

TRANSCRIPT OF THIRD TELEPHONE CONVERSATION BETWEEN
DAVID WATSON (SHELL) AND JOHN DONOVAN (DON MARKETING)

P249

TAKES PLACE ON WEDNESDAY 3RD NOVEMBER 1993

WAT: WE'VE JUST HAD A MEETING WITH OUR LAWYERS AGAIN

DON: RIGHT

WAT: I MEAN REALLY WE'VE STILL IN THE SAME POSITION WHICH IS THAT EM I MEAN WE STILL DON'T REALLY UNDERSTAND WHY YOU THINK YOU HAVE A CASE AGAINST BUT I MEAN WE DO THINK IT WOULD BE WORTHWHILE IF YOU'D STILL LIKE TO COME IN ON FRIDAY AND CHAT ABOUT IT A BIT MORE AND JUST SEE WHETHER WE CAN REACH SOME MORE SORT OF UNDERSTANDING AROUND AROUND THE ISSUES THAT.. WHY THERE IS THIS GREAT DIFFERENCE OF PERCEPTION WHICH DIVIDE OUR OUR TWO PARTIES.. SO.. I MEAN WE WE DON'T WANT TO GET OUR LAWYERS INVOLVED IN A MEETING AT THIS POINT I THINK IT WILL BE MORE MORE HELPFUL PROBABLY JUST TO HAVE OURSELVES AND FRANK LEGGETT AND YOUR COLLEAGUE IF THATS STILL..

DON: OKAY WHAT TA.. I CAN'T UNDERSTAND WHAT MADE THEM PUT THAT.. THAT THEY SUGGESTED A WITHOUT PREJUDICE MEETING TO SETTLE THE MATTER.. WHAT MADE THEM SAY THAT

WAT: WELL.. BECAUSE WE THOUGHT IF WE TALKED ABOUT IT WE MIGHT BE ABLE BETWEEN THE TWO SIDES WE MIGHT FIND THAT ACTUALLY THERE WAS SOME GREAT BIT OF INFORMATION THAT YOU HAD THAT WE WERE'NT AWARE OF ER WHICH MIGHT MAKE US THINK THAT WE BEHAVED IN A WAY THAT WE SHOULD'NT HAVE DONE AND EQUALLY THAT YOU MIGHT SEE FROM OUR.. YOU MIGHT FIND FROM WHAT WE'VE SAID THAT THAT WAS A WAY TO SETTLING IT

DON: THE THE DIFFICULTY IS THAT HAVING SPOKEN TO YOU OVER THE TELEPHONE IT SEEMS FAIRLY CLEAR THAT I HAVE'NT GOT ANYTHING FURTHER TO SHOW YOU AND WHAT YOU'VE MENTIONED TO ME, THERE IS'NT ANYTHING THAT YOUR GOING TO BE ABLE TO SHOW ME THAT GOING TO CHANGE THE CASE AS WE SEE IT SO.. I'M NOT SURE UNLESS.. I THOUGHT WE'D MOVED ON BEYOND THE STAGE OF OF THE LEGAL PEOPLE LOOKING AT IT AND DECIDING.. I THOUGHT THAT SHELL HAD REACHED THE DECISION THAT IF THEY COULD THEY WANTED TO COME TO A SETTLEMENT ON IT IN OTHER WORDS THAT YOU WERE GOING TO MAKE US AN OFFER BUT..

WAT: I MEAN WE'VE NEVER BEEN IN THAT.. I MEAN WITHOUT SOME SOME EVIDENCE AS TO WHY WE'VE BEHAVED IN A WAY WE SHOULD'NT HAVE DONE.. WE WOULD'NT MAKE ANY OFFER

DON: YES BUT OF COURSE THAT THAT EVIDENCE IS IN THE STATEMENT OF CLAIM THAT THE ER COUNSEL PREPARED WHICH IS THAT OUR STANDARD TERMS AND CONDITIONS DO COVER THE SITUATION AND THAT A.. ANDREW IN FACT.. YOU SAID WHO SIGNED FOR TO AGREE TO THOSE STANDARD TERMS AND CONDITIONS.. HE DID OF COURSE SIGN THAT FAX THAT HE SENT BACK TO ME AND ON THAT FAX IT HAD, JUST BELOW WHERE HE SIGNED.. IMPORTANT ALL BUSINESS UNDERTAKEN ETC.. THE MESSAGE THAT IT SAYS ON THERE

WAT: BUT BUT UNLESS THERES A CONTRACT THOSE TERMS YOU KNOW BY US NOT EXPLICITLY REJECTING THAT DOES NOT IN ANYWAY IMPLY ACCEPTANCE OF YOUR TERMS

DON: WELL THAT THAT IS'NT.. THE BOTTOM LINE AS FAR MARY VITORIA WAS CONCERNED, SHE SAID THAT SHELL HAVE ONLY GOT ONE POSSIBLE DEFENCE AND THAT IS THAT ANDREW LAZENBY FORGOT ABOUT THE YOUR PROPOSAL AND SHE SAID THAT IN HER VIEW THAT WAS UNSUSTAINABLE BECAUSE OF THE FAX WHICH HE SENT

