieved and on 10 February 1994 Option One produced some proposals for promotions which could be put in for an 8 to 12 week period should this prove necessary.

113. Another matter to which attention needed to be turned was how we would present the scheme to our own Shell Retailers, who were going to be the people on the ground who were actually going to have to operate it. It was important not only that we should educate them as to how the scheme would work but also that we should enthuse them. A great deal of thought and planning went into the presentation to be made to them, which included video material and a carefully-

scripted series of interviews with personnel involved in the scheme, including David Pirret, Ian Sutcliffe and myself.

114. On 22 February 1994, Gary Anderton wrote a note on plans for the launch. By this stage it was generally agreed that we could not simply launch an electronic scheme over the entire country in one fell swoop. The risks would be far too great even if there were some sort of small pilot testing scheme. Gary's view, as expressed in his note, was that the way forward ought to be by way of a launch with paper vouchers, followed by a regional electronic roll-out shortly afterwards. He seemed to be keen to separate the launch of the loyalty programme itself from the introduction of the electronic technology. He was suggesting that there should be a meeting with David Pirret in the following week to get agreement on how to move forward. While I agreed with the basic premise that a full national launch was unworkable, I thought that there was an alternative way forward and on 23 February 1994 I wrote a note to Frank Leggatt and David Pirret, copying it to Ian Sutcliffe and Gary Anderton, setting out my own views. These were that we should launch electronically in one region, which I recommended should be Scotland because it provided a representative sample of the United Kingdom. At the same time we should launch a long-term promotion over the rest of the country which would involve collection of paper vouchers, which could ultimately be converted into SMART points when the scheme was eventually launched nationally. My note set out extensively the advantages, disadvantages and risks of this strategy. I also set out my reasons for rejecting the idea of a region by region roll-out of the scheme. The timetable I was recommending was that a pilot launch to test the technology should commence in the middle of May 1994 (we had

identified Aberdeen, which had around 10 Shell sites, as a good prospect for such a pilot), with launch of the regional scheme in Scotland in the middle of July. By the start of October we would then have a full evaluation of the regional scheme and could go for national launch at any time from then until March, depending upon various practical considerations.

115. I met with Option One on 7 March 1994 to discuss the Project Hercules launch strategy. Following this discussion I attended the Hercules Launch Committee meeting on 9 March 1994. The Committee agreed the following matters. The Aberdeen pilot was to begin on 15 May. We would then move into a launch in Scotland on 11 July 1994, which would encompass the full reward structure that we envisaged for SMART. The national launch, also on a full basis, was targeted for 10 September 1994. Leading up to that national launch we would have a 12 to 16 week interim promotion operating in the whole of the United Kingdom other than Scotland. This would involve a reward structure which would ultimately be transferable into on-site rewards within SMART. Various options for this interim scheme were discussed, which involved a link-up with McDonald's or a similar based promotion (the launch of the Flintstones' films due shortly) or promotions offering summer merchandise or glasses. It was agreed that we should have a meeting with Option One to work out the strategy of this promotion.

116. Meanwhile, plans for the pilot scheme were getting under way. Simon Grimsell (another new addition to the Smart team) produced on 9 March a proposal for the testing arrangements in Aberdeen involving the use of smart cards and readers by Shell employees only (there were 1,500 such employees in Aberdeen).

117. At around this time I decided I wanted fresh challenges and therefore instigated discussions which eventually led to my moving to the post of euroShell project manager in The Hague in early May 1994. Until then, I remained fully involved in the preparations for launch.
118. In the middle of March 1994 Ian Sutcliffe travelled to Canada to visit Shell Canada and to learn something from the arrangements that they had there with the Air Miles scheme. The Canadian Air Miles scheme there is based on ownership of the scheme by a number of participating retail partners, including Shell Canada, a major supermarket and other organisations. Ian was enthusiastic about the potential of certain features of the Canadian scheme and set out in his Note of 22 March 1994 some of the 'key learning points' which Shell UK could make use of in the development of Project Hercules.
119. My main role over the remainder of my time as Promotions Manager was dealing with rewards for the SMART scheme. On 30 March I circulated a note on the rewards proposed for the Scotland launch, which in addition to on-site rewards, mail order and Air Miles, included the participation as third party redeeming retail participants of UCI Cinemas, Dillons Books and HMV (in fact Dillons did not eventually participate because we had doubts about their financial viability). I also envisaged Save the Children and British Heart Foundation being involved. For the national launch it was envisaged that TicketMaster would be involved but Dillons and HMV might drop out. A schools campaign was also proposed to be included in the national launch (although I believe that this did not in the event happen).

I wrote a more detailed note on the subject on 13 April 1994. This was my parting shot in relation to SMART, and I left the department on 6 May 1994.

Summary

120. Having been heavily involved in the formative stages of the SMART scheme for some two years, I can state categorically that the scheme was in no way derived from any information disclosed to me by Mr Donovan or Don Marketing UK Limited. The only occasion that he put forward any information to me about any kind of loyalty scheme involving third party retailers was in May 1992 when a copy of Mr Donovans three year old proposal was sent. By this time extensive research into and development of the concept of the sort he claims as his own was already well under way. Even now I have no recollection of his ever mentioning a long term loyalty scheme; after all, his expertise was in the field of game promotions and all the proposals he presented to me were games or competitions on one theme or another.
121. The evolution of SMART was a long and arduous process. The progress from Project Onyx through Project Hercules to SMART was a long and bumpy ride. It took many twists and turns, evolving along the way in response to pressures from senior management, market research, third party input and the successes and failures of other loyalty schemes. Even before my departure, the scheme made many trips back to the drawing board and was still under revision when I left. The final SMART scheme was specifically tailored by and for Shell with the assistance of Option One in order to reclaim and retain the business of a valuable section of

the motoring public. It is naive of Mr. Donovan to suggest that the SMART scheme was modelled entirely by me on the basis of his contributions.

Previous litigation

122. Mr Donovan is no stranger to litigation - I believe that this is around the sixth legal action brought against Shell by members of the Donovan family or their associated companies. In particular Mr Donovan has referred at paragraph 25 of his Statement of Claim to three previous actions which Don Marketing UK Limited brought against Shell UK Limited in 1995.
123. The 1995 actions involved a great deal of documentation. I thought that these matters had been laid to rest with the settlement of the previous litigation, but it appears from his Statement of Claim that Mr Donovan is determined to argue that he would have won all three of these actions. If Mr Donovan is allowed to throw all of this back into the melting pot, it leaves me with no alternative but to challenge his assertions.
124. I understand that Mr Richard Wiseman will be dealing in his evidence with the settlement negotiations in those actions, so I will confine myself to a brief discussion of my involvement with each action.

Nintendo CH 1995 D 5417

125. In 1992 handheld video games called 'Nintendo Gameboys' were very popular. Consequently, a Nintendo theme was an obvious choice for a short term promotion. Indeed, as early as February 1992 Garrie Keys (a Shell employee) suggested that Shell could run such a promotion.
126. On 4 June 1992, I attended a meeting with Mr Donovan, who was attempting to persuade me to adopt his 'MegaMatch' promotion. At this meeting Mr Donovan also put forward an idea for a 'Nintendo' themed promotional game called "Super Mario Land" involving cash prizes, playcards, holidays and gameboys.
127. Shell promotions usually required a nine month preparation time. I was therefore concerned that the gameboy craze would have long passed when the promotion came to market. I was not enthusiastic about this idea, not least because I was keener on MegaMatch which I perceived to be more appealing to a wider age range.
128. Over six months later, on 11 November 1992, I received an unsolicited fax from Business Development Partnership Limited ("BDP") suggesting another Nintendo themed gift promotion for the first quarter of 1993. I turned BDP down too, telling them that it generally takes 6 - 9 months from the presentation of the idea to the implementation of the final scheme.

129. I should mention that at this stage there had been no indication from Don Marketing or BDP that either of them had in fact obtained permission from Nintendo to use the Nintendo theming or branding, though John Donovan indicated that he had consulted Nintendo.
130. On 19 February 1993 John Donovan wrote to me pressing the claims of his Super Mario Land idea secondary to another idea which he called 'Hollywood Collection' (which I deal with below). I was very busy with Project Hercules at the time and, in keeping with my general practice of not upsetting agencies unnecessarily, I faxed the letter back to him with a note saying thank you and that I would revert when we had made any further progress. I have to admit that this was really a euphemism for 'stop bothering me'.
131. On 27 April 1993 BDP re-submitted their Nintendo proposal. In the interim they had developed their proposal considerably and by the time they presented the idea to Charlie Fox (an assistant in the Promotions Department) and myself, they told us that they had already obtained Nintendo's approval. They also explained that a Nintendo film was due to be released in July 1993, with all the usual publicity. Charlie Fox and I liked the mechanic of the promotion, its 'everyone's a winner' reward structure and the fact that it was fully-worked up and so would not require a long lead time. We agreed to run the promotion and I handled the sell in to management, gaining approval from David Pirret. The letters of 3 May 1993 and 12 May 1993 were at my instigation, I then handed the project over to Charlie Fox to deal with, as at the time I was very busy dealing with Project Hercules.

132. At no stage did Don Marketing's Super Mario Land proposal enter my mind. Aside from the general Nintendo/Gameboy theme, the BDP and Don Marketing proposals were entirely different. The main differences were as follows:

	Business Development Partnership	Don Marketing
Title	Gameboy	Super Mario Land
Mechanic	Every leaflet was a winner and every contestant did win. There was one scratch panel which revealed one of the prizes.	multiple scratch panel you had to scratch off the correct combinations of panels to win. Every leaflet had the potential to win but only a small number of contestants would win.
Prize	Posters Baseball caps Software Gameboy unit	Instant cash prize "a share of £250k" A separate very complicated method for winning Gameboy
Timing	Based on film opening in UK in July 1993	Based on Nintendo advertising campaign
Proposal	Worked up and prepared for Nintendo. 6 weeks to implement	Speculative concept 10 weeks to implement

133. The Shell Nintendo promotion ran from 18 June 1993 for four weeks. On the day of the launch, John Donovan telephoned me to complain about what he perceived to be our use of his idea and additionally to complain that our scheme was open to fraud on account of customers being able to see through the latex covering the prize panels. Having read the transcripts of the tapes supplied by Mr Donovan (but not having heard the original tapes which have not yet been produced), I am

now aware that Mr Donovan was recording this and all subsequent telephone conversations between us onto audio tape. I was not aware of this at the time.

134. He explained that he had suggested a Super Mario Land idea at our MegaMatch meeting in the previous year and that he had referred to it again in February. I explained that I genuinely had no recollection of such a proposal and that the Nintendo promotion had been developed entirely by BDP. He reminded me of his proposals, and I realised that in fact it was completely different to the BDP promotion anyway. He acknowledged that Shell had not used the exact idea he put to us and that BDP's promotion was very different in terms of mechanics, execution, creative elements and prize structure.

135. After the telephone call I managed to find a copy of Don Marketing's original Super Mario Land proposal. When I compared it with BDP's Nintendo promotion it was clear to me that apart from the fact that in both promotions the customer stood a chance of winning a Nintendo Gameboy, there was no similarity between the two. I was content that there was no basis for Mr Donovan's claim that Shell or BDP had used his confidential information.

Now Showing - CH 1995 D 2259

136. Films have always been a popular theme for promotional games. My colleagues and I were approached on a regular basis by agencies with promotional game ideas based on individual film and video releases, as well as more general 'movie' themes. For example Jackson Brady (one such promotional agency) on 22 July

1992 suggested a promotional tie-in with Twentieth Century Fox and other unspecified third parties. Agencies commonly made such suggestions, but my concern was always whether such agencies realistically had the ability and influence to get such third parties involved.

137. I have already mentioned Don Marketing's "Hollywood Collection" proposal. It was first put forward by Mr Donovan on 24 November 1992. Hollywood Collection was a gift collection/instant win promotional game proposed for the third quarter of 1993. I took this idea no further, despite Mr Donovan's attempts to re-pitch it to me in early February 1993.

138. In February 1994 Shell required a short term promotion to fill the gap in the UK whilst SMART was running in Scotland, so I invited five agencies (Promotional Campaigns, Tequila UK, Brownings, Option One and Powerhouse Consultancy) to pitch for the promotion. The instructions made no mention of any particular theme and no agency was steered in any particular direction. Between the five agencies they came up with 40 - 50 different variations of promotions. Two of the agencies (Tequila and Option One) suggested promotions with film themes. Tequila suggested an association with MGM and Option One suggested Blockbusters (probably because at the time they were negotiating with Blockbusters in relation to Project Hercules).

