

[1] Monday, 21st June, 1999
 [2] MR ROGER SOTHERTON
 [3] Cross-examined by MR HOBBS (Cont.)
 [4] MR HOBBS: Mr Sotherton, please, I would like you to take
 [5] file E1, if you would not mind. You might like to take
 [6] this opportunity to clear your bench of the other
 [7] files. At file E1, would you turn to page 450/A, which
 [8] is a document we were looking at together on Friday.
 [9] A: Yes.
 [10] Q: All right, now, I think we have agreed that the
 [11] handwriting at the top of that page, at the top right,
 [12] is your handwriting?
 [13] A: Yes.
 [14] Q: It says, "Relates to proposal presented to Paul King in
 [15] November 1989".
 [16] A: Yes.
 [17] Q: This proposal, as I understand it, that you are
 [18] referring to there is Concept 4?
 [19] A: Yes.
 [20] Q: Do you have any recollection yourself of presenting that
 [21] proposal which we know as Concept 4 to Paul King in
 [22] 1989?
 [23] A: Not clearly, no.
 [24] Q: Do you have any recollection?
 [25] A: Yes, that I presented it at some point, but I could not

[1] Q: Who made the presentation to Paul King, do you know?
 [2] A: I certainly would have been involved.
 [3] Q: Was it you?
 [4] A: I probably jointly with John Donovan, yes.
 [5] Q: Turn, if you would, please, to -
 [6] MR JUSTICE LADDIE: Mr Sotherton, I know this is difficult
 [7] because you are having to turn your mind back in this
 [8] case 10 years, and I find it unhelpful when you say "I
 [9] probably did something, yes". What Mr Hobbs is asking
 [10] you to do is to recall what happened. If you say "I
 [11] probably did something", it means that you cannot
 [12] remember but you think it is likely. If you say "yes",
 [13] it means you did something. I want to know whether you
 [14] can recall these events or whether you cannot recall
 [15] them. I want to know, if you cannot recall them,
 [16] whether you are trying to do your best to work out what
 [17] was likely to have happened. So for you to say
 [18] "probably, yes", really does not do me any good.
 [19] A: I think the answer would be "probably", then.
 [20] MR HOBBS: So when you answer "probably", you are answering
 [21] within that frame of reference which my Lord has just
 [22] indicated?
 [23] A: Yes.
 [24] Q: Would you turn to page 449, in the same bundle, please.
 [25] This letter carries the letter reference RGS/SDP/AB100b

[1] be accurate about the date.
 [2] Q: You see, what intrigues me is that you are writing on
 [3] the top of this letter to Paul King in November 1989 in
 [4] circumstances where, as I understand it from all other
 [5] materials in the case, that the proposal was presented
 [6] on 23rd October 1989?
 [7] A: No, the comment refers to a presentation to Paul King in
 [8] 1989.
 [9] Q: True. The date which you are writing is November 1989.
 [10] You are as I understand it -
 [11] A: No, sorry, I think the date that I am writing here is
 [12] 24.11.92.
 [13] Q: Which date are you referring to?
 [14] A: I am referring to the date on which that note was
 [15] written, on the top right-hand corner of page 450/A.
 [16] Q: You are saying that you wrote the note at the front
 [17] here?
 [18] A: Yes.
 [19] Q: In 1992?
 [20] A: I would think so, yes.
 [21] Q: Right. Okay. Now, in fact, the date on the document
 [22] relating to Concept 4 and its presentation to Paul King
 [23] was on 23rd October 1989. Did you not know that in
 [24] 1992, in November 1992?
 [25] A: Yes, probably.

[1] at the top. Do you see that?
 [2] A: Yes.
 [3] Q: You were present in court when I was asking Mr Donovan
 [4] questions about that reference, were you not?
 [5] A: Yes.
 [6] Q: The RGS is you, is it not?
 [7] A: Correct.
 [8] Q: SDP is Sharon Peacock?
 [9] A: Correct.
 [10] Q: And why is this numbered B, do you know?
 [11] A: AB100b would probably be the file reference or the
 [12] computer reference.
 [13] Q: And the significance of the last letter "b" is what?
 [14] A: I am not completely sure but it may be a second letter
 [15] in a sequence or perhaps a redraft of a letter.
 [16] Q: A redraft of a letter?
 [17] A: Yes, maybe.
 [18] Q: How might that occur?
 [19] A: Only if it is - probably if it is retained on computer.
 [20] Q: You will have to explain because it is a little cryptic
 [21] to me.
 [22] A: If a letter is drafted and is not printed or sent, and
 [23] left on computer, it may be modified and then sent, but
 [24] for the reference of - for the purpose of what did it
 [25] say before, I think that we used to use a system like

