

A legal dispute between Don Marketing (UK) Ltd and Shell UK (Ltd) is now spilling out into the public arena following the placing of advertisements in the trade press by Don Marketing, requesting information from Shell dealers. The following is an attempt by *Forecourt Trader* to uncover the facts behind the dispute – from both sides.

In total, Don Marketing has issued three High Court writs and a County Court proceeding against Shell, alleging wrongful use of retail promotions developed by Don Marketing. Shell has already settled one of the three writs out of court.

Over 13 years, Don Marketing claims it has devised multi-million pound forecourt promotions for Shell such as Bruce's Lucky Deal (1986) and a Star Trek game (1991). Problems arose, however, over the development of two further promotions – a Nintendo Game Boy competition (1993) and Make Money (1994).

Where Make Money was concerned, Don Marketing and Shell agreed joint rights when the competition was first introduced in 1983. At that time, Shell partially funded the development of the promotion. The joint rights were still in force for the 1994 project of the same name. According to John Donovan, managing director of Don Marketing, Shell decided to go ahead with the 1994 promotion without Don Marketing's consent or knowledge, and despite the fact that Andrew Lazenby, Shell's promotions manager at the time, informed him that the company had no immediate intention of proceeding with the competition.

"I was highly suspicious. I phoned my contact who said the game was in production, so I went back to Shell and asked them if this was the case. I was sent a letter saying there were no plans to run the promotion which would in any way clash with my company's rights," said Mr Donovan. "My sources confirmed, however, that the game was definitely going ahead."

As a result, Don Marketing issued its first High Court writ and threatened to advertise in the trade press warning Shell dealers that legal action would be taken against them if they went ahead with the

Promotion wrangle



Forecourt Trader uncovers the background to the legal dispute between Shell (UK) Ltd and promotions company Don Marketing UK (Ltd)

John Donovan (centre), managing director of Don Marketing Ltd, with two colleagues at the launch of the Make Money promotion in 1983

Shell's Make Money promotion, was followed by other joint ventures between Shell and Don Marketing, such as Bruce's Lucky Deal and a Star Trek game

game. According to Mr Donovan, Shell apparently then issued an ultimatum to Don Marketing warning it to accept Shell's settlement offer or else.

"Shell was prepared to run another promotion of its own which had reached an advanced stage of production so we accepted and settled out of court for a substantial sum," said Mr Donovan.

The Make Money promotion ran between May and June 1994.

A second High Court writ was issued against Shell over a Nintendo Game Boy promotion which ran in June 1993. In February 1993, Don Marketing received a fax from Shell's Andrew Lazenby which stated that Shell would be back in touch when they had made further progress. Mr Donovan claims he heard nothing further from Shell until, in June 1993, he opened a copy of the *Daily Mail* and saw an advertisement for the competition.

Shell accepted Don Marketing's invitation to put the Nintendo dispute to mediation with the objective of settling the dispute amicably. Mr Donovan said that this was done "to gag us from making public our belief that the Make Money game was flawed". The mediation meeting took place on July 25, 1994, at Shell Mex House in London.

"The terms were that the mediation would be carried out forthwith and that someone in authority from Shell UK would attend. It took two months to get to mediation and no-one of authority from Shell was present, only their lawyers," said Mr Donovan.

"They said at the end of the session that their solicitors would be in touch with our solicitors, but on August 30, 1994, we received a letter which said Shell had no offer to make.

"We then issued legal proceedings against Shell for breach of contract in

relation to the mediation."

Writ number three was issued on September 30, 1994, and involved another Don Marketing promotion idea, originally entitled *The Hollywood Collection* and retitled as *Now Showing by Shell*.

"We received a fax from Shell saying they would let us know when there was further progress on the project but it was suddenly launched without any credit or payment to Don Marketing," said Mr Donovan.

Shell UK "categorically denies" the allegations made by Don Marketing and has served defences to each action.

In a written statement, the company said: "Shell is surprised that Mr Donovan of Don Marketing, having initiated proceedings, has chosen the unusual course of publicity to ventilate his allegations. Shell believes that the appropriate forum for resolving this commercial dispute is the legal process currently taking place. Shell UK has complete faith in the strength of its defence and will rely on the Court's eventual decision. Shell is convinced that the legal process will find all allegations to be ill-founded."

According to the statement: "Shell agreed to participate in a mediation process to resolve the dispute on terms put forward by, and with a mediator proposed by, Don Marketing. It was agreed that the method, content and conclusions of the mediation would remain confidential so that the court proceedings that are running would not be influenced. Unlike Don Marketing, Shell proposes to honour that agreement.

"Shell UK is sorry that Mr Donovan has not felt confident enough to await the outcome of the legal proceedings which he initiated and which Shell is keen to conclude."