WAT: BUT DID SHE KNOW.. SHE KNOWS DOES'NT SHE THAT BDP BROUGHT THE IDEA TO US WITH BDP ACTING ON BEHALF OF NINTENDO

DON: YES SHE DOES

WAT: SHE DOES KNOW ALL THAT

DON: SHE'S ABSOLUTELY AWARE OF THAT

WAT: BDP HAVE WRITTEN TO US SAYING THAT THEY DEVELOPED THE IDEA SOLELY BY THEMSELVES ON BEHALF OF THEIR CLIENT NINTENDO.. SHE KNOWS ALL THAT

DON: YES YES SHE DOES KNOW THAT BUT.. THIS DOES'NT OF COURSE TIE UP WITH WHAT DAVID PATTON TOLD ME AT NINTENDO, WHO OF COURSE INSTRUCTED THE THEIR AGENTS TO APPROACH YOU BECAUSE HE SAID THAT WAS DEVELOPED JOINTLY WITH SHELL NOW YOU MAY HAVE GOT A LETTER FROM THE AGENCY BECAUSE OF THE SITUATION WITH BP BUT ARE YOU SAYING THAT THE.. I'M NOT SAYING THIS NECESSARILY MAKES A DIFFERENCE.. BUT ARE YOU SAYING THAT THE PRESENTATION THAT IF THEY BROUGHT IN A VISUAL TO YOU THAT AT THE END OF THE DAY YOU RAN EXACTLY WHAT THEY PRESENTED TO YOU WITH NO CHANGES AT ALL?

WAT: ERM

DON: IN OTHER WORDS THAT SHELL HAD NO INVOLVEMENT WHATSOEVER IN THE DEVELOPMENT OF WHAT WENT OUT ON YOUR FORECOURTS

WAT: ONCE BDP HAD BROUGHT US THE BASIC IDEA ERM I MEAN I'M SURE THERE WAS A LITTLE BIT OF DEVELOPMENT YES I MEAN I CERTAINLY REMEMBER TALKING WITH..

DON: SO DAVID PATTON REALLY THEN WAS CORRECT IN WHAT HE SAID THAT IT WAS JOINTLY DEVELOPED WITH SHELL.. AND THAT YOU.. THEY WENT FORWARD WITH WITH THE PROPOSAL

WAT: IN TERMS OF THE ARTWORK AND THAT SORT OF THING YES

DON: YES

WAT: THE DESIGN AND THE POSTERS AND SO ON

DON: YES YES, SO SO HE IS CORRECT THERE.. BUT EVEN LEAVING THAT ASIDE WHAT WE PUT FORWARD WAS A NINTENDO THEMED PROMOTIONAL GAME WITH A SCRATCH-OFF TECHNIQUE TO GENERATE NINTENDO THEMED PRODUCT PRIZES.. WE SHOWED ANDREW A VISUAL WE MADE IT CLEAR THAT IT WAS JUST ONE POSSIBLE EXECUTION AND HE SAID THAT HE WOULD DISCUSS IT WITH HIS COLLEAGUES AND THAT IT WOULD BE CONSIDERED FOR RESEARCH

WAT: I MEAN YOU DID'NT PRESENT ARTWORK FOR EXAMPLE I MEAN THERES NO SUGGESTION WE USED ARTWORK THAT YOU BROUGHT

DON: NO, NOT ARTWORK, A VISUAL WHICH IS WHICH IS WE'VE NEVER IN ALL THE BUSINESS WE'VE DONE WITH SHELL, WE'VE NEVER BROUGHT IN FINISHED ARTWORK BECAUSE THE END PRODUCT HAS NEVER BEEN THE VISUAL THAT WE'D PRESENTED, ITS ALWAYS BEEN SOMETIMES ABSOLUTELY MAJOR CHANGES TO THE FORMAT

WAT: I SORR, I MEAN, YEAH, I MEAN IN THE END YOU KNOW I'VE, WHERE WHERE WE'VE GOT TO IS THAT WHAT YOU SUGGESTED WAS YES A SORT OF GENERAL IDEA BUT I MEAN THERES PLENTY OF OTHER PEOPLE SUGGESTED THINGS YOU KNOW THEMES AROUND NINTENDO, SCRATCH CARDS ARE VERY WELL KNOWN, GAMEBOYS OBVIOUSLY ARE ONE OF NINTENDO'S MAIN PRODUCTS YOU'D EXPECT SOMETHING TO BE INVOLVING THEM ERM YOU KNOW BDP CAME ALONG WITH AN IDEA THAT WAS ERM YOU KNOW THAT WAS WELL DEVELOPED SO

