

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

**B E T W E E N:**

**JOHN ALFRED DONOVAN**  
**Plaintiff**

**- and -**

**SHELL UK LIMITED**  
**Defendant**

**(by Original Action)**

**AND B E T W E E N:**

**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**  
**ANDREW JOHN LAZENBY**

---

D J Freeman  
43 Fetter Lane  
London  
EC4A 1JU

Ref: JXM/  
ID: LC.31363

**Solicitors for the Plaintiff**

**CHANCERY DIVISION**

**B E T W E E N:**

**JOHN ALFRED DONOVAN**

**Plaintiff**

**- and -**

**SHELL UK LIMITED**

**Defendant**

**(by Original Action)**

**AND B E T W E E N:**

**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  
ANDREW JOHN LAZENBY**

---

**I, ANDREW JOHN LAZENBY of Shell UK Limited, Shell-Mex House, Strand, London**

**WC2R 0DX WILL SAY as follows:-**

- 1. I joined Shell in October 1987 as a graduate. Prior to this I completed my degree in Engineering Science at Oxford University. My first appointment with Shell was as a retail representative in Glasgow. I then moved to the Commercial Division as a business analyst. I then worked in the Retail Diesel Strategy Unit before joining the Promotions Department of Shell UK Retail in February 1992 as National Promotions Manager. I was moved to the Promotions Department to**

replace Alan McNab who was moving to another position within Shell. Alan McNab had worked for David Watson, who was Advertising and Promotions Manager and in this role headed up the advertising and promotions unit. David reported to the Retail Marketing Manager. I had worked with David Watson previously in the Commercial Division. The promotions unit was made up of Paul King, Tim Hannagan and myself. Jacqui Freeman and Liz Proctor were assistants in the department. David Watson's immediate superior was Graham Sweeney, Retail Marketing Manager. Graham Sweeney was replaced by Frank Leggatt in September 1992. Frank Leggatt has since retired from Shell.

2. I was involved in what subsequently became the SMART scheme between February 1992 and my departure from the promotions department in May 1994. Project Onyx, the forerunner to Project Hercules (which eventually became the SMART scheme), was already under way when I joined the department. At that stage, before I had ever met John Donovan, Project Onyx already bore many of the features that Mr. Donovan now claims as his own.
3. In its progression from Project Onyx to the SMART consortium, many lessons were learnt from the successes and failures of other people's loyalty programmes and from our own market analysis and research; the project evolved accordingly. Along the way, the project consumed tens of thousands of hours of management and consultant time, hundreds of files of paper and over £15 million. During the whole of that time no element of the scheme was taken for granted - the whole project was under constant review. And yet Mr Donovan still appears to maintain

that the entire SMART scheme originated from the information on two pieces of paper which he sent to me in the latter half of 1992.

4. In order to refute the serious allegations made against me and other Shell UK staff by Mr. Donovan it is necessary to demonstrate exactly how the SMART scheme was developed, entirely without reference to Mr. Donovan's suggestions. I must in effect prove a negative. Unfortunately this entails a detailed analysis of large numbers of documents and of every stage of the chronological development of SMART.

#### **The Chronological Development of SMART**

5. When I started in the promotions department I had not run promotions before but I had been involved in implementing them in other departments within Shell. Before moving into the position, I had a short interview with David Watson. This was an introduction to the job rather than a selection process. My handover from Alan McNab consisted of a short period when I shadowed what he was doing, rather than a formal briefing. He had been dealing with the tail end of the Collect and Select promotion and with short term promotions. When I joined the department, I dealt with short term promotions. We had a number of such promotions 'on the go' at any one time. I was aware that Tim Hannagan was working on a report about the use of technology in promotions. I became aware that this investigation went under the name of Project Onyx. Whenever I mentioned the use of technology in promotions David Watson suggested that I speak to Tim Hannagan, as David was anxious to ensure that work was not being

I wrote a more detailed note on the subject on 13 April 1994. This was my parting shot in relation to SMART, and I left the department on 6 May 1994.

### Summary

120. Having been heavily involved in the formative stages of the SMART scheme for some two years, I can state categorically that the scheme was in no way derived from any information disclosed to me by Mr Donovan or Don Marketing UK Limited. The only occasion that he put forward any information to me about any kind of loyalty scheme involving third party retailers was in May 1992 when a copy of Mr Donovans three year old proposal was sent. By this time extensive research into and development of the concept of the sort he claims as his own was already well under way. Even now I have no recollection of his ever mentioning a long term loyalty scheme; after all, his expertise was in the field of game promotions and all the proposals he presented to me were games or competitions on one theme or another.
121. The evolution of SMART was a long and arduous process. The progress from Project Onyx through Project Hercules to SMART was a long and bumpy ride. It took many twists and turns, evolving along the way in response to pressures from senior management, market research, third party input and the successes and failures of other loyalty schemes. Even before my departure, the scheme made many trips back to the drawing board and was still under revision when I left. The final SMART scheme was specifically tailored by and for Shell with the assistance of Option One in order to reclaim and retain the business of a valuable section of

the motoring public. It is naive of Mr. Donovan to suggest that the SMART scheme was modelled entirely by me on the basis of his contributions.

### **Previous litigation**

122. Mr Donovan is no stranger to litigation - I believe that this is around the sixth legal action brought against Shell by members of the Donovan family or their associated companies. In particular Mr Donovan has referred at paragraph 25 of his Statement of Claim to three previous actions which Don Marketing UK Limited brought against Shell UK Limited in 1995.
123. The 1995 actions involved a great deal of documentation. I thought that these matters had been laid to rest with the settlement of the previous litigation, but it appears from his Statement of Claim that Mr Donovan is determined to argue that he would have won all three of these actions. If Mr Donovan is allowed to throw all of this back into the melting pot, it leaves me with no alternative but to challenge his assertions.
124. I understand that Mr Richard Wiseman will be dealing in his evidence with the settlement negotiations in those actions, so I will confine myself to a brief discussion of my involvement with each action.

**Nintendo CH 1995 D 5417**

125. In 1992 handheld video games called 'Nintendo Gameboys' were very popular. Consequently, a Nintendo theme was an obvious choice for a short term promotion. Indeed, as early as February 1992 Garrie Keys (a Shell employee) suggested that Shell could run such a promotion.
126. On 4 June 1992, I attended a meeting with Mr Donovan, who was attempting to persuade me to adopt his 'MegaMatch' promotion. At this meeting Mr Donovan also put forward an idea for a 'Nintendo' themed promotional game called "Super Mario Land" involving cash prizes, playcards, holidays and gameboys.
127. Shell promotions usually required a nine month preparation time. I was therefore concerned that the gameboy craze would have long passed when the promotion came to market. I was not enthusiastic about this idea, not least because I was keener on MegaMatch which I perceived to be more appealing to a wider age range.
128. Over six months later, on 11 November 1992, I received an unsolicited fax from Business Development Partnership Limited ("BDP") suggesting another Nintendo themed gift promotion for the first quarter of 1993. I turned BDP down too, telling them that it generally takes 6 - 9 months from the presentation of the idea to the implementation of the final scheme.

129. I should mention that at this stage there had been no indication from Don Marketing or BDP that either of them had in fact obtained permission from Nintendo to use the Nintendo theming or branding, though John Donovan indicated that he had consulted Nintendo.
130. On 19 February 1993 John Donovan wrote to me pressing the claims of his Super Mario Land idea secondary to another idea which he called 'Hollywood Collection' (which I deal with below). I was very busy with Project Hercules at the time and, in keeping with my general practice of not upsetting agencies unnecessarily, I faxed the letter back to him with a note saying thank you and that I would revert when we had made any further progress. I have to admit that this was really a euphemism for 'stop bothering me'.
131. On 27 April 1993 BDP re-submitted their Nintendo proposal. In the interim they had developed their proposal considerably and by the time they presented the idea to Charlie Fox (an assistant in the Promotions Department) and myself, they told us that they had already obtained Nintendo's approval. They also explained that a Nintendo film was due to be released in July 1993, with all the usual publicity. Charlie Fox and I liked the mechanic of the promotion, its 'everyone's a winner' reward structure and the fact that it was fully-worked up and so would not require a long lead time. We agreed to run the promotion and I handled the sell in to management, gaining approval from David Pirret. The letters of 3 May 1993 and 12 May 1993 were at my instigation, I then handed the project over to Charlie Fox to deal with, as at the time I was very busy dealing with Project Hercules.

