

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
TIMOTHY SEAN HANNAGAN**

I, TIMOTHY SEAN HANNAGAN, of Shell-Mex House, Strand, London WC2R 0DX

WILL SAY as follows:-

Background

1. I joined Shell in August or September 1985. I have an HND in Business Studies and before working for Shell I worked for Mobil, Marks & Spencer and British Home Stores. My first eighteen months at Shell were spent on the road as a Retail Sales Representative and an Acquisition Negotiator. I then joined the Sales Development Unit in 1987 as a Sales Development Coordinator. In this role I developed among other things uniforms for staff and incentive schemes for staff. As a result of having been on the road, I had strong views about the sort of promotions that were successful and those that were not.
2. As a result of my interest in promotions, I was asked to work with Paul King who at this time ran the promotions arm of the Sales Development Unit. He did this on his own to start with but later, after he had suffered a nervous breakdown in the late 1980's, he was joined by Stuart Carson in 1989.
3. I was involved in various projects undertaken within the Promotions Department between 1989 and 1993. Several of these projects had an influence on the final form of the Shell SMART scheme. Mr Donovan has accused Shell of copying his ideas for a multi-brand loyalty programme, saying that Paul King in 1990 or Andrew Lazenby in 1992 must have made use of his proposals. Neither Mr King, who as a result of his nervous breakdown did not really have any input into anything, nor Mr Lazenby, who only came in after much of the groundwork had already been done, mentioned any such proposals to me.

4. The internal documents created in the course of Project Onyx (the prototype for SMART) by me and my colleagues at Shell show that we were quite happy to give credit to outside agencies where credit was due. No such credit was given to Mr Donovan for the simple reason that Onyx was developed entirely without reference to any input from him.
5. The Sales Development Unit was often being approached by agencies such as Don Marketing offering various ideas to promote sales and/or loyalty. Paul King's practice was to talk to a large number of agencies, consultancies and individuals. Agencies pitched on a no strings attached basis. An agency would then be paid if the idea was used. Paul King had worked closely with Don Marketing in the Sales Development Unit at various times until late 1989. Don Marketing had been involved in the "Make Money" promotion which was typical of the sort of promotion they specialized in, namely short-term tactical promotional games.
6. Between 1984 and 1988 Shell also ran a series of gift style promotions in which customers collected vouchers which could be exchanged for glasses, soup bowls etc. This was not the type of promotion in which Don Marketing had shown any particular interest - there were many better qualified promotions agencies capable of running this type of promotion.
7. My own view from my previous experience in the field was that Shell should be turning more towards a long-term collection scheme and I aimed to persuade Shell to move out of short-term promotions and into long-term promotions with data base marketing.

8. **Project Nova**

Marcel Cohen of Shell, but now of London University, was asked to write a report on the feasibility of using a contactless Smart-chip technology, primarily as a payment mechanism, but bringing with it a number of associated benefits, such as the potential of a link-up with other retailers and an associated loyalty scheme application. This project was code-named Project Nova. Simon Hatherall of Shell assisted with this report. I was seconded part time from the Sales Development Unit when I first arrived, ie the beginning of January 1987, to assist with this report. At this stage we saw the uses of Smart technology but at the time the technology was too expensive.

9. **Collect and Select**

From May to November 1988 I worked on the development of the Collect and Select scheme. Collect and Select was launched on 1st November 1988. The main feature of Collect and Select was that it not only promoted customer loyalty but also enabled data to be gathered. Customers collected bar-coded stamps which indicated when and where the stamps had been collected. These stamps were then assembled on a card with the customer's name and address on the back. In order to claim prizes the customer sent in the card from which the data could be read and stored. This data taught us a great deal about our customers' spending habits.

10. At this time other petrol companies were running promotions based on vouchers and a catalogue. Woolworths were also testing a card-based scheme in the South West of England.

11. During our research of Collect and Select, I met Keith Mills who had recently devised and launched the Air Miles loyalty scheme for British Airways. As a result of this meeting I thought Shell should be involved in Air Miles. Shell were the first partner for Air Miles, which was incorporated into the Collect and Select scheme when it was launched on 1 November 1988. Tesco were also meant to become a partner at this time but pulled out shortly before the launch.
12. During the life of Collect and Select (1988 to 1991) the scheme involved third parties such as Currys, B&Q and Little Chef where points could be redeemed for discounts. Additionally, it was always envisaged that C&S would evolve from a voucher-based scheme into one using card technology when the technology became more reliable, accessible and less costly.
13. I discussed with B&Q the possibility that they might issue points as well as redeem them. A card-based scheme would have been particularly suitable for such a link-up because of the fast-moving nature of B&Q's point of sale environment. Ultimately the discussions came to nothing because of B&Q's concerns about technical feasibility and financial exposure (no-one knew how many points would be issued or what percentage of these would be redeemed).
14. In January 1989 Jim Slavin had arrived from Australia as General Manager of the Retail Group. Mark Foster reported to Jim Slavin and Paul King worked for Mark Foster. Jim Slavin liked short-term promotions as he saw them as a cheaper way of running the business. I personally continued to feel that the situation was the other way round and that Shell should be running long-term promotions. Jim

Slavin eventually closed down Collect and Select March 1991 in favour of short term promotions.

15. For Collect and Select, I stayed on and produced about three brochures. I then moved on when Stuart Carson was brought on in 1989. Stuart Carson was seen as a high-flyer. He stood in for Paul King when Paul King was absent due to ill-health. After his breakdown, Paul King returned to work but played a much less prominent role in the promotions team, though he continued to provide promotional expertise and advice to new appointees, such as initially Alan McNab and later Andrew Lazenby.
16. In 1989 I moved to another department, where I worked on a project called "Networking for the Nineties". "Networking for the Nineties" concerned the Shell Select Shops, their setting up and franchising. I stayed in this role through to September 1991. I worked for John Taylor and had very little contact with Stuart Carson or Alan McNab in promotions.
17. I have been shown a copy of Mr Donovan's Statement of Claim where he states (at paragraph 3) that he presented a series of proposals to Paul King of Shell on 23 October 1989 and (at paragraph 4(ii) of his Further & Better Particulars) that I was present at a lunch on that day when these proposals were discussed. I have no recollection of going for lunch on this day with John Donovan. In fact, I do not believe that I did go for lunch with him. Jim Slavin did away with the "lunch mentality" at Shell. By this time we had to make a note of all gifts-in-kind and it was a very rare occurrence indeed for me to have lunch with any outside

supplier. I see also that Mr Donovan alleges that I attended a further lunch with him in December 1989 at the same restaurant. This makes it doubly unlikely as if I had been there twice, I would surely have remembered it. I have no recollection of the meeting in October or that mentioned in December. I do not recall ever having seen a copy of his proposals prior to this litigation and I have never heard of what he describes as Project 100.

18. The only time I can remember meeting Mr Donovan was at a meeting with Paul King which I believe took place at Shell-Mex House sometime prior to the launch of Collect and Select in November 1988. At that meeting Paul King, Mr Donovan and I discussed short term promotions. If Paul King did have discussions with Mr Donovan when I was not present, he did not relay those discussions to me or to any other Shell staff I am aware of.

19. Mr Donovan also refers in paragraph 3 of his Statement of Claim to discussions with Shell which led to a letter to Sainsburys dated 24 July 1990. I was not involved in those discussions. However, I do recall attending a meeting at Sainsburys with Paul King at some stage, at which we discussed the potential of some sort of promotional partnership with Sainsburys. At this time we were already running Collect and Select and Jim Slavin had expressed his wish to return to short term promotions. I think that we approached Sainsburys with a view to a potential link-up for a short term promotion as such arrangements were very hot property at this time.

20. In 1991 the Shell Promotions Department had another reorganisation and I went to work for David Watson on "below the line" marketing. This involved communications at the point of sale, literature supplied at retail outlets and local advertising. I was asked by David Watson to do some strategic thinking about promotion, especially on the subject of long-term promotions about which David Watson knew that I had positive views. I had been a campaigner for long-term customer relationships for a long time. My work on Project Nova for Marcel Cohen who led the project and Simon Hatherall Project Manager of Project Nova had touched on the capture of customer data. I also helped develop Collect and Select with Paul King. After Collect and Select, I had kept a watching brief on multi-cards promotions although I was working on other projects.
21. On 13 September 1991 I wrote myself a memo referring to the conversation I had had with David Watson, probably on that day. He had asked me to evaluate the use of electronic points in forecourt promotion. I called this Project Onyx. I did not know what prompted David Watson to pursue the idea for Project Onyx. I knew it was important that we got to know customers' spending habits and David Watson would have agreed with this. The market was moving this way: Esso, Texaco and Mobil were all obtaining such information via Magnetic strip cards or information on them were given to customers. The brief for Project Onyx was broad. The concept of long-term promotions was not rocket science. Shell wanted to get in a position of understanding their customer and this can only be done effectively with some form of electronic database. This project brought together ideas from projects I had worked on, including Collect and Select and Project Nova.

22. David Watson asked me to be discreet about my work on Project Onyx and not to discuss it with other members of the promotion team (including Paul King). I now know that at around the same time Andrew Lazenby, David Watson and Alan McNab, Andrew Lazenby's predecessor in the promotions team were themselves being approached with other possibilities for a long-term scheme, such as a link-up with a revived Green Shield Stamps scheme. I was unaware of this at the time. I do not know why David Watson initially kept my work separate from that of the promotions team. It may have been because he did not wish to do anything to distract them at a time when they were all working very hard on a number of short-term promotions. In the event, however, the fact that I was working on Project Onyx became known to Andrew Lazenby, and Paul King as I began to follow up specific leads.
23. The first meeting I had in relation to the project was with a company producing loyalty cards for Woolworths. When I first started work on Project Onyx in September 1991 I was working entirely on my own. I looked at Marketing Week and other relevant publications to get various names of people and companies who I thought could be of assistance. As a result of my initial enquiries, my interest became known and people started to ring me. I was approached by various agencies suggesting loyalty schemes and I contacted them and listened to what they had to offer.
24. Senior King, a small firm consisting effectively of Mr Steve King were at the time Shell's retained agency, they gave strategic advice on promotions. I had a meeting with Steve King on 1 November 1991. This was an informal meeting to discuss

the current state of the market in relation to loyalty schemes, particularly those using electronic technology. At this time Steve King was well known to Shell. Senior King were on a retainer from Shell for their general advice though they received additional payments when they were asked to deal with specific projects. They had a good reputation and Paul King (no relation) had suggested to David Watson that we use them. David Watson in turn suggested that Senior King could be of use to me. By November 1991, when I had done some initial research and was ready to move this idea forward, Senior King was the obvious agency to talk to. At this meeting Steve King and I discussed a number of schemes that were operating or planned in the UK.

25. On 8 January 1992, Steve King gave a formal presentation on behalf of Senior King at which David Watson and Alan McNab were also present. A great deal of this presentation merely reflected the matters that had been discussed on 1 November, but they also put forward a technological solution for us, based on a connection they had with Hughes Electronics. Steve told us that Hughes had electronic data capture capability which had been used previously in the defence industry.
26. After the meeting with Senior King it was agreed that they would take us up to see Hughes' operation in Scotland to get a better idea of what they could offer. That meeting took place on 27 January 1992. Present from Shell were David Watson and Nick Bradshaw, one of our IT team, as well as myself. However, immediately after that trip I went down with pneumonia and was away from the office for several weeks, during which time I was unable to progress matters.

27. During that time David Watson received a letter dated 14 February 1992 from an agency called Sheard Thomson Harris in relation to a loyalty system they were promoting using what they called Tagcards. They informed us that such a scheme was being used by Shell in Belgium.
28. Sheard Thomson Harris offered to give us a presentation of the system which was arranged for 12 March 1992, by which time I was back at work. I attended the presentation with David Watson. I was quite impressed by the Tagcard scheme and the company stayed in the running as a possible scheme provider for Shell for a long time. The Tagcard was much less sophisticated than a smart card, but at this stage we were merely exploring alternative possibilities.
29. On 1 February 1992 , while I was away from the office through illness, Andrew Lazenby had joined the group as promotions manager in place of Alan McNab. Initially Mr Lazenby was not involved with Project Onyx but, as is dealt with below, that position changed as 1992 progressed.
30. There was a meeting on 16 March 1992 at which a presentation was made by Geoff Howe Associates. They had a scheme called Power Points which was a ready-made electronic points collection scheme intended to be operated by a number of retailers in different fields. For some reason I was not present at the 16 March meeting, which may have been because David Watson who was present had had some initial discussion with Geoff Howe Associates while I was absent through illness. However, the GHA Powerpoints Scheme was very much within the focus of Project Onyx and I did subsequently become involved in discussions

with GHA. David Watson reported on the Power Points proposition to his own direct superior, Graham Sweeney, who was then head of retail marketing. During March 1992, I visited Geoff Howe Associates at their premises in Hampton for a demonstration of their equipment.

31. Meanwhile I was pursuing other similar avenues. On 20 March I had a meeting with The Communications Agency, a group that was promoting the idea of a loyalty scheme. That agency did a presentation surveying the market and seeking to be instructed in relation to fleshing out their outline proposal. The outline proposal suggested a computerised loyalty scheme linked to a central database which could offer the greatest potential for marketing activity.

32. By 23 March 1992 I had completed the first evaluative phase of Project Onyx and I reported on that day in writing to David Watson, summarising the options open to Shell in terms of a long-term loyalty scheme, either by way of paper vouchers, different types of magnetic strip cards, smart cards or Tagcards. My note summarised the advantages and disadvantages of each of these systems and gave an indication of potential costs. I cannot recall whether David Watson discussed this note with more senior personnel within Shell but in any event he asked me to continue my work. Over the next few weeks and months I met with many agencies and suppliers who had products designed to assist with the creation of a long-term loyalty scheme. I also continued to pursue the propositions which I had already started to investigate.

33. A full list of those agencies with which I dealt is contained in the note I prepared on or around 4 August 1992 headed "Project Onyx - The Players". These were

Senior King

Hughes

Sheard Thomson Harris

Prodata

Communications Agency

Project Assyst Limited

Geoff Howe & Associates

HTEC

NCH

System Gold/Feature Electronics

The Sales Machine

Concept Systems

Dallington Smartcard Project

McCorquodale Security Cards Limited

MIDS UK Limited

Innovation

Card Code Limited

Blue Chip

Key Points Limited

Plus Points Limited

A couple are worthy of further mention. In early June we were contacted by a company called Concept Systems Limited. This company had expertise, particularly in the provision of SMART card and magnetic strip and technology for use in loyalty systems. Concept Systems was connected with Fortronic Limited, a subsidiary of De La Rue. Fortronic were manufacturers of computer terminals, some of which were already used by Shell. They ultimately became the suppliers of terminals for use in the Smart scheme. Mike MacMahon on behalf of Concept Systems claimed to be talking to many major retailers and other companies about their scheme. It was already plain to me that the technological aspect was going to be a very important factor in any successful loyalty scheme. Among others that I talked to on this topic were McCorquodale who are manufacturers of plastic cards and of smart card systems. A sales agency named the Sales Machine (who were linked with an electronic company called Feature Electronics Limited) also submitted proposals on 3rd April 1992 for an electronic contactless card system which could also offer a point system for rewarding customer loyalty.

34. At paragraph 9 of his Statement of Claim, Mr Donovan mentions a meeting between himself and Andrew Lazenby which took place on 12 May 1992. He claims at that meeting to have suggested to Mr Lazenby the idea of a long term promotion involving the use of a Smart card. I was unaware of this meeting. Mr Lazenby did not mention it and did not pass on any of Mr Donovan's proposals. Even if I had seen Mr Donovan's proposals, at that stage Project Nova and Onyx had already progressed a long way in relation to the applications of

electronic card technology to Shell's long-term promotional strategy, so his proposals would have scarcely been of any assistance.

35. In the course of June and July 1992 Mr Lazenby became more involved in discussions on Project Onyx so that by the time I produced my note of 4 August 1992 the project was in effect being run as a joint operation by the two of us under the overall supervision of David Watson. That continued to be the case until the closing months of 1992 when Mr Lazenby took over the project as it began to move towards its implementation stage commencing in January 1993 and thereafter known as Project Hercules.
36. Following my note of 4 August 1992 listing the "players" in Project Onyx, there was a discussions between David Watson, Andrew Lazenby and myself, at which we narrowed down the list of "players" mentioned in my note to a shortlist of five. These were Senior King, Sheard Thomson Harris, Geoff Howe Associates, Concept Systems and McCorquodale. A sixth member of the shortlist, AT&T Istel, was added by Andrew Lazenby. I believe that AT&T were trying to put together a ready-made electronic points collection system, which is presumably why they were added. I personally had no dealings with AT&T Istel.
37. In early September 1992 Andrew Lazenby wrote to the shortlisted six, indicating that they had been identified as potential suppliers and setting up meetings with them to brief them on our requirements. Once proposals were in, Andrew Lazenby and I identified Senior King and Geoff Howe Associates as the two front-runners. David Watson and Andrew Lazenby met on 23 October 1992 to

determine how to proceed. I do not believe that I was present at that meeting but the outcome was that Shell should press ahead with the two front-runners but in the meantime not to inform the other four immediately that they had been unsuccessful. That was certainly the effect of the letters that Andrew Lazenby wrote to them on 27 October and I recall that some difficulties were caused over subsequent weeks because the runners-up continued to make enquiries in the hope of securing the business. However, by this time, Andrew Lazenby was very much playing the front role and I was much less involved in the matter.

38. After Project Hercules got under way in early 1993 I was hardly involved at all. My limited involvement was with specific aspects, in particular the design of the card. I believe that in January 1993 David Watson and Andrew Lazenby decided not to proceed with either of the two ready-made options supplied by Senior King and Geoff Howe but in fact to instruct Option One to help Shell to design a tailor-made scheme of its own. I was not involved with Option One on this project.
39. My responsibilities by this time had changed and I was working as part of the advertising unit with the Advertising and Promotions Department. In that capacity I became involved with the Nintendo promotion in the course of 1993. This was primarily in relation to the "communication design" aspect. This role involved liaising with Greenwich Design (the design agency who designed the appearance of the game pieces), providing them with instructions on points of detail such as the arrangement of symbols and the coloured used. The main person dealing with that promotion at Shell was Charlie Fox who had the main liaison role with BDP,

(Business Development Partnership Limited) the agency that had produced the idea to us.

40. I was also involved in communication design matters relating to the proposed revival of the Make Money promotion, which was intended to be used as a lead-up to the introduction of Smart in 1994. Greenwich Design were given a brief to design the tokens for this game and to deal with the security and printing. I was not involved in the dispute about the rights in respect of this game.

41. At no stage in relation to either the Nintendo or Make Money promotions did I make use of any proposals put forward by John Donovan or Don Marketing.

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

Signed


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TIMOTHY SEAN HANNAGAN

DATED

.....7/4/99.....