DON: WELL THEY WERE INSTRUCTED BY NINTENDO TO COME ALONG.. NINTENDO KNEW THAT WE'D ALREADY APPROACHED SHELL OF COURSE

WAT: RIGHT

DON: AND I'VE GOT.. WHAT YOU HAVE'NT SEEN IS.. I'VE GOT MATERIALS THAT ER DAVID PATTON SUPPLIED TO ME TO BRING ALONG TO THE PRESENTATION INCLUDING A COMPLIMENT SLIP SIGNED BY HIM WISHING US LUCK AT THE PRESENTATION SO THEY WERE IN POSSESSION OF CONFIDENTIAL INFORMATION THAT WE'D APPROACHED SHELL.. THEY KNEW THAT ER YOU WERE CONSIDERING IT FOR RESEARCH THEY KNEW THAT I WAS IN REGULAR CONTACT WITH ER ANDREW ON IT.. ER AND THAT AND THAT ANDREW HAD'NT ACTUALLY EVER REJECTED IT.. IT WAS STILL ON THE TABLE BECAUSE IF THAT HAD'NT BEEN THE CASE HE WOULD'NT HAVE SENT ME BACK THE FAX THAT HE DID AND WE WOULD HAVE BEEN FREE TO PRESENT THE IDEA TO TO ANOTHER OIL COMPANY, AS IT WAS, WE WE PUT THIS UP FIRST TO SHELL BECAUSE OF OUR PAST RELATIONSHIP AND WE HELD OFF FOR NEARLY A YEAR BECAUSE WE WERE KEPT HANGING ON AND ITS OBVIOUS TO ME NOW THAT DURING THOSE LATTER MONTHS WHEN ANDREW WAS TELLING ME THAT HE WAS WAITING FOR THIS FUNDAMENTAL DECISION BY YOUR MANAGEMENT ON WHETHER YOU WERE GOING TO STAY WITH SHORT TERM OR GO ON TO A PERMANENT PROMOTION THAT EVEN THEN HE MUST KNOWN THAT ER YOU WERE GOING AHEAD WITH THE NINTENDO GAME, BUT HE DID'NT TELL ME.. THE FIRST THING I KNEW ABOUT IT IS WHEN I OPENED THE DAILY MAIL AND SAW THE ADVERT FOR IT

WAT: I MEAN I GUESS THAT WOULD DEPEND ON WHAT THE TIMING WAS OF SOME OF YOUR CONVERSATIONS

DON: WELL EVERY MONTH I SPOKE I SPOKE TO ANDREW AS HE WOULD CONFIRM.. I DID PHONE HIM EVERY MONTH TO SEE WHAT WAS HAPPENING

WAT: WELL I MEAN CERTAINLY THE IDEA WITH NINTENDO-BDP WAS DEVELOPED VERY QUICKLY AND ROLLED OUT

DON: YES I THINK ANDREW SAID AT WAS ABOUT SIX WEEKS THAT IT TOOK

WAT: THATS ABOUT RIGHT

3rd 11/1/97
DON: AND IF YOU GO BACK FROM JUNE THE 18TH IT MEANS THAT WITHIN JUST A FEW WEEKS OF THE FAX WHICH ANDREW RETURNED TO ME WHICH HE SIGNED AND PUT HIS MESSAGE ON.. ANY FURTHER PROGRESS I'LL LET YOU KNOW.. WITHIN A FEW WEEKS OF THAT THIS WORK IS ACTUALLY COMMENCING ON THE THE GAME WHICH YOU LAUNCH IN JUNE AND IT IS A NINTENDO THEMED PROMOTIONAL GAME WITH A SCRATCH OFF MECHANIC WITH NINTENDO PRODUCT PRIZES.. IT EXACTLY FALLS WITHIN THE PROPOSAL THAT WE PUT FORWARD AND WAS ON THE TABLE FOR ALL OF THAT TIME.. THAT CANNOT BE RIGHT OR FAIR

WAT: THAT WAS A VERY GENERAL PROPOSAL I MEAN I DON'T THINK YOU COULD CLAIM TO HAVE ANY INTELLECTUAL COPYRIGHTS OR OWNERSHIP OF THAT PARTICULAR PROPOSAL THATS SO GENERAL, I MEAN YOU KNOW IF I WAS TRYING TO THINK OF SOMETHING WITH NINTENDO I WOULD THINK OF SOMETHING LIKE THAT.. ITS NOT YOU KNOW

DON: BUT.. BUT AS I SAY ERM UNLESS SHELL HAVE GOT ANYTHING IN WRITING TO THE CONTRARY SHOWING THAT ANOTHER AGENCY PUT UP A PROPOSAL WITH FOR A NINTENDO THEMED PROMOTIONAL GAME ECT BEFORE WE DID, THEN WE HAVE GOT RIGHTS TO IT, WE HAVE GOT RIGHTS AND AND THERE SET OUT IN THAT STATEMENT OF CLAIM.. AND TO ME ITS ABSOLUTELY CRYSTAL CLEAR.. I CAN'T UNDERSTAND HOW YOUR LEGAL PEOPLE CAN'T SEE THAT