132. At no stage did Don Marketing's Super Mario Land proposal enter my mind. Aside from the general Nintendo/Gameboy theme, the BDP and Don Marketing proposals were entirely different. The main differences were as follows:

	<b>Business Development Partnership</b>	<b>Don Marketing</b>
<b>Title</b>	Gameboy	Super Mario Land
<b>Mechanic</b>	Every leaflet was a winner and every contestant did win. There was one scratch panel which revealed one of the prizes.	multiple scratch panel you had to scratch off the correct combinations of panels to win. Every leaflet had the potential to win but only a small number of contestants would win.
<b>Prize</b>	Posters Baseball caps Software Gameboy unit	Instant cash prize "a share of £250k" A separate very complicated method for winning Gameboy
<b>Timing</b>	Based on film opening in UK in July 1993	Based on Nintendo advertising campaign
<b>Proposal</b>	Worked up and prepared for Nintendo. 6 weeks to implement	Speculative concept 10 weeks to implement

133. The Shell Nintendo promotion ran from 18 June 1993 for four weeks. On the day of the launch, John Donovan telephoned me to complain about what he perceived to be our use of his idea and additionally to complain that our scheme was open to fraud on account of customers being able to see through the latex covering the prize panels. Having read the transcripts of the tapes supplied by Mr Donovan (but not having heard the original tapes which have not yet been produced), I am

now aware that Mr Donovan was recording this and all subsequent telephone conversations between us onto audio tape. I was not aware of this at the time.

134. He explained that he had suggested a Super Mario Land idea at our MegaMatch meeting in the previous year and that he had referred to it again in February. I explained that I genuinely had no recollection of such a proposal and that the Nintendo promotion had been developed entirely by BDP. He reminded me of his proposals, and I realised that in fact it was completely different to the BDP promotion anyway. He acknowledged that Shell had not used the exact idea he put to us and that BDP's promotion was very different in terms of mechanics, execution, creative elements and prize structure.

135. After the telephone call I managed to find a copy of Don Marketing's original Super Mario Land proposal. When I compared it with BDP's Nintendo promotion it was clear to me that apart from the fact that in both promotions the customer stood a chance of winning a Nintendo Gameboy, there was no similarity between the two. I was content that there was no basis for Mr Donovan's claim that Shell or BDP had used his confidential information.

**Now Showing - CH 1995 D 2259**

136. Films have always been a popular theme for promotional games. My colleagues and I were approached on a regular basis by agencies with promotional game ideas based on individual film and video releases, as well as more general 'movie' themes. For example Jackson Brady (one such promotional agency) on 22 July

1992 suggested a promotional tie-in with Twentieth Century Fox and other unspecified third parties. Agencies commonly made such suggestions, but my concern was always whether such agencies realistically had the ability and influence to get such third parties involved.

137. I have already mentioned Don Marketing's "Hollywood Collection" proposal. It was first put forward by Mr Donovan on 24 November 1992. Hollywood Collection was a gift collection/instant win promotional game proposed for the third quarter of 1993. I took this idea no further, despite Mr Donovan's attempts to re-pitch it to me in early February 1993.

138. In February 1994 Shell required a short term promotion to fill the gap in the UK whilst SMART was running in Scotland, so I invited five agencies (Promotional Campaigns, Tequila UK, Brownings, Option One and Powerhouse Consultancy) to pitch for the promotion. The instructions made no mention of any particular theme and no agency was steered in any particular direction. Between the five agencies they came up with 40 - 50 different variations of promotions. Two of the agencies (Tequila and Option One) suggested promotions with film themes. Tequila suggested an association with MGM and Option One suggested Blockbusters (probably because at the time they were negotiating with Blockbusters in relation to Project Hercules).