[1] Q: "I had a discussion with John Donovan and telephoned
 [2] Paul King back with an option arrangement that we knew
 [3] Shell would find acceptable."
 [4] A: Yes.
 [5] Q: What was that option arrangement?
 [6] A: That if we received the Star Trek business that we would
 [7] hold the option open for Shell.
 [8] Q: And that was -
 [9] A: Virtually forever.
 [10] Q: I beg your pardon?
 [11] A: Forever.
 [12] Q: Yes, forever, and you did receive the Star Trek
 [13] business, did you not?
 [14] A: Yes, we did.
 [15] Q: And therefore you were aware, you and John Donovan, on
 [16] your own version of events, were aware of the existence
 [17] of the option at all relevant times subsequently, were
 [18] you not?
 [19] A: Yes.
 [20] Q: You go on in this statement:
 [21] "If Shell went forward with the Star Trek concept
 [22] they would also seek an option on the multibrand loyalty
 [23] scheme. We did not include a time limit on the option
 [24] because we knew that Shell would be committed to short
 [25] term promotions for a number of years. We were

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[1] administration.
 [2] MR JUSTICE LADDIE: Once again, when you say "It would have
 [3] been", "There must have been", are you saying you assume
 [4] there was or are you saying you recall there was?
 [5] A: I am saying I assume there was.
 [6] MR JUSTICE LADDIE: You cannot recall it yourself?
 [7] A: No.
 [8] MR HOBBS: Then I am foxed as to why you assume there was,
 [9] if you have no recollection of it. What is it that
 [10] makes you assume there was?
 [11] A: That would be a standard office procedure.
 [12] Q: It would be in a small office?
 [13] A: Yes.
 [14] Q: And how does it work then? You signed off your letter
 [15] of 24th July, did you, you signed it?
 [16] A: Yes.
 [17] Q: What do you do about taking copies for the purposes of
 [18] your files?
 [19] A: I would not.
 [20] Q: Who would?
 [21] A: Sharon Peacock.
 [22] Q: And you would sign the letter. A copy would be made for
 [23] the purposes of the file, would it?
 [24] A: Yes.
 [25] Q: And then where would it go from there?

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[1] delighted..." and so on.
 [2] You say in paragraph 16:
 [3] "I sent the amended letter to Mr Horley on 24th
 [4] July 1990 with a copy of the section from our proposal
 [5] to Shell dated 23rd October 1989."
 [6] Can I ask you this: do you have a clear
 [7] recollection of sending that letter of 24th July 1990?
 [8] A: No, but I have it noted somewhere I think.
 [9] Q: Why are you able to say, as you do here, that you sent
 [10] it? What is your basis for that statement?
 [11] A: Somewhere in the files is a note to that effect.
 [12] Q: Is there?
 [13] A: There must be, yes.
 [14] Q: Which files?
 [15] A: Well, Don Marketing's own files.
 [16] Q: Do you have a post book?
 [17] A: No, I am no longer involved with Don Marketing.
 [18] Q: Did they have a post book at the time?
 [19] A: I am unsure.
 [20] Q: There are six people in this office and you were
 [21] regularly in that office. Did they have a post book?
 [22] A: I would assume that there must have been a post book,
 [23] yes.
 [24] Q: Where was it? Who kept it?
 [25] A: It would have been one of the young ladies looking after

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[1] A: I would have a file. She would file it in its relevant
 [2] file. It may be one that she would copy to John
 [3] Donovan, to his own personal file.
 [4] Q: Did you say you would have a file?
 [5] A: Yes.
 [6] Q: You were a freelance in 1990, or were you an employee in
 [7] 1990?
 [8] A: An employee in 1990.
 [9] Q: Did you keep your files when you ceased to be employed
 [10] and became a freelancer to the firm?
 [11] A: Yes, there was some information that was kept.
 [12] Q: Have you kept files in your house relating to these
 [13] matters that we are discussing here?
 [14] A: I had done.
 [15] Q: Until when?
 [16] A: Last October-ish.
 [17] Q: Did you not think that they ought to be kept beyond
 [18] October?
 [19] A: No, I did not, and the reason I disposed of the files
 [20] was I had a burglary, and it was rather a strange
 [21] circumstance really, because very little was taken but
 [22] small items of jewellery left laying around, and at a
 [23] later point I discovered that these files had actually
 [24] been tampered with, although at the point that the
 [25] police were called, the scenes of crimes officers went

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[1] over the house, I had not noticed that any of it had
[2] been disturbed. At that point I wondered, as other
[3] people that appeared to be involved as witnesses in this
[4] case or whatever, who also had burglaries, that I no
[5] longer wanted any of the paperwork with anything to do
[6] with these matters, and passed them back to John
[7] Donovan.

