

Shell Shareholders Organisation

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18 January 1999

Mr Malcolm Brinded
Chairman
Shell UK Limited
Shell-Mex House
London WC2R ODX

Dear Mr Brinded

I am writing to you regarding an unresolved and no doubt unwelcome problem that you have inherited from your predecessor. I refer to the "Don Marketing Saga".

Since you are starting with a clean slate on these matters, I want you to know that contrary to whatever you may have been told by Dr Fay, we are reasonable people who have always gone to great lengths to avoid becoming embroiled in litigation. We enjoyed a mutually successful, friendly and trusting business relationship with Shell for over a decade before hostilities commenced.

Time and time again, we have been placed in the position of having to sue Shell or abandon legitimate claims. On every occasion that we have brought a claim to Shell's attention, your lawyers have rejected them as being totally without merit. Despite the obvious merit of each claim, they consistently opted to play hard ball in the hope that we would give up.

When I publicly challenged Sir John Jennings at the 1995 AGM about the lack of any fair process to deal with disputes, he made the point that "it takes two to tango". When we spoke to him after the AGM we advised him that it was Shell UK, not us, that was not prepared to tango. We actually made more progress in the few minutes spent with Sir John Jennings than in the previous two years of acrimonious discussion with Shell UK. All that was required was some commonsense on both sides.

At the time when my son, John Donovan, wrote to Dr Fay in respect of the SMART claim, he proposed that the matter be discussed and resolved privately. Dr Fay declined the invitation and threw us to the legal wolves at DJ Freeman. We still tried to avoid litigation and agreed to await the preparation of a report by DJ Freeman.

For several months, while discussions were continuing, we voluntarily kept the matter confidential because we did not want to jeopardise Shell's prospects of signing up SMART partners. When eventually DJ Freeman had assembled the evidence and interviewed witnesses, it was clear that the process had strengthened our claim.

Nonetheless, DJ Freeman subsequently ignored independent expert witness opinions, including one obtained from Professor Steve Worthington, who is probably the worlds leading authority on loyalty schemes, and informed us that our claim was "doomed to failure". When they then engaged the services of sleazy undercover investigators, all hell broke loose. Faced with hard ball tactics yet again, I have responded accordingly.

Quite frankly at the age of 81 I would ideally prefer to be snoozing in my favourite chair, than spending most of my time fighting Shell. It is not good for me and it is not good for Shell. In this connection, I enclose copies of the next two leaflets in the pipeline. Both will be circulated in London and The Hague next week i.e. the week commencing 25th January. I also enclose a copy of a self explanatory draft letter to the Lord Chancellor's Department, which will be finalised, before my departure to the Netherlands next week.

The main message that I want to get across to you is that I would need very little encouragement to end my activities. Shell would not need to capitulate in any way. Although there is no prospect of my son abandoning his SMART claim, given a modicum of common sense on both sides, matters could be dealt with in a less confrontational way. The undercover agents could be dispensed with and my campaign could be brought to an immediate end.

All it would take is a successful outcome to "without prejudice" discussions between my son and Mr Richard Wiseman. I believe that both have acquired some genuine respect for each other during the past disputes and could agree a way forward that would be advantageous to Shell shareholders, as it would minimise legal costs and the damage to Shell's reputation. It could also help to stem the deterioration in Shell staff morale. Despite the collapse of previous confidentiality agreements it would not be beyond the wit and wisdom of Mr Wiseman and the respective lawyers to construct a new agreement that would stand the test of time, given sufficient incentives and penalties.

I suspect that what ever way forward was agreed, both sides would want discovery and the exchange of witness statements to be completed and the trial date to be retained. From our perspective, we believe that the "good prospects of success" assessment made by leading Counsel over a year ago will be upgraded by further important evidence which has come to light, even though it was buried in a mountain of discovery furnished by Shell. My son believes that no one had previously given the same degree of scrutiny as he did over several days at the offices of DJ Freeman. The new evidence shows a definite pattern and practice of unethical conduct by the relevant Shell manager. My son will be contacting relevant parties to obtain their testimony.

Please note that despite the additional discovery, the situation remains that only one proposal exists, which describes the SMART consortium scheme. It is the one that DM put to Shell UK in strictest confidence. The evidence shows that it was last discussed with a Shell manager, Mr Andrew Lazenby, towards the end of November 1992. It also shows that early January 1993, Mr Lazenby briefed another agency to produce a scheme that was fundamentally identical.

Aside from DM's proposal, the January 1993 brief was the first time in the entire Shell discovery that there was any evidence of a valid blueprint for the promotion. Given the proximity of the two dates – late November 1992 and early January 1993, and the specific agreement he reached with two representatives of Don Marketing during the November meeting, whichever way the matter is assessed Mr Lazenby undoubtedly acted improperly.

If you decided to discuss a settlement in the light of the additional evidence (or put the dispute to mediation), there will be no question of holding Shell to ransom. My son would accept the recommendation of a suitable independent third party, for example an international licensing agency, in relation to fair compensation. Settlement funds could be released over a period of several years to tie in with any confidentiality agreement.

As you are no doubt aware, you have already settled in our favour three High Court actions that DM brought against Shell UK. Your lawyers have made the fair point that the cases were not heard in Court and consequently no determination was made on the merits of the claims. Nonetheless, the mere fact that Shell chose to settle them confirmed an acceptance of wrongdoing by Shell. This conclusion is reinforced by: -

1. The apologies made by Mr Wiseman on behalf of the board of directors of Shell UK to Don Marketing on two separate occasions in the presence of my son's solicitor, Mr Richard Woodman. On the first occasion, a meeting held at Shell-Mex House on 14th June 1996, Mr Wiseman pointed out that Dr Fay was the only Director still remaining from the board that was in place at the time the alleged misdeeds occurred.
2. The letter of apology that Don Marketing received from Dr Fay. It has become apparent that the letter was prompted by the mediators who considered the submissions made by both sides and interviewed the main witnesses including Mr Lazenby, the Shell manager at the center of all of the claims.
3. The fact that Mr Wiseman and Mr Colin Joseph (of DJ Freeman) admitted in an interview with a journalist that DM's claims had genuine merit. The interview was recorded by Shell and by the journalist. I recommend that you listen to the recording, which covers a number of relevant subjects. We will be seeking a copy.

If you feel that it might be worthwhile in the light of this letter for both sides to talk, I would happily end all campaigning activity including the website and the Shareholders Organisation, so as to give commonsense a chance.

Yours sincerely

Alfred Donovan
Chairman
Shell Shareholders Organisation

M.A. Brinded
Managing Director

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27th January 1999

Mr. Alfred Donovan
Shell Shareholders Organisation
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Dear Mr. Donovan,

SMART

Thank you for your letter of 18th January. I am familiar with the litigation relating to SMART and the background to this matter.

I believe that it is not appropriate or constructive for me to engage in direct communication with you on this issue and, as previously advised by both Dr. Fay and Mr. Moody-Stuart, I would ask that all future communication is conducted through the proper legal channels.

Yours sincerely



Malcolm Brinded