139. In March 1994 I commissioned some market research to gauge our customers' reactions to the various promotions on offer. Tequila's proposed MGM promotion proved very popular in this research due to the cinema ticket prizes on offer. On

that basis Frank Leggatt and Ian Sutcliffe agreed that Shell would run the Tequila promotion. The agreement between Tequila and Shell was signed on 16 May 1994. In the end Blockbuster were also brought into the promotion, so Option One were also credited and paid accordingly. The promotion was run under the title "Now Showing" from 11 July to 2 October 1994 in the UK except Scotland.

140. Mr Donovan's "Hollywood Collection" scheme simply did not enter my mind; neither for that matter did Jackson Brady's or anyone else's. However, in due course Mr Donovan claimed that because he had presented a promotional game with a 'film' concept, Shell was breaching his confidential information by running its "Now Showing" promotion. It is clear from the tender process and market research that Now Showing was independently derived, quite apart from the fact that it was very different from Mr Donovan's original suggestion.

#### **Make Money - CH 1995 D 1927**

141. Shell Make Money was a promotion originally run in the 1960s. It was reintroduced in the 1980s, this time with the assistance of Don Marketing, who redesigned the artwork and game pieces. On both occasions, Make Money was very popular.
142. In the course of a telephone conversation on 18 June 1993 in relation to the dispute over the Nintendo promotion (recorded, unbeknownst to me, by John Donovan) Mr Donovan claimed in passing that Shell could not run the Make Money promotion again without his permission.

143. In order to investigate whether there was any substance to Mr Donovan's allegations, Charlie Fox and Option One carried out investigations into the ownership of the rights in Make Money. It transpired that Paul King, who was in charge of Shell Promotions Department in the 1980s, had written a letter dated 3 June 1981 to Mr Donovan in which he agreed that Don Marketing would "work up" a promotional concept based on the Make Money theme but with a new slant. Mr King's letter went on to state "I agree to pay you a figure of £500 to cover your artwork costs on the understanding that this promotional idea remains the sole right of Don Marketing/Shell UK Oil until we agree mutually to differ this arrangement for a particular promotion".
144. Mr Donovan evidently believed that this letter gave him a half share in all rights in the whole Make Money concept dating back to the 1960s. On the other hand, Charlie Fox's and Option One's conclusion was that Mr Donovan only owned rights over the revamped 1980s artwork and design (his 'new slant') and that Shell could run Make Money again provided it steered clear of Donovan's artwork. The promotion was run on this basis between April and June 1994.
145. I had very little to do with the implementation or preparation of the promotion itself, as I was busy dealing with the immediate run-up to SMART until my departure from the Department in April 1994. However, in February 1994 I did pick up on the tail end of the correspondence which had passed between David Watson and Mr Donovan on this topic at the end of the previous year.

### **Campaigning**

146. Mr Donovan and his father have campaigned against Shell and me personally in the weeks preceding the issue of the Writ and throughout this litigation. They have done this by placing advertisements in the press, setting up two websites on which extensive material is published and selected extracts of telephone conversations that John Donovan surreptitiously recorded are both played and transcribed; by writing letters to senior executives within Shell; other public figures including MP's and many government departments. His father, Alfred Donovan and others are accustomed to stand outside Shell-Mex House where Shell UK Limited's office is based handing out copies of this material, as well as outside Shell International in Waterloo and the Shell offices in The Hague. Mr Donovan's campaign against me and Shell has been persistent and vindictive and the campaign includes among the various incidents the following:

- i. On 5th March 1998 John Donovan send a letter to Mark Moody Stuart, Chairman of Shell Transport and Trading Company Plc, naming me and saying that I acted "entirely without scruples in these matters". Letters were then posted on the website and sent to Pension Fund Managers and Shell Station Operators talking about the "blatantly disreputable conduct of a former manager of Shell UK Limited, Mr Andrew Lazenby"
- ii. On 8th May 1998 an open letter was sent to Mark Moody Stuart, saying that concept of the Smartcard was disclosed by John Donovan in

confidence to me. The allegations contained in this letter were later distributed in leaflets outside Shell offices.