[8] Q: So you passed your files back to him?

[9] A: Yes. He has had them since about last October.

[10] Q: How complete were those files?

[11] A: Not very. Very limited.

[12] Q: They were so complete that you did not notice to begin
[13] with that anything was missing from them, correct?

[14] A: No, they were actually in date order, and there were
[15] also some personal files as well and items from my
[16] personal files had somehow got physically into the file
[17] that contained information not only about the Shell
[18] business but other business as well, and the whole thing
[19] had been upset.

[20] Q: And you stripped out, did you, and gave back to John
[21] Donovan the bits that related to Shell?

[22] A: Anything that related to anything that was not personal,
[23] yes.

[24] Q: Do you remember when you first went into the witness box
[25] I was asking you questions about a letter before action

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[1] not leading anything at all. It was obviously that was
[2] John Donovan that was -

[3] Q: Close up your witness statement, please, and go back to
[4] the letter that we still have open in the other file.

[5] MR JUSTICE LADDIE: Which one is that?

[6] MR HOBBS: E1, 449. I am going to go through with you
[7] certain points under the heading "A multibrand loyalty
[8] programme". This is your letter to Horley. Now, are
[9] you quite sure that this letter was sent and that this
[10] letter was written at this time?

[11] A: Yes.

[12] Q: Are you really sure that that is so? Is it your
[13] evidence on oath to my Lord that it was?

[14] A: Yes.

[15] Q: Under that heading you say:

[16] "When the timing is suitable for Shell, Sainsbury
[17] will be willing to consider the consortium-based
[18] customer loyalty proposal which, with Shell's approval,
[19] we disclosed to you in strictest confidence."

[20] When did you get Shell's approval for the oral
[21] disclosure down the telephone?
[22] (12.15 pm).

[23] A: (Pause). That would have been a couple of days before.

[24] Q: Before what?

[25] A: Before the letter was written.

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[1] which was written by John Donovan in April 1997?

[2] A: I have a vague remembrance of that, yes.

[3] Q: This happened on Friday I think. Is your memory that
[4] bad?

[5] A: It is unfortunately. This weekend I have just been
[6] through a traumatic house completion, and it has been
[7] rather upsetting because the people that we were
[8] completing the house with would not move out and did not
[9] move out until Sunday, so it has not helped my memory at
[10] all.

[11] Q: Look, when I asked about correspondence and letters
[12] which were mentioned in that letter before action of
[13] April 1997, I was not aware at that point in time that
[14] you had your own files in your own house in date order
[15] relating to those matters?

[16] A: To some of the matters.

[17] Q: Some of the matters?

[18] A: Yes, it was not a complete file.

[19] Q: You must, therefore, when that letter before action came
[20] to be written, you know what I am talking about, do you
[21] not, the April 1997 letter -

[22] A: Yes, I think so.

[23] Q: You must have checked your own files relating to those
[24] matters for corresponding letters, must you not?

[25] A: I don't think I did. I don't recall that I did. I was

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[1] Q: No, before the telephone conversation surely?

[2] A: Oh -

[3] Q: When did you get Shell's approval for the oral
[4] disclosure down the telephone to Horley?

[5] A: I am not certain I did.

[6] Q: So that letter is not accurate insofar as it may suggest
[7] that you did have Shell's approval to speak to Horley?

[8] A: I think that was after the event, yes.

[9] Q: Right.

[10] "Copies of pages 12, 13 and 14 of Concept Four, a
[11] section of a multiconcept proposal we presented to
[12] Shell, are attached for your information."

[13] You had permission to do that, you say?

[14] A: Yes.

[15] Q: Who gave you that permission?

[16] A: Paul King.

[17] Q: Did it ever occur to you that it would have been
[18] appropriate to speak to Stuart Carson on these matters?

[19] A: No.

[20] Q: Did you know that Paul King had been sidelined within
[21] Shell at this point?

[22] A: I must have done. Because, of course, Stuart Carson was
[23] there as National Promotions Manager.

[24] Q: Did you know that your colleague, John Donovan, was
[25] dealing, at this very point in time, with Stuart Carson

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