WAT: WELL I MEAN OUR LEGAL PEOPLE AND THERES BEEN MANY LEGAL PEOPLE NOW WHO'VE LOOKED AT IT AND ARE ABSOLUTELY CLEAR ER THAT THAT YOU COULD'NT HAVE OWNERSHIP TO THAT IDEA.. IF YOU'VE GOT ANY YOU HAVE GOT A CASE IT MUST BE AGAINST NINTENDO FOR BREACH OF CONFIDENCE IN TERMS OF WHAT YOU TOLD THEM AND THEY THEN TOLD BDP, WHICH I DON'T KNOW IF THEY DID TELL BDP ANYTHING OR NOT BUT YOU MIGHT HAVE A CASE THERE ERM BUT THERE'S A CERTAINTY.. BUT YOU KNOW THERES NOTHING THAT WE'VE DONE THATS A PROBLEM ERM AS I SAY WE'A VERY HAPPY TO MEET ON FRIDAY AND JUST TALK IT THROUGH A BIT MORE AND JUST LISTEN A BIT MORE TO YOU KNOW TO WHAT YOU'VE GOT TO SAY AND SO ON ERM WITHOUT QUESTION AND I MEAN OUT OF INTEREST WE OUR LAWYERS WOULD SORT OF BE QUITE INTERESTED TO SEE YOUR.. FULL TRADING TERMS AND CONDITIONS

DON: RIGHT

WAT: SO IF YOU WANTED TO PUT THEM IN THE POST OR BRING THEM WITH YOU ON FRIDAY WHATEVER REALLY JUST.. THEY SAID THERE'D BE INTERESTED TO HAVE A LOOK AT THEM AND ALSO THE MAKE MONEY LETTER YOU MENTIONED ALSO SOUNDED QUITE INTERESTING SO IF YOU HAVE GOT A COPY I'D BE QUITE INTERESTED TO SEE THAT

DON: WELL IF WE COME ALONG TO THE MEETING I'LL BRING ALONG THE THE ORIGINAL WITH ME SO THAT YOU CAN SEE IT

WAT: THATS FINE YES

DON: YES I'M JUST.. IT ALL SEEMS ER SO UNSATISFACTORY.. SO MISLEADING THAT THE THE LETTER THAT MR VARNEY SENT.. FROM OUR DISCUSSIONS I UNDERSTAND THAT IN FACT HE SIGNED IT BUT THAT YOU DRAFTED IT

WAT: ERM

DON: IN THAT LETTER IT HAD ABSOLUTELY MISLEADING INFORMATION THAT ER

WAT: WHICH WHICH ONE WAS MISLEADING

DON: WHERE WHERE IT SAID THAT ANDREW HAD NO INVOLVEMENT WHATSOEVER WITH THIS PROMOTION.. THE PROMOTION THAT RAN THAT IN FACT THAT HE HAD EVERY INVOLVEMENT WITH IT.. AS HE HAS SAID SAID SO HIMSELF.. AND THEN WE GET THE THE FAX ER THE LETTER FROM YOUR LEGAL DEPARTMENT SAYING THAT YOUR GOING TO MAKE A SETTLEMENT OFFER

WAT: ER

DON: THAT THAT THAT ER WITHOUT PREJUDICE MEETING WITH A VIEW TO SETTLING THE MATTER, TO USE THE EXACT WORDS BUT NOW THAT IS'NT APPARENTLY WHAT WHAT THE MEETING IS FOR. THE MEETING IS TO TRY TO PERSUADE US THAT WE HAVE'NT GOT A CASE

WAT: AND ALSO JUST TO HEAR WHAT TO HEAR WHETHER YOU HAVE GOT SOMETHING THAT ER YOU KNOW THAT YOU HAVE'NT TOLD US YET AND SORT OF EXPLAIN WHY YOU THINK YOU HAVE GOT A CASE

DON: YES.. I JUST DON'T KNOW HOW ANY AGENCY COULD EVER PROTECT THEMSELF PRESENTING A PROPOSAL ON A SPECULATIVE BASIS IF WHAT YOUR VIEW YOUR LEGAL PEOPLES VIEW WAS CORRECT.. THE CLIENT WOULD ONLY HAVE TO CHANGE THE FORMAT AND THEY WOULD NEVER HAVE TO PAY ANY AGENCY.. THE AGENCY WHO ACTUALLY ORIGINATED THAT IDEA.. THEY WOULD NEVER HAVE TO PAY THEM

WAT: BUT I MEAN THE WAY THE INDUSTRY GENERALLY OPERATES.. CERTAINLY THE WAY THAT WE TEND TO OPERATE WITH THE INDUSTRY IS THAT IF PEOPLE DO BRING US IDEAS AND ITS THEIR PARTICULAR IDEA THEIR SPECIFIC IDEA THAT WE THEN SAY YES, WE'LL GO WITH, WE THEN NEGOTIATE WITH THEM TO REACH TO REACH SATISFACTORY TERMS FOR THE WORK THAT THERE'LL DO, WE HARDLY EVER WOULD PAY A CONCEPT FEE AND WE'D CERTAINLY NEVER PAY ANY SORT OF MARK UPS ON PRODUCTION MATERIALS