- iii. On 6th April 1998 a further letter was sent to Mark Moody Stuart saying that I had specific knowledge of Don Marketing's proposal and implying that I had used this proposal for the SMART scheme.
- iv. On 14th April 1998 Mr Donovan wrote a further letter to Mark Moody Stuart saying that he would send a package to a number of parties including Shell's shareholders and 2,000 Pension Fund Managers. He also stated that the shell-shareholders.org website, a website used as a further medium to campaign against Shell, and with a link to the don-marketing website, was now fully operative. In a further letter on 14th April 1998 to Mr Moody Stuart, Mr Donovan referred to me as a "bad apple at Shell UK".
- v. On 23rd April 1998 John Donovan wrote a further letter to Mr Moody Stuart saying that he had no personal animosity against me. This is obviously wrong as all his actions show that he has enormous personal animosity against me. If he did not he would not be campaigning in the way he is.
- vi. On 8th May 1998 Alfred Donovan (Mr Donovan's father) distributed a leaflet at the Shell Transport and Trading Company Plc Annual General Meeting referring to an "unscrupulous Shell UK Manager". This letter

also gave the address of the Don Marketing website where lots of further malicious material had been published about me by name.

- vii. Mr Donovan published a document entitled "The Don Marketing Saga", a copy of this was posted on his website. In the second paragraph this referred to me personally claiming that Don Marketing presented a succession of concepts to me in strictest confidence and that these ideas were adopted without giving any payment or credit to Don Marketing. This is untrue and a prime example of Mr Donovan's vindictive behaviour towards me.
  
- viii. Mr Donovan also placed advertisements in the press all referring to his website where I am personally attacked as indicated above. On 1st May 1998 there was an advertisement in the Evening Standard referring readers to his website. A legal notice was published in Marketing Week on 21st May 1998. A letter from John Donovan was published in Marketing Week on 21st May 1998 and further advertisements were in the 28th May 1998 edition of Marketing Week and the July issue of the Forecourt Trader.
  
- ix. Letters were written to public figures. On 5th May 1998 a letter was written to The Prime Minister, Tony Blair. Further letters were written to MPs on 23rd July 1998, 27th July 1998 and 30th October 1998. Letters were written to the Advertising Standards Authority and the Office of Fair

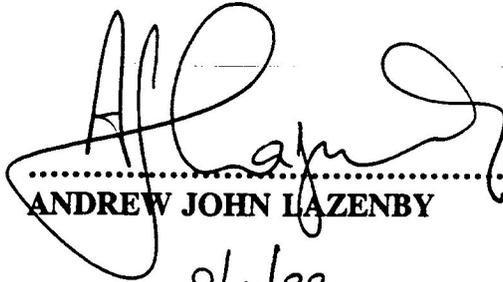
Trading on 11th May 1998, 1st June 1998, 9th July 1998 and 26th July 1998.

- x. During July and August documentation was sent to Shell Retailers asking them to take part in a survey about the principles of Shell and referring them to this action against Shell. The documentation referred retailers to the Don Marketing website at "don-marketing.com" where John Donovan, Alfred Donovan and Don Marketing (UK) Ltd post copies of their campaign material which includes malicious material about me.
  
- xi. Out of all these incidents I have found the circulation of documentation outside Shell offices and the contents of the Don Marketing website the most distressing. On the website there is an audio function entitled "The Shell Game" where my voice which was recorded without my knowledge in a telephone conversation with John Donovan is used partially and selectively. The distribution of leaflets outside Shell offices has been carried out by John Donovan's father, Alfred Donovan, and it also appears that third parties have been encouraged to distribute leaflets. (including a young man and a young woman). These leaflets have been distributed on a regular basis since August 1998 and new leaflets are available at regular intervals.

147. Such behaviour has caused me much stress and has only been tolerable because of the unreserved support I have received from Shell management to the highest levels as well as my colleagues, and because I am confident of our position. Only because of such support has the intense personal campaign he has been waging not affected my work performance, professional standing or health.

I confirm that the contents of this statement are true to the best of my knowledge and belief.

SIGNED

  
.....  
ANDREW JOHN LAZENBY

DATED

8/4/99.  
.....