

IN THE HIGH COURT OF JUSTICE**CH 1998 D No. 2149****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
 IAN SUTCLIFFE**

I, IAN SUTCLIFFE of Mohogany Court, Wildey Business Park, Wildey, St. Michael, Barbados WILL SAY as follows:-

- 1. I joined Shell in September 1987 as a retail representative following employment as a Brand Manager at Scottish & Newcastle Breweries. In 1990 I became a retail network planner and in April 1993 I became the fuels marketing manager. This was a post created as a result of restructuring initiated by Frank Leggatt, in order to group together under the sole responsibility of a single person the skills and resources required to market fuel successfully. My responsibilities included**

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amongst other things advertising, promotion and sales of Shell fuel. This included the marketing, branding and pricing activities for the retail forecourts, excluding the Shell Select shops.

2. I have had a great deal to do with the development of the Shell SMART scheme. Many of its key features were suggested by me without reference to any proposals put forward directly or indirectly by Mr. John Donovan or his company Don Marketing. In fact, the major influence in my thinking, was the learning experience we gained working with the "Air Miles" concept as implemented in the U.K. and around the world. No one set of inflexible requirements were carried through the scheme from inception to implementation: at all stages prior to launch, the scheme was in a state of flux and could, but for the decision not to progress in association with Barclaycard, have resulted in a fundamentally different product.

3. My first involvement with the SMART project, or Operation Hercules as it was then known, came on 16th April 1993 when Andrew Lazenby came to speak to me about the proposed scheme. He explained to me the thinking behind it and the way in which it was envisaged that it would work in practice. I understood that the purpose of the meeting was to seek my views on the proposals. I indicated that it was very important to be clear as to exactly who was to be targeted by the promotion. I felt that the scheme ought to be primarily aimed at high-mileage or company car drivers. It was perfectly possible at the same time to offer some reward to the low-mileage, private motorist but this should not be the focus of the scheme. So far as the technology was concerned, I was sceptical as to the cost

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and potential benefit. Of these two factors, my primary concern was cost. I was acutely aware of the problems that had arisen in the Collect and Select scheme with the build-up of contingent liabilities.

4. I think that Andrew Lazenby accepted my views about segmentation of the market because on 20 April 1993 he sent a note to Frank Leggatt and David Watson, with a copy to me, summarising these objectives, which led him to consider the possibility of a dual-track solution which would provide a technologically advanced scheme for the main target customers and a less advanced solution for the others. On the same day he also copied me in to a note he wrote about discussions with Argos about joining in to their existing Premier Points scheme, at least in Scotland and Northern Ireland.

5. After this, although I was not directly in the line of decision-making authority for the scheme at this stage, Andrew continued to copy me in on some of his key memos on how matters were developing, eg. in relation to technology on 4 May and rewards on 5 May. I increased my level of involvement with the project in July and August, when it progressed from the conceptual stage to the implementation stage, and I became involved in a number of discussions about the scheme. I asked Julian Beck, the fuels pricing manager who was directly responsible to me, to produce a report on the cost-benefit, in cash flow terms, of a long term loyalty scheme. He was asked to consider and compare the viability of paper and electronic media for the project, demonstrating the level of additional revenues that would have to be generated to justify a smart card-based promotion.

C. Satchell

That note was produced at my request because I was still sceptical about the benefits of going down the technological route.

6. It was as a result of this note that discussions took place with other recipients of the note, such as Frank Leggatt, David Watson and Andrew Lazenby. Together we decided that the electronic option would provide two essential advantages: firstly the ability to accumulate data on our customers and secondly a means of differentiating the Shell scheme from its main rival, Esso Tiger Tokens. On 17 August Andrew wrote to Frank, David and myself setting out his own analysis of the various options and recommending use of an electronic points system. His note concluded by seeking the approval of all recipients of the note by 3 September in order to obtain senior management approval for the launch of Hercules on 1 February 1994 (which was the then target date).

7. I responded on 20 August with a note setting out the areas with which I was still concerned. These were the set-up cost, consumer resistance and the additional transaction time associated with use of an electronic card system. Because of these concerns I still favoured a paper-based promotion. These matters were to be discussed at a meeting with David Pirret who was at that time the head of retail. I believe that meeting took place within a few days after my note. I cannot recall precisely what was said at the meeting but my concerns were discussed and, to a degree, alleviated. The decision taken at the meeting was to move forward with the scheme and to try and seek approval from senior management. We agreed to support the project and the proposal was taken to Shell International for funding

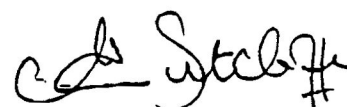
John Stirling

authorisation. In fact, as the latter part of 1993 was largely taken up with the process of getting approval for other proposals, very little, if any, further input was required from me before 31 December 1993 when David Watson left his position as advertising and promotions manager and I took over direct responsibility for the project, reporting to Frank Leggatt and ultimately to David Pirret.

8. In January 1994 Project Hercules moved to the implementation stage and I was promoted to the post of Forecourt Marketing Manager, following the departure of David Watson. By this point Shell had retained the services of Alan Davis, a consultant who had previously worked for Esso, and Gary Anderton who took the role of the SMART Project Manager. Option One started to suggest potential third parties who might be interested in joining the Hercules scheme. They referred us to Visa with whom we held discussions during January, but we quickly moved on to other financial organisations because Visa were only interested in paper vouchers. Next we tried Lloyds, who were Shell's corporate bankers and therefore a logical next port of call. On 27 January 1994 I had a meeting with Lloyds Bank about Select UK, a Lloyds Bank discount card, geared towards short-term rewards. I decided that we would not proceed with the Select UK scheme as we would have little control on who we were packaged with. I wrote to Lloyds Bank on 7 February 1994 saying we would not be going ahead. We subsequently then approached NatWest (because of their connection with Air Miles) and Barclaycard (because of the sheer size of their customer base).

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9. It was rapidly becoming apparent that Project Hercules was a multi-discipline project including many different specialisations and departments, (Marketing, IT, engineering) As a result, Gary Anderton (who had a great deal of experience of general project management) was appointed at the beginning of 1994. Having considered Project Hercules, Gary wrote a note highlighting the changes he would make to the project so that it could be managed effectively. We were still aiming for a June 1994 launch date. Gary Anderton thought we should have a set programme to achieve launch in this time frame.
10. During February, Andrew Lazenby, Frank Leggatt and I were concentrating on the operations side of the project and one of my concerns was the amount of time transactions would take in order to allow the transfer of enough data between the Smart Card and the point of sale terminal. I was not entirely satisfied with an internal demonstration of the speed with which Smart transactions could take place. As a result I asked Andrew Lazenby to conduct a field study at a busy service station in Addington, South London. His findings satisfied me that the transaction time was satisfactory.
11. Gary Anderton had set a target date of 7 February 1994 to decide upon third party involvement. However, at that date we were still in discussions with third parties with a view to their possibly joining later as participants. On 21 February 1994 we had a meeting with Option One to discuss third party contacts and launch participants. We decided that there would be two stages to our dealings with third parties. The first stage was to get launch participants on-board with a letter of



intent and then prepare for phase two for those participants who would join when the project was up and running. At this stage the only participant we had for the launch was HMV (as a redeemer only). During this time our line of thinking was that we should just launch the scheme for Shell, to prove the technology, rather than trying to accommodate any other third parties.

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12. Towards the end of February in the Operations Group we were discussing how we would launch the project and whether we would launch it region by region or would do a national roll-out. On 23 February 1994 Andrew Lazenby wrote me a memo setting out the pros and cons of a regional launch. One of the disadvantages of doing a regional launch was that we might lose potential partners. Shell senior management were concerned about a national roll-out and decided to have a trial in Aberdeen followed by a roll out in Scotland to commence in July. The national launch was to follow in October.
13. On 3 March 1994 I had a meeting with Barclaycard about potential joint marketing opportunities. They were running their own 'Profiles' scheme at the time. On 16 March 1994 I had a meeting with the Automobile Association about the possibility of their becoming a participant. We decided against having the Automobile Association as a participant but negotiations continued with Barclaycard.
14. In March 1994, I visited Air Miles in Canada. I was very interested to learn about their management information, the organisation of their database, and how they targeted their partners. The Canadian Air Miles scheme at that time used

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electronic data capture cards issued and redeemed by a variety of partners. The experience of Shell Canada and Air Miles (Canada) was probably the biggest single influence which guided my thinking in relation to the development of the SMART scheme.

15. Gary Anderton at this stage was getting very concerned that too many changes were happening too close to the launch and on 21 March 1994 he implemented a change control process whereby any changes to the scheme needed to be authorised by certain personnel. Gary was concerned to ensure that Smart did not collapse under the weight of all the ideas being put forward at the last minute.
16. On 12 April 1994 Operation Boomer, which was to include Blockbuster Videos and MGM Cinemas, was proposed to run from 11 July to 2 October, except in Scotland where SMART would already be running. Approval was needed by 15 April and was duly given. On 16 May 1994 an agreement was signed with Tequila, the agency which put forward the Operation Boomer idea. Peter Whyte dealt with this under my supervision. To the best of my knowledge there was no involvement from Andrew Lazenby in this project.
17. During this time we were dealing with our Shell contractors for SMART on a daily basis. During April we were preparing the fulfilment pack that Fortronic would send to all cardholders. Dillons had been a potential third party participants but on 15 April 1994 we decided not to go ahead with them due to their financial position. We had also been in discussions with General Motors, but on 21 April

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1994 we decided not to proceed with them. We subsequently found out on 16 May 1994 that General Motors were talking to Esso and therefore our discussions went no further.

18. On 6 May 1994 we had approval from AirMiles as to their participation in the SMART scheme. One of our concerns had been the branding of AirMiles and SMART and whether SMART was its own separate brand if it were to include the AirMiles logo. The placing and prominence of the AirMiles logo was hotly contested because neither Shell nor AirMiles wished to be perceived to be a sub-brand of the other. It was decided only at this stage that the SMART card was to have the capability to store AirMiles and SMART points alongside each other (as opposed to merely establishing a conversion rate between the two 'currencies').
19. On 6 May 1994 I had a further meeting with Barclaycard and on 9 May 1994 I sent a letter to Barclaycard setting out potential joint promotions. We were at this stage considering much closer involvement with their Profiles scheme.
20. On 16 May 1994 our test in Aberdeen started. My biggest concern was training the site staff and how we would get enough Smart Cards issued and how long it would take. I was involved with the negotiations with our field marketing advisors about the training of sales assistants and agreed to have promotional girls on site in Scotland to encourage customers to sign up to the SMART scheme.

C. J. Stobbe II

21. On 17 June we signed a confidentiality agreement with Barclaycard who then requested various financial information about the scheme. On 5 July 1994, Option One informed us that the Royal Bank of Scotland were interested in a six month pilot scheme with the SMART scheme. We were concerned about damaging our relationship with Barclaycard and therefore informed them that we were already in negotiations with another financial organisation and that we could not continue our discussions with them. On 8 July, the Aberdeen trial finished and on 11 July Hercules was launched in Scotland. Nearly 25% of the people involved and potential customers had a Smart Card during the first month and paper vouchers were issued which were valid until 31 January 1995 to those who had not yet received their card. The Aberdeen trial was considered a success and Gary Anderton did a note to senior management to this effect on 14 July 1994. On 8 July 1994, the advertising contract for Ogilvy & Mather was signed off and on 1 August 1994 formal approval was given by Shell International for the launch of SMART nationwide. I then prepared a full proposal to put to Barclaycard on 5 August, as a result of this a letter of intent was sent to Barclaycard on 9 September 1994.

22. In October 1994, the SMART scheme was launched nationwide with HMV redeeming tokens. On 22 September 1994 an agreement was signed with UCI Cinemas for them to act as a redeemer only.

23. Interest was beginning to build up. We had made no secret of our wish to involve other parties in the scheme - Gary Anderton had spoken on the topic at a number

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of retailer conferences. On 10 October 1994 Hilton International wrote to me, unsolicited, explaining that they were already a partner in the AirMiles scheme and they were interested in joining the SMART scheme. A meeting was then arranged. Ronnie Wayte was having discussions with Kingfisher and on 14 October a confidentiality undertaking was given by Kingfisher.

24. Throughout this time negotiations were still continuing with Barclaycard and on 22 November a further letter of intent for Barclaycard was drafted. There was some concern from David Pirret that there might be a potential conflict between Barclaycard and AirMiles in which case David Pirret thought we should go with AirMiles. When considering our relationship with Barclaycard we were considering using the card as an electronic purse. This led to us reconsidering some of the work Shell had done previously on a scheme known as Project Nova in the late 1980s, which the Promotions Department had kept on file. Concerns were growing that if we chose to proceed with Barclaycard, tripartite decisions between Shell, Air Miles and Barclaycard might be difficult. The potential for a clash of corporate cultures was a source of concern.

25. On 27 January 1995 a feasibility study was produced by Guy Burgess (a Shell employee concerned with information technology) on the subject of how we could use the data collected from SMART cards. We were concerned that a lot of the data collected from the Smart cards would not be used and we wanted to be able to use the data to develop an information base about our customers.

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26. We continued to seek third party participants. Presentations were made to Kwik Fit and John Menzies. I considered the AirMiles parties as potential participants in the SMART scheme. In February 1995 we had a meeting with NatWest and AirMiles to discuss a joint promotional opportunity between the three parties. I learnt that the participants in the AirMiles scheme were concerned about the strategic direction, control and branding of Air Miles. I concluded that in order to avoid these shortcomings inherent in the AirMiles scheme, SMART could ideally become a 'stakeholder' scheme (more like the Canadian AirMiles scheme I saw in operation in 1994). On 17 March 1995 we had a Steering Group Meeting at which it was considered that partner development and stability were seen as the top priorities for the card.
27. On 21 March 1995, we had a final, 'make or break' meeting to discuss whether a link-up with Barclaycard was feasible. It looked as though progress was becoming difficult because (i) it was not clear to what extent Barclaycard Profiles could be converted into SMART points and (ii) there was a conflict with NatWest, the banker involved in AirMiles. These issues were not resolved and by the end of March a possible link up with Barclaycard was ruled out. But for this decision, the Shell SMART card would have not resembled the card it is today. It would have been much more like a glorified payment card which could be credited at Shell stations.
28. On 28 March 1995, Shell were negotiating the final terms of their agreement with John Menzies. Negotiating with them was somewhat easier than with some other



parties, because Ronnie Wayte had joined that company from Shell and was familiar with what we were doing. It was agreed the contract with John Menzies would be for five years. On 3 April 1994, Gary wrote a note in which he said he saw the long term Smart card being a multi-partner program with all management systems being carried out by a separate company which he called "Smart Inc". This idea came purely from Gary Anderton but was not necessarily shared by the rest of us on the team. We saw third parties as participants in a Shell scheme rather than partners. That has remained the core as SMART developed.

29. Throughout my time as Fuels Marketing Manager I spent a lot of time working on SMART. The project was fluid and constantly changing. I left my role as Forecourt Marketing Manager in April 1995 and my position was filled by Darren Messem.
30. I have never spoken, corresponded with or met John Donovan. The first time I heard about Don Marketing or John Donovan was when they started the first of their actions against Shell UK. I therefore believe it is not credible to suggest that Donovan had any influence over or input into the development of SMART.

Ch. Stelfox

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

SIGNED 
IAN SUTCLIFFE

DATED 9/4/99.