DON: RIGHT WELL IN EVERY SINGLE INSTANCE WHERE WE HAVE SUPPLIED A PROMOTIONAL GAME TO SHELL, A MAJOR PROMOTIONAL GAME, YOU HAVE PAID A CONCEPT FEE AND YOU'VE PAID US PRINT COMMISSION INCLUDING THE STAR TREK PROMOTION

WAT: I MEAN AS I SAY THINGS HAVE MOVED ON A LOT SINCE THE LAST TWO AND A HALF YEARS ERM AND NOW IT WOULD BE VERY MUCH A CASE OF PAYING.. WHAT WE DO IS NEGOTIATE FOR WHAT THE AGENCY ARE THEN GOING TO DO AND THEN WE PAY THEM A FEE

DON: RIGHT

WAT: I MEAN BDP I I DO NEED TO CHECK EXACTLY WHAT WE PAID BUT ITS A VERY SMALL AMOUNT OF MONEY

DON: WELL ANDREW SAID THAT YOU PAID THEM NOTHING AT ALL AND THAT HE SAID THAT WE WERE WELCOME TO HALF OF IT

WAT: WELL FOR THE CONCEPT WE PAID THEM NOTHING AT ALL THATS QUITE TRUE

DON: YEAH

WAT: BUT IN TERMS OF SOME OF THE WORK THEY DID GET PAID I MEAN I HAVE TO BE HONEST I HAVE'NT CHECKED ITS ON MY LIST TO CHECK I THOUGHT I'D PHONE YOU FIRST YOU KNOW TO GIVE TO GIVE YOU SOME NEWS ANYWAY ERM ITS ONE OF THE THINGS I DO WANT TO CHECK BUT AS FAR AS I REMEMBER IT WAS A FEW XXXXXX POUNDS FOR THE WORK THEY WERE GOING TO DO

DON: YES WELL WE PUT UP A NUMBER OF IDEAS TO ANDREW WE PUT A LOT TIME INTO THEM ONE OF THEM IN PARTICULAR, MEGA MATCH I'VE TOLD YOU BEFORE I APPROACHED WOOLWORTH SAFEWAYS LITTLE CHEF AND THE SUN NEWSPAPER AND THERE WAS WEEKS OF WORK IN THAT AND IT DID'NT COME TO ANYTHING WHICH IS FAIR ENOUGH BECAUSE YOU DON'T ALWAYS WIN WITH THESE THINGS, WE KNOW THAT.. BUT HAVING SPENT SO MUCH TIME ON A SPECULATIVE BASIS WHEN ONE OF THE IDEAS THAT YOU PUT FORWARD IS TAKEN UP AND THEN YOU DON'T GET ANY ANY CREDIT OR PAYMENT FOR IT.. I MEAN HOW COULD ANY AGENCY PRESENT IDEAS ON A SPECULATIVE BASIS

WAT: I MEAN TO BE FAIR IT IS A VERY GENERAL IDEA I MEAN DOING SOMETHING WITH NINTENDO I KNOW A LOT OF PEOPLE HAVE TALKED ABOUT..

DON: IT WAS'NT.. IT WAS A PROMOTIONAL GAME YOU SEE WITH A SCRATCH OFF.. THERE WAS NOTHING PREVIOUS TO THAT

WAT: I MEAN SCRATCH CARDS ARE VERY WELL KNOWN AND VERY WELL USED ACROSS PROMOTIONS...

DON: AND THEY HAVE HAVE BEEN FOR MANY YEARS BUT SHELL HAVE STILL PAID US FEES, CONCEPT FEES FOR DEVISING FORMATS AND CON.. AND IDEAS FOR USING SCRATCH CARD GAMES, AS THEY DID WITH STAR TREK YOU PAID US A £50,000 CONCEPT FEE ON THAT

WAT: WELL

DON: THERES NO WAY ROUND THAT.. IT HAPPENED

WAT: YEAH I MEAN ALL I CAN SAY IS THAT I MEAN I GUESS WE'VE CHANGED AND MAYBE WE WERE MISTAKEN TO PAY AS MUCH IN THE PAST CAUSE CERTAINLY

DON: WELL

WAT: THAT THATS NOT THE SORT OF WORLD WE'RE OPERATING IN NOW

DON: FROM FROM THE EARLY DAYS THOSE FIRST GAMES FOR SHELL NOT ONLY DID YOU PAY OUR FEES, YOU WERE SO PLEASED WITH THE RESULTS THAT WE WERE TAKEN OUT TO LUNCH AND WINED AND DINED BY JOHN SMEDDLE AND OTHER SENIOR PEOPLE AT SHELL ER SO TIMES CERTAINLY HAVE CHANGED

WAT: YEAH THE WORLDS GOT SO MUCH HARDER AND I GUESS THERES SO MUCH COMPETITION AROUND NOW AS WELL

DON: YES THIS IS WHAT.. THIS WAS ANDREWS LINE.. THAT SORRY JOHN IT'S A HARD WORLD..

WAT: WELL

DON: WELL I DON'T ACCEPT THAT I DON'T ACCEPT THE WORLD IS AS HARD AS THAT WHERE WE PRESENT SOMETHING ON A CONFIDENTIAL BASIS WE GET PERMISSION FROM NINTENDO FIRST OF ALL.. APPROACH THEM ON A CONFIDENTIAL BASIS AND THEN ITS THE THE PROPOSALS LEFT ON THE TABLE WE I SPEAK TO HIM REGULARLY, I GET A FAX BACK FROM HIM CONFIRMING THAT YOUR STILL LOOKING AT IT AND HE'LL LET ME KNOW IF THERES ANY FURTHER PROGRESS AND THEN YOU ACTUALLY RUN A DERIVATIVE OF THAT PROMOTION AND IT IS COVERED BY OUR STANDARD TERMS AND CONDITIONS, EVERYTHING WE'VE EVER SENT YOU HAS HAD THE MESSAGE ON THE BOTTOM, IMPORTANT ALL BUSINESS UNDERTAKEN ETC ER

WAT: YEAH

DON: TO OUR SIDE, OUR BARRISTER, AND THAT IS'NT THE FIRST BARRISTER, ITS THE SECOND BARRISTER I'VE SPOKEN TO, THEY SAY THAT WE'VE GOT A CRYSTAL CLEAR CASE AGAINST SHELL SO I'M ABSOLUTELY MYSTIFIED HOW YOUR LEGAL PEOPLE TAKE SUCH AN OPPOSITE VIEW.. I COULD MAKE ANOTHER SUGGESTION WHICH MIGHT BE HELPFUL.. WOULD IT NOT BE A POSSIBILITY FOR SHELL TO TAKE AN OPINION FROM A SPECIALIST COUNSEL

WAT: WE TOOK AN OPINION ON A RELATED CASE ER SOME TIME AGO ER BUT TO BE HONEST WE DON'T THINK ITS WORTH SPENDING ANY MORE MONEY ON IT

DON: RIGHT RIGHT YES

WAT: NOT AT THIS STAGE

DON: RIGHT

WAT: I MEAN WE'VE HAD THREE INTERNAL LAWYERS PLUS THIS RELATED CASE THAT I MENTIONED THAT A SPECIALIST COUNSEL DID LOOK AT AND OTHERWISE OF COURSE QUITE A LARGE NUMBER OF SHELL MARKETING MANAGERS HAVE LOOKED AT IT AND REALLY.. WE'VE ALL, ON THE BASIS OF THE PAPERS AND WE'VE FOUND WE'VE ALL COME TO THE SAME CONCLUSION. BUT AS I SAY FRANK LEGGETT AND I ARE VERY HAPPY TO MEET ON FRIDAY AND JUST SEE WHETHER WE CAN MAKE ANY PROGRESS YOU KNOW TRY TO CHAT AROUND ERM

DON: UNLESS YOU THINK THAT YOUR LIKELY TO MAKE AN OFFER I I JUST CANNOT SEE THE POINT.. I THINK THE BEST BET IS FOR US TO CARRY ON NOW AND ER ISSUE THAT WRIT THAT YOU'VE ALREADY SEEN THE DRAFT COPY OF AND WE'LL GET TO THESE WITNESS STATEMENTS AND WE'LL GET TO DISCLOSURE AND WE'LL GET TO SEE ALL OF THE DOCUMENTS ON BOTH SIDES AT THAT STAGE BECAUSE I JUST CANNOT SEE THE POINT OF THE MEETING

WAT: OKAY I MEAN THAT, I UNDERSTAND AND THATS FINE IF THATS THE WAY YOU WANT YOU KNOW

DON: IT IS'NT IT IS'NT WHAT I WANT I.. THE LAST THING WE WANTED TO DO WAS GET IN INVOLVED IN LITIGATION BECAUSE I SAW WHAT HAPPENED WITH THE ESSO GLENNENING CASE DRAGGED ON FOR TWO YEARS WAS REGULARLY IN THE TRADE PRESS WE DON'T WANT THAT SORT OF PUBLICITY THAT WE'VE SUEING A CLIENT THAT WE'VE BEEN SO SO ASSOCIATED OVER MANY YEARS ER I JUST DID'NT WANT TO GET INVOLVED IN THAT BUT IT JUST SEEMS THAT WE HAVE'NT GOT ANY CHOICE ON IT BECAUSE WE TRIED TO BE REASONABLE WE SUGGESTED A MEDIATOR ON MORE THAN ONE OCCASION BUT THAT IDEAS ALWAYS BEEN TURNED DOWN ERM AND YOU SAY THAT YOUR LEGAL PEOPLE SAY THAT THE SITUATION IS CLEAR THAT WE HAVE'NT GOT A CASE, WE'VE GOT EXACTLY THE OPPOSITE OPINIONS, ALL THAT WE CAN DO IS PRESS FORWARD WITH A LEGAL ACTION AND SEE WHAT HAPPENS I SUPPOSE

WAT: OKAY YEAH I UNDERSTAND I MEAN YOU KNOW FROM OUR FROM OUR PERSPECTIVE THERES NO POINT REALLY IN GOING TO SOME OTHER FORM OF ARBITRATION CAUSE I THINK WE MAY AS WELL SORT THIS OUT PROPERLY IN A LEGAL CASE

DON: YOU HAVE'NT GOT CONFIDENCE SUFFICIENT CONFIDENCE IN YOUR CASE TO TO AGREE TO A MEDIATOR WHO COULD BE SOMEONE APPOINTED BY THE CHAIRMAN OF THE BAR COUNCIL

WAT: NO I MEAN WE'VE GOT

DON: BECAUSE THAT WAY IT WOULD AVOID ANY POSSIBLE PUBLICITY

WAT: YEAH, BUT WE'VE QUITE HAPPY WITH PUBLICITY ON THIS WE'VE NOT.. WE'VE THOUGHT ABOUT THAT AS WELL I MEAN BECAUSE WE THINK ITS QUITE IMPORTANT BECAUSE IT MEANS THAT WE WOULD'NT BE ABLE TO LISTEN TO IDEAS FROM YOURSELVES OR INDEED PERHAPS FROM OTHER PEOPLE IF WE WERE TO AGREE TO YOUR SORT OF POSITION THEN IF WE END UP IN COURT WHAT WE'VE QUITE HAPPY TO BE IN COURT

DON: OKAY WELL I THINK THAT WE'VE AIRED.. I JUST CAN'T SEE THAT THERES GOING TO BE MUCH MORE TO TALK ABOUT AT THE MEETING ON FRIDAY HONESTLY CAN YOU

WAT: WELL I MEAN NOT UNLESS WE ERM NOT UNLESS I SAY UNLESS THERE WAS SOME NEW INFORMATION OR WE WENT THROUGH A BIT MORE THE BDP LETTER OR WHATEVER AND MAYBE JUST THERE MIGHT TALKING ABOUT IT FACE TO FACE WE MIGHT FIND SOME BLINDING REVELATION THAT WE SUDDENLY ALL REALISE THAT MEANS WE OUGHT TO DO SOMETHING OR YOU KNOW MAYBE YOUR CASE IS NOT QUITE AS CLEAR AS YOU OBVIOUSLY THINK YOU KNOW I MEAN I MEAN NONE OF US NONE US WANT TO END UP IN COURT

DON: NO NO

WAT: I MEAN WE DON'T WANT YOU KNOW WE DON'T WANT TO MAKE SOME SORT OF OFFER BECAUSE WE DON'T THINK THAT WE'VE DONE ANYTHING WRONG AND I'M SURE THAT ANY OFFER WE MAKE GIVEN THAT WE WOULD BASE IT ON SOME SORT OF, PRESUMABLY WELL RELATIVELY LOW PERCENTAGE OF WHAT WE PAID BDP FOR THE IDEA

DON: YEAH

WAT: THAT CAN'T POSSIBLY BE ACCEPTABLE TO YOU IF YOU END UP WITH SORT OF A £1,000 OR SOMETHING

DON: YEAH I CAN'T SEE

WAT: YOU'D PROBABLY SAY NO TO THAT

DON: I CAN'T SEE HOW YOU CAN BE HAPPY WITH THE SITUATION AS IT IS THAT ER.. WHY DID WHY DID ANDREW SEND ME BACK THAT FAX ER

WAT: BECAUSE AT THE TIME YOU KNOW HE GENUINELY THOUGHT THAT WE MIGHT WANT TO DO SOMETHING

DON: URM BUT THEN A FEW WEEKS LATER HE DID DO SOMETHING

WAT: YES WE DID THATS RIGHT BECAUSE SOMEBODY ELSE CAME TO US WITH A WELL WORKED UP IDEA WHICH HAD..

DON: IT WAS ABOUT THE MOST SIMPLEST POSSIBLE EXECUTION OF THE IDEA WAS'NT IT.. A SCRATCH OFF PATCH ON A LEAFLET.. THERE COULD'NT BE ANYTHING EASIER THAN THAT AND FAIR ENOUGH THATS GOT AN APPEAL IT ITS OWN RIGHT BECAUSE IT IS SO SIMPLE BUT ER I WOULD HAVE THOUGHT THAT UNDER THE CIRCUMSTANCES THE FACT THAT IT WAS PRESENTED IN CONFIDENCE, THAT IT WAS ON THE TABLE FOR SUCH A LONG TIME.. THAT ANDREW WOULD HAVE CONTACTED US AND SAID LOOK ANOTHER AGENCIES COME IN WITH WITH ER SOMETHING SIMILAR TO WHAT YOU PRESENTED, WE NEED.. WE OUGHT TO HAVE A TALK ABOUT IT.. BUT NOTHING AT ALL, NO CONTACT, FURTHER CONVERSATIONS WHILE THAT PROMOTION IS STILL, IS ACTUALLY BEING PREPARED AND ER FIRST NEWS I HAVE OF IT IS WHEN I OPEN THE NEWSPAPER

WAT: WELL I THINK THATS BECAUSE YOUR IDEA WAS SO GENERAL.. CAN YOU HOLD ON JUST ONE MOMENT..

DON: OF COURSE

WAT: ERM YEAH I MEAN THE IDEA IS QUITE GENERAL ITS THE SORT THAT YOU KNOW A LOT OF OTHER PEOPLE HAVE BEEN HAVING SO I DON'T I DON'T THINK THERES ANY SORT OF INTELLECTUAL COPYRIGHT OVER THAT PARTICULAR IDEA YOU KNOW ITS NOT ITS NOT A SPECIFIC IDEA ITS A GENERAL IDEA

DON: WELL THAT.. IT DOES'NT SEEM TO TIE UP WITH THE PROPOSAL THAT WE PUT TO ANDREW WHICH YOU HAVE A COPY OF..

WAT: RIGHT

DON: HAVE HAVE YOU READ THAT PROPOSAL?

WAT: I'VE READ ALL.. I'VE READ THE CORRESPONDENCE ERM

DON: WHAT ABOUT THE ACTUAL PROPOSAL BECAUSE SURELY THATS THE KEY THE KEY DOCUMENT IN THIS..

WAT: BUT WHY DO YOU THINK THAT, WHY DO YOU THINK THATS KEY

DON: BECAUSE IT SETS OUT THE THE ACTUAL PROMOTION.. I DON'T UNDERSTAND HOW YOU COULD SAY THAT IT WAS A GENERAL CONCEPT IF YOU HAVE'NT ACTUALLY READ THAT PROPOSAL

WAT: THE THE BIT THAT .. THE IDEA THAT WE THEN FOLLOWED IF I UNDERSTAND CORRECTLY IS SCRATCH CARDS AND NINTENDO AND GAMEBOYS..

DON: RIGHT

WAT: THATS THATS ALL VERY GENERAL I MEAN THATS YOU KNOW THERES NOTHING SORT OF NOBODY WOULD HAVE INTELLECTUAL COPYRIGHT OVER THAT SORT OF IDEA

DON: WELL THEY.. IN MY OPINION THEY WOULD BASED ON MY OPINION OF 30 YEARS IN THE INDUSTRY.. PROMOTIONAL GAMES THEY WOULD HAVE COPYRIGHT.. WELL NOT NECESSARILY COPYRIGHT BUT RIGHTS TO THE IDEA BECAUSE COPYRIGHT IS SOMETHING ELSE SOMEONE ONLY HAS TO CHANGE THE DESIGN AND THERE THATS IT.. COPYRIGHT IS A DIFFERENT.. IT IS'NT REALLY COPYRIGHT THAT WE ARE TACKLING THIS ON.. ITS ON BREACH OF CONFIDENCE AND POSSIBLY BREACH OF CONTRACT

WAT: RIGHT

DON: AS SET OUT IN THAT STATEMENT OF CLAIM.. BUT I'M SURPRISED THAT YOU HAVE'NT READ THE PROPOSAL

WAT: WELL I HAVE BUT I HAVE SOME TIME AGO THIS HAS GONE ON FOR A LITTLE WHILE

DON: YES THATS TRUE.. AND WHAT ABOUT THE THE LETTER I SENT TO ANDREW WHICH WAS I THINK 10 PAGES LONG.. SO IT WAS A LENGTHY LETTER BUT A, PRESUMABLY YOU HAVE READ THAT AT SOME STAGE

WAT: I MEAN AGAIN, SOMETIME AGO BUT YEAH

DON: OKAY DAVID, I'M I'M VERY GRATEFUL FOR THE TIME THAT YOU'VE PUT INTO THIS ON THE TELEPHONE

WAT: DON'T WORRY

DON: AT LEAST IT MAY SAVED US.. BECAUSE I AM IN BURY IT DOES TAKE.. ITS A WHOLE DAY REALLY TO COME INTO LONDON FOR A MEETING

WAT: RIGHT

DON: AND ER, SINCE WE HAVE AIRED IT THOROUGHLY I THINK OVER THE PHONE AT THE MOMENT I CAN'T SEE THE THE THE REASON REALLY FOR HAVING ER MEETING BECAUSE I DON'T THINK THERES GOING TO BE ANYTHING ELSE THAT IS A BLINDING FLASH THAT WE'VE SUDDENLY GOING TO TO AGREE ON THIS WE'VE SO FAR APART ON IT ARE'NT WE

WAT: I MEAN I MEAN I THINK WE ARE

DON: YEAH

WAT: I THINK THATS PROBABLY RIGHT

DON: OKAY DAVID THANKS AGAIN FOR YOUR TIME

WAT: ALRIGHT, I'LL I'LL ASSUME YOUR NOT COMING ON FRIDAY

DON: I THINK THATS THE BEST THING TO BE HONEST

WAT: IF YOU THINK OF ANYTHING ELSE, ANY OTHER QUESTIONS OR COMMENTS THEN OBVIOUSLY YOU KNOW, GIVE ME A CALL

DON: RIGHT OKAY

WAT: OKAY

DON: THANK YOU DAVID

WAT: ALRIGHT JOHN

DON: THANKS

WAT: BYE

DON: BYE

(0431) .