139. In March 1994 I commissioned some market research to gauge our customers' reactions to the various promotions on offer. Tequila's proposed MGM promotion proved very popular in this research due to the cinema ticket prizes on offer. On

that basis Frank Leggatt and Ian Sutcliffe agreed that Shell would run the Tequila promotion. The agreement between Tequila and Shell was signed on 16 May 1994. In the end Blockbuster were also brought into the promotion, so Option One were also credited and paid accordingly. The promotion was run under the title "Now Showing" from 11 July to 2 October 1994 in the UK except Scotland.

140. Mr Donovan's "Hollywood Collection" scheme simply did not enter my mind; neither for that matter did Jackson Brady's or anyone else's. However, in due course Mr Donovan claimed that because he had presented a promotional game with a 'film' concept, Shell was breaching his confidential information by running its "Now Showing" promotion. It is clear from the tender process and market research that Now Showing was independently derived, quite apart from the fact that it was very different from Mr Donovan's original suggestion.

Make Money - CH 1995 D 1927

141. Shell Make Money was a promotion originally run in the 1960s. It was reintroduced in the 1980s, this time with the assistance of Don Marketing, who redesigned the artwork and game pieces. On both occasions, Make Money was very popular.
142. In the course of a telephone conversation on 18 June 1993 in relation to the dispute over the Nintendo promotion (recorded, unbeknownst to me, by John Donovan) Mr Donovan claimed in passing that Shell could not run the Make Money promotion again without his permission.

143. In order to investigate whether there was any substance to Mr Donovan's allegations, Charlie Fox and Option One carried out investigations into the ownership of the rights in Make Money. It transpired that Paul King, who was in charge of Shell Promotions Department in the 1980s, had written a letter dated 3 June 1981 to Mr Donovan in which he agreed that Don Marketing would "work up" a promotional concept based on the Make Money theme but with a new slant. Mr King's letter went on to state "I agree to pay you a figure of £500 to cover your artwork costs on the understanding that this promotional idea remains the sole right of Don Marketing/Shell UK Oil until we agree mutually to differ this arrangement for a particular promotion".
144. Mr Donovan evidently believed that this letter gave him a half share in all rights in the whole Make Money concept dating back to the 1960s. On the other hand, Charlie Fox's and Option One's conclusion was that Mr Donovan only owned rights over the revamped 1980s artwork and design (his 'new slant') and that Shell could run Make Money again provided it steered clear of Donovan's artwork. The promotion was run on this basis between April and June 1994.
145. I had very little to do with the implementation or preparation of the promotion itself, as I was busy dealing with the immediate run-up to SMART until my departure from the Department in April 1994. However, in February 1994 I did pick up on the tail end of the correspondence which had passed between David Watson and Mr Donovan on this topic at the end of the previous year.

Campaigning

146. Mr Donovan and his father have campaigned against Shell and me personally in the weeks preceding the issue of the Writ and throughout this litigation. They have done this by placing advertisements in the press, setting up two websites on which extensive material is published and selected extracts of telephone conversations that John Donovan surreptitiously recorded are both played and transcribed; by writing letters to senior executives within Shell; other public figures including MP's and many government departments. His father, Alfred Donovan and others are accustomed to stand outside Shell-Mex House where Shell UK Limited's office is based handing out copies of this material, as well as outside Shell International in Waterloo and the Shell offices in The Hague. Mr Donovan's campaign against me and Shell has been persistent and vindictive and the campaign includes among the various incidents the following:

- i. On 5th March 1998 John Donovan send a letter to Mark Moody Stuart, Chairman of Shell Transport and Trading Company Plc, naming me and saying that I acted "entirely without scruples in these matters". Letters were then posted on the website and sent to Pension Fund Managers and Shell Station Operators talking about the "blatantly disreputable conduct of a former manager of Shell UK Limited, Mr Andrew Lazenby"
- ii. On 8th May 1998 an open letter was sent to Mark Moody Stuart, saying that concept of the Smartcard was disclosed by John Donovan in

confidence to me. The allegations contained in this letter were later distributed in leaflets outside Shell offices.

- iii. On 6th April 1998 a further letter was sent to Mark Moody Stuart saying that I had specific knowledge of Don Marketing's proposal and implying that I had used this proposal for the SMART scheme.
- iv. On 14th April 1998 Mr Donovan wrote a further letter to Mark Moody Stuart saying that he would send a package to a number of parties including Shell's shareholders and 2,000 Pension Fund Managers. He also stated that the shell-shareholders.org website, a website used as a further medium to campaign against Shell, and with a link to the don-marketing website, was now fully operative. In a further letter on 14th April 1998 to Mr Moody Stuart, Mr Donovan referred to me as a "bad apple at Shell UK".
- v. On 23rd April 1998 John Donovan wrote a further letter to Mr Moody Stuart saying that he had no personal animosity against me. This is obviously wrong as all his actions show that he has enormous personal animosity against me. If he did not he would not be campaigning in the way he is.
- vi. On 8th May 1998 Alfred Donovan (Mr Donovan's father) distributed a leaflet at the Shell Transport and Trading Company Plc Annual General Meeting referring to an "unscrupulous Shell UK Manager". This letter

also gave the address of the Don Marketing website where lots of further malicious material had been published about me by name.

- vii. Mr Donovan published a document entitled "The Don Marketing Saga", a copy of this was posted on his website. In the second paragraph this referred to me personally claiming that Don Marketing presented a succession of concepts to me in strictest confidence and that these ideas were adopted without giving any payment or credit to Don Marketing. This is untrue and a prime example of Mr Donovan's vindictive behaviour towards me.

- viii. Mr Donovan also placed advertisements in the press all referring to his website where I am personally attacked as indicated above. On 1st May 1998 there was an advertisement in the Evening Standard referring readers to his website. A legal notice was published in Marketing Week on 21st May 1998. A letter from John Donovan was published in Marketing Week on 21st May 1998 and further advertisements were in the 28th May 1998 edition of Marketing Week and the July issue of the Forecourt Trader.

- ix. Letters were written to public figures. On 5th May 1998 a letter was written to The Prime Minister, Tony Blair. Further letters were written to MPs on 23rd July 1998, 27th July 1998 and 30th October 1998. Letters were written to the Advertising Standards Authority and the Office of Fair

Trading on 11th May 1998, 1st June 1998, 9th July 1998 and 26th July 1998.

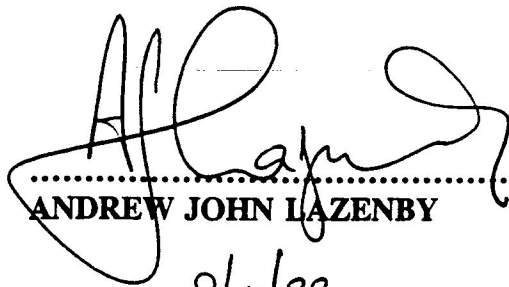
- x. During July and August documentation was sent to Shell Retailers asking them to take part in a survey about the principles of Shell and referring them to this action against Shell. The documentation referred retailers to the Don Marketing website at "don-marketing.com" where John Donovan, Alfred Donovan and Don Marketing (UK) Ltd post copies of their campaign material which includes malicious material about me.

- xi. Out of all these incidents I have found the circulation of documentation outside Shell offices and the contents of the Don Marketing website the most distressing. On the website there is an audio function entitled "The Shell Game" where my voice which was recorded without my knowledge in a telephone conversation with John Donovan is used partially and selectively. The distribution of leaflets outside Shell offices has been carried out by John Donovan's father, Alfred Donovan, and it also appears that third parties have been encouraged to distribute leaflets. (including a young man and a young woman). These leaflets have been distributed on a regular basis since August 1998 and new leaflets are available at regular intervals.

147. Such behaviour has caused me much stress and has only been tolerable because of the unreserved support I have received from Shell management to the highest levels as well as my colleagues, and because I am confident of our position. Only because of such support has the intense personal campaign he has been waging not affected my work performance, professional standing or health.

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

SIGNED


.....
ANDREW JOHN LAZENBY

DATED

8/4/99.
.....