Shell Smart copyright battle gets nastier

John Donovan, a director of Don Marketing UK Ltd, believes he owns the copyright to the Shell Smart loyalty scheme. He has been involved in protracted legal wrangling with Shell UK and last month issued a High Court writ when talks broke down. Recently he decided to write to all Shell partners and petrol station managers warning them they may face legal action if they participate in the scheme. Donovan spoke to *Loyalty* about why he believes the copyright is his.

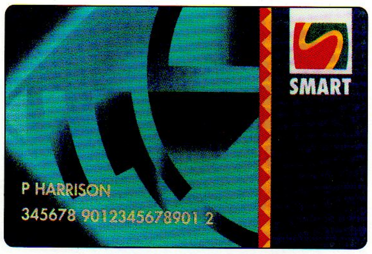
The advertisement in Marketing Week states that "Any business contemplating becoming a partner in the SMART consortium scheme is hereby notified that any such participation may involve an infringement of rights, rendering it liable to legal action." It refers interested parties to its web site at www.don-marketing.com.

John Donovan is stepping up pressure on one of the largest company in the world, in his fight for recognition that he thought of the Shell Smart Card idea first.

That David is taking on Goliath is obvious, and in itself proof of the depth of feeling that the small man has been wronged.

But why has John Donovan taken so long to fight back, and why does he feel he can win against such a hefty opponent?

When ***Loyalty*** first spoke to him John had just lodged his High Court writ and was gathering strength for the offensive. Explaining why his action had taken so long he said: "Taking on the world's largest company is a daunting prospect. When the Shell card scheme was first launched, it didn't appear to be the same scheme, but when in March last year they launched the Scottish multi-partner scheme, it then became obvious it was my original idea. Since then I have been gathering evidence, and expert opinions, including that of Professor Steve Worthington, who agrees with



me. Worthington said: "Based on the information I have received [from Don Marketing] the presentation by Don Marketing to Shell UK on October 23, 1989 does seem to lay the foundation for the current Shell Smart Scheme."

Make Money

DM has had a business relationship with Shell stretching back almost two decades and has been responsible for many of Shell's most successful promotions, both in the UK and overseas, including the Make Money game in the UK, Ireland and Singapore.

During that time Donovan has issued writs against Shell three times, concerning the Nintendo game, the Now Showing promotion and the Make Money game. "In all three cases," says Donovan, "it was the same individual concerned, and in all three cases, Shell settled out of court."

DM claims its concept was devised in response to a specific brief from Shell. The brief itself stemmed from research carried out by DM which first identified flaws in loyalty schemes commonly used at that time, such as Shell's Collect & Select scheme. John Donovan says he suggested a card scheme, using a number of partners.

The issue has now turned acrimonious, with Don Marketing warning partners of their liabilities and Shell insisting that when it reaches the High Court, it will undoubtedly win.

Explaining why he is prepared to risk so much to fight such an unbalanced battle, the director said: "We thrive on good ideas, and have to protect them. Shell has always abided by agreements in the past, and we had a fruitful relationship until one individual came onto the scene, and working unsupervised, made agreements with me that he later denied.

"We have had legal opinion that we have a strongly arguable case with good prospects, and that the claim will likely be extended to overseas exploitation of the concept by the Royal Dutch/Shell Group."

Although Shell's legal department has managed to get his letter revised, Donovan will also be writing to all 400 Gulf stations currently being rebranded by Shell, warning of the consequences of moving to the Shell Smart scheme.

Shell comment

"We are strongly contesting Don Marketing's claims and litigation is pending. There has been a considerable amount of open comment on this matter. Shell believes it is not appropriate to discuss in public matters that should be resolved in court."

SMART partner extension goes ahead

Shell is going ahead with extending its Smart card loyalty scheme, despite it being the subject of a High Court dispute over copyright.

The company has announced that the Smart chip card can now be used to collect or spend points on 25 different brands.

These include Avis Rent A Car, British Gas, British Midland, Commercial Union, First Choice, Hilton Hotels, John Menzies, KLM UK, Le Shuttle, RAC, Shell, UCI Cinemas, Unijet, Vauxhall, Virgin Net and Vision Express.

Customers in Scotland only can also collect and spend SMART points at Dixons, Currys, The Link and Victoria Wine.

Gary Anderton, SMART manager said: "Many loyalty programmes know the next big step is to start creating a multi-company 'currency' – and we've pulled it off. Research has shown that people want to collect points on more of their purchases, have a greater choice of reward and use a single card. Customers also want their privacy respected and do not want to be deluged with unwanted mail, so we have promised that too."

SMART first launched as the Shell loyalty scheme in October 1994. It gained much publicity as the first nationwide smart card in the UK, where it now has 4 million cardholders. Last year it became the first loyalty scheme to offer points on the Web. Card holders have to click on flashing credits scattered around the websites of seven SMART member companies.

Comment

Data promises

Mintel claims its research 'confirms industry scepticism' over the value of individual loyalty cards.

The market research company says that its figures reveal that only 13 per cent of customers spend more through participation in a scheme, and one third claim not to be influenced in any way about where they shop.

Loyalty suggests this shows up the inherent inaccuracy of market research rather than the failure of loyalty schemes.

The Mintel research also showed that 47 per cent of customers believe that cards are used for retailers to sell the information collected to other companies.

Recent media hype has concentrated on the big brother 'we know everything about you' aspect of card schemes. If someone then stops a nervous customer in the street to find out *more* information, it is no surprise they are going to claim they don't take part, that loyalty cards have never affected their shopping decisions, and anyway, they have a selection of cards.

Did Mintel notice the results from Safeway this quarter? The struggling supermarket group has dug itself out from the mire by offering triple points to customers who have spent above a certain limit the month before – and still made a profit.

Liz Harlow, relationship marketing manager of WH Smith, is adamant that its Clubcard has had a significant influence on buying behaviour, revealing that 51 per cent of customers were switching spend as a result of the loyalty card.

Tesco, with 8.5 million cards, the first and largest loyalty player, believes it will save over £500 million over the next three years through data analysis.

You don't find out about your customers by asking them what they do, but by watching what they did. Concrete evidence of shopping habits is collected via a POS linked database, with the loyalty reward as the incentive for the customer to take part.

Whether we will kill the golden goose by paying too little respect to the confidentiality of that information, and too little attention to the concerns of customers for their privacy is an important consideration.

It is not proof that loyalty doesn't work.

Contents

Loyalty is published by C&M Publications Ltd, PO Box 28, Corby, Northants NN17 5LY, England Tel: 01536 403648, International: +44 1536 403648, Fax: 01536 406888, International: +44 1536 406888 (Price UK£98 plus £6 postage outside the UK)
Managing Editor: Annich McIntosh
Staff Writers: Will Rankin, Lisa Rosenthal
Advertisement Sales: Marie Sinclair
Contributors: Jeremy Flint, Feisal Visram
Subscriptions Controller: Kay Woodley. Subscriptions Direct Line, Tel: 01536 206886
Editorial enquiries, manuscripts and correspondence should be sent to: Editorial Department, Loyalty, C&M Publications, Clare House, Hunters Road, Weldon North, Corby, Northants NN17 5JE. Subscription and advertising details: Subscriptions or Advertising Manager, Clare House, Hunters Road, Weldon North, Corby, Northants NN17 5JE.

ISSN 1354-5868