

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 BETWEEN

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

JOHN CHAMBERS

I, John Anthony Chambers of 45 Stanhope Road, Croydon, Surrey CRO 5NS, WILL SAY AS FOLLOWS:

I was Managing Director of Don Marketing Management Limited (DMML) from 1983 to 1985. I was previously a Nestlé Brand Manager, Advertising Services Manager of Rank Hovis McDougall Foods, and Promotions Manager of a top ten advertising agency, Allen Brady & Marsh. For a number of years, I was a member of the Management Committee of The Institute of Sales Promotion, and was twice Chairman of the ISP Awards Committee. I have also served as a member of the Sales Promotion Sub-Committee of the Advertising Standards Authority.

Shell became a client of DMML soon after I became the Managing Director, and I was involved in negotiating the terms by which DMML was originally paid by Shell for its services. I also personally negotiated terms for the subsequent DMML promotions for Shell. Although DMML strived to supply promotions to Shell on a package basis – as was the rule for other DMML clients – Shell insisted on purchasing their own print. For each Shell promotion devised by DMML, we therefore received a concept fee plus agency commission on all promotional materials, including the print. This was, and remains, a commonplace basis by which agencies receive payment for services rendered. DMML proposals were always presented to Shell in strictest confidence and under cover of DMML's Standard Terms & Conditions regarding proprietary rights etc.

Shell came to have great faith in the expertise of DMML. Although there was no on-going contractual relationship, Shell indicated that even if they accepted an idea from another agency, they would try to purchase title rights, so that DMML could act as Shell's agency to develop the basic idea which had been presented. Because of the excellent working relationship which had been established between DMML and Shell, DMML often spent months on a project before terms had even been agreed, trusting in the belief that the Shell would honour their obligations towards DMML as they had in all previous promotions.

At the height of the spectacular success of the 1984 Shell Make Money promotion, John Donovan and I put a MegaMatch multibrand game proposal to Mr John Smeddle, the Retail Sales Manager of Shell UK and his colleague, Mr Ken Danson, Shell's Sales Development Manager. It was for a unique game devised by John Donovan, which was basically a multibrand version of the Make Money matching halves game. A left-hand half note received from a Shell station might match with right-hand half note received from a participating supermarket chain. We put the idea to them over lunch at a French restaurant in Covent Garden. We had been invited to lunch with Mr Smeddle, which was a significant honour in itself, because Shell was enthralled with the success of the Make Money promotion as it had dealt a major blow to its rivals. Mr Smeddle decided against any immediate adoption of the multibrand concept because he was concerned that it might be too successful. Shell was having difficulties in maintaining adequate stocks of petrol to its forecourt network due to the Make Money phenomenon.

In 1985, with Shell's permission, John Donovan and I met with Tesco directors at the Savoy Hotel for exploratory discussions about Tesco being a partner in the multibrand game. The project was subsequently put on hold while Shell considered its plans and was still pending when I left DMML in the Autumn of 1985.

It was commonplace for radical amendments to be made following DMML's supply to Shell of an initial visual for a particular promotional idea. This was the case with 'Bruce's Lucky Deal', the last Shell promotion I was involved with before I left DMML.

The scratch card size, shape, format, colours, and the promotion name changed many times from the initial visual to the final game card. We had to take into account Shell's specific brief with regard to design preferences, budget availability, timings and promotional objectives. For Bruce's Lucky Deal, DMML received a £50,000 concept fee from Shell UK, plus 17.65% commission on the game cards, plus £48,000 for drafting the rules, devising the prize fund, originating game variations and handling verification of major prizes. Shell also agreed that the credit: 'A GAME DEVISED BY DON MARKETING', would be printed on every game card. DMML also received a commission from the suppliers of 4.5 million Shell branded playing card packs given away as prizes in the promotion. DMML received additional fees for the Irish Shell version of 'Bruce's Lucky Deal', as they had for Make Money when that promotion was conducted with huge success in Ireland, and subsequently in Singapore. I negotiated DMML's fees with Shell in respect of all of the international promotions.

In 1986, John Donovan contacted me after I had moved to Leo Burnett Promotions, where I was Chief Executive. He invited Leo Burnett to pitch for the TV advertising campaign in respect of the 'Project 100' multi-partner promotion, which was essentially the same game that DMML had originally put to Mr Smeddle and Mr Danson in 1984. I attended several highly confidential meetings of the consortium organised by Don Marketing UK Ltd, which included Shell, Woolworth, Bass Brewers, Sketchley and the Daily Express newspaper. Leo Burnett made a substantial investment of time and materials in the project on a purely speculative basis, because we wanted to be associated with the first multi-partner promotion involving the leading retailers in the UK. It was a highly exciting project.

On 26th June 1986, a presentation of the MegaMatch multibrand game was made to the consortium partners by DMML and my Leo Burnett account team. DMML dealt with the overall aspects of the promotion and briefed the partners on the results of consumer research, which they had commissioned on behalf of the consortium. Leo Burnett presented a complