

CHANCERY DIVISION

B E T W E E N :

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 ARMSTRONG-HOLMES

I, JOHN ARMSTRONG-HOLMES of 99 Bingham Road, Radcliffe-on-Trent, Nottingham, NG12 2GP WILL SAY as follows:-

1. I am the Commercial Manager for a design and print company specialising in the design of brochures, catalogues and corporate identities for organisations including charities, banks and building societies.
2. From 1983 until 1992 my wife and I operated a small design and marketing practice. In the course of our business activities we created and developed a number of very

successful consumer promotions for Home Brewery Plc. We handled every aspect of each promotion, from design and printing all literature to sourcing of prizes and fulfilment etc., and were well rewarded for our endeavours.

3. Additionally, we provided marketing services to a number of well known organisations, particularly in the field of commercial and leisure development. I conducted business with our clients at director level and at all times we did so in the strictest confidence. We had a mutual bond of trust. A verbal agreement or a handshake was all it took to begin the process of implementing a project. I never once experienced a breach of confidence or trust and we were always remunerated for the work we undertook.
4. From 1985 until 1993, I was a senior member (councillor) of Nottinghamshire County Council and was elected by my peers as their Group Leader in 1992. As a senior member I was well versed in dealing with highly sensitive and confidential matters. I can't recall one breach of confidence during my time on the Authority. Your word was your bond.
5. Around the beginning of March 1992 my wife, Mariane, had an idea for a "Green" promotion. We discussed it in depth and I quickly realised that my wife had thought of an extraordinarily appealing concept for a novel and timely petrol sales promotion in view of the oil industries strong desire to be linked with "green" policies. Being in the promotions market for many years, I knew that no such scheme had ever been adopted by an oil company (or indeed by any other retail chain). It clearly represented a genuine first. We decided that Shell would be a prime target and developed the concept accordingly.

Approach to Shell UK

6. Although my wife and I owned the concept personally, we felt that it would be better received by Shell if presented under the banner of a new company, Christian James Design & Marketing. On 26th March 1992 (our Wedding Anniversary) I wrote a teaser letter to Alan McNab, National Promotions Manager at Shell UK, saying that we had an idea for a "Green" promotion that we were willing to share with Shell on an exclusive basis. I specifically made the point that it would be "a genuine first in your industry!"

7. On or about 9th April 1992 I received a letter from Andrew J Lazenby, Promotions Manager at Shell UK Oil, saying he would like to give further thought towards making use of our idea in their promotional mix. He invited me to call him to arrange a time to discuss further and demonstrate our idea.
8. I had a fairly lengthy telephone discussion with Andrew Lazenby on or about 24th April 1992. He wanted me to disclose the idea on the basis that he did not want to waste my time or his with a meeting if the concept had already been put to Shell. I agreed to disclose the idea after he gave me a verbal and categorical guarantee of confidentiality.
9. When I did reveal the concept he appeared to be very excited about it and was keen to meet up at the earliest possible opportunity. I explained to Mr Lazenby that my wife had devised the concept. He said that he would be pleased to meet her. A meeting was arranged for 10am on Friday 1st May 1992 at Shell-Mex House, which I confirmed to him by letter on 24th April.

Meeting with Andrew Lazenby at Shell-Mex House

10. As arranged, my wife accompanied me at the meeting on 1st May 1992 and we presented to Mr Lazenby a confidential document outlining in considerable detail our concept for the "Spring into Shell" promotion. Before we began to discuss the contents of the document, I again emphasised to Mr Lazenby that the contents of the document and all discussions in respect of our concept were in strictest confidence. He reiterated his categorical guarantee that it would be treated at all times on that basis. The legal term - "CONFIDENTIAL" was prominently printed on the cover page of the document and Mr Lazenby retained the document under that express condition.
11. We talked through the document with him in detail and he still appeared to be genuinely excited by the concept. Mr Lazenby explained that originality was a crucial point as far as Shell management was concerned. As he was keen to verify that the idea was genuinely a "first", he had double-checked with a colleague who had worked in Shell's promotions unit since the 1970's. The colleague had confirmed that although Shell had

once featured garden tools in a loyalty scheme, no "garden concept" involving bulbs, plants, shrubs etc., had been originated internally or put to Shell by any other party. Neither had any other oil company used such a promotion.

12. Mr Lazenby asked if we had sourced any of the "rewards" (as he called them). I said that we had, and disclosed to him in confidence the name of Direct Garden Supplies Ltd in Spalding, Lincolnshire as our likely supplier for bulbs, shrubs etc, and that I envisaged a link up with B & Q and/or Sainsbury Homebase for redemption of garden hardware, accessories, tools, furniture etc,.
13. Mr Lazenby said that there was a strong possibility of our idea being used as part of their promotional mix following on from what was already being planned for January and February 1993. He made it clear that he didn't want us to approach a competitor and said that if our concept was incorporated into their promotional mix we could expect a concept fee for our idea, plus payment for all promotional materials and commissions on merchandise as we would be expected to handle every aspect of the promotion. This, he said, was Shell's standard practice and how they worked with other promotional agencies.
14. We went on to discuss various aspects of the promotion, its implementation and children's increasing interest in their environment and how they could also be locked into the promotion. "Pester power" was an important consideration Mr Lazenby advised us.
15. The meeting, which lasted about two hours, was very positive. Mr Lazenby certainly gave us the impression that our concept had excited him and he promised that it would be presented favourably by him to an internal meeting on 13th May 1992. He anticipated that the concept would be put out to research.

Subsequent Events

16. On 5th May 1992 I wrote to Shell covering a few of the points that arose at our meeting. Shortly after 13th May 1992 I called him to enquire about the internal meeting. Mr Lazenby told me the outcome was positive and that our concept would now be put out to research with a few other promotional ideas they were considering. He said that apart

from the possibility of a Shell short-term promotion the garden concept could be incorporated into the reward structure of a multi-retailer loyalty concept on which Shell held an option. The project was at an initial stage of appraisal and was a future possibility. The name of Don Marketing was mentioned during the conversation but I cannot recall the context. I already knew of Don Marketing and their association with Shell. Mr Lazenby said that the initial research would be for a standalone concept. I agreed to keep secret the information he had disclosed to me. Our call ended with Mr Lazenby saying he would be back in touch once the research had been concluded and reported to Shell towards the end of July 1992.

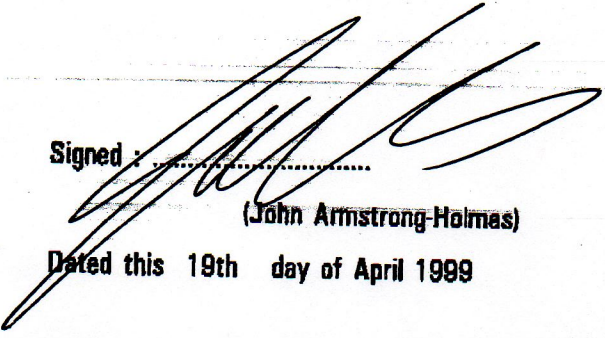
17. I contacted Mr Lazenby at the end of July 1992 to discuss the outcome of the research and he told me that whilst our concept had not come out at the top of the list, it had received good results and was still a strong possibility. I spoke to him on a number of other occasions during the latter part of 1992 and subsequently in 1993. He always asked for more time on the basis that the concept was now more likely to be incorporated into the long-term scheme. During one such call in the summer of 1993, I asked if he would like to negotiate an option on our concept and reminded him of his comment about the option on the loyalty scheme. He said that he had inherited it from a predecessor and that although Shell no longer entered into such agreements, he could assure me that Shell definitely had our concept earmarked for further research. He asked us to be patient.
18. Nothing more was heard on the subject until I was contacted by John Donovan on 10th March 1999. He advised me of his High Court litigation against Shell UK in relation to the Smart loyalty promotion. Mr Donovan explained that he had found documents relating to our proposal to Mr Lazenby within a mass of papers supplied to him by Shell as "discovery". Mr Donovan supplied me with copies of the documents, which included a copy of the confidential proposal that Mr Lazenby had retained under consideration.
19. My wife and I were in a state of shock when we read the letter that Mr Lazenby sent to The Hazell Consultancy on 31st July 1992. Mr Lazenby advised them that he had on 22nd July (1992) received the results of market research on a "gardening concept" which Shell had "formulated internally, not utilising any external agencies". Mr Lazenby was

undoubtedly referring to the concept that my wife and I had disclosed to him in confidence. His intentions to hijack our concept were abundantly clear and his plans to implement the promotion internally were totally at variance with what he had agreed with us. Mr Lazenby intentionally deceived us. I can only conclude that his categorical assurances were an out-and-out deception.

20. The discovery papers show that our "Spring into Shell" gardening concept was researched again for Shell in September 1993 as a "Spring Bulbs" theme and that Mr Lazenby was still Promotions Manager at that time. They also show that Shell issued a letter of intent to Direct Garden Supplies Ltd in October 1995 for the provision of awards in the Smart loyalty scheme.
21. Mr Donovan also supplied me with copies of notes and correspondence generated by Mr Lazenby in late October 1993 in relation to PROJECT ONYX. It confirms his intention in that instance to "keep rejects holding as long as poss". Mr Lazenby wrote a few days later to a number of the suppliers he had already decided to reject, advising of delays in considering their proposals and seeking further extensive information from them. His colleagues were aware of his insidious actions.
22. It is obvious to me that Mr Lazenby kept us holding on for the same underhand and unethical reasons. He did not want us to offer our concept and our services to any competitor. I would not have thought it conceivable that the Promotions Manager of a multinational company could behave in such a dishonest and despicable manner, particularly when dealing with small companies. I do not see how his actions can be interpreted as anything other than predatory.
23. My wife and I find it deeply disturbing that Shell's lawyers have remained silent even though they have been in possession of this highly incriminating evidence for several years. It must have been examined in connection with the previous claims brought against Shell. We find it even more amazing that contrary to the promises of honest dealing by Shell employees given in Shell's Statement of General Business Principles (of which Mr Donovan has supplied me with a copy), Mr Lazenby still works for Shell. This was confirmed by

a call to Shell-Mex House.

24. I confirm the contents of this statement are true to the best of my knowledge, information and belief and I make it knowing that it may be given in evidence.

Signed: 
(John Armstrong-Holmas)
Dated this 19th day of April 1999

John Armstrong
19.04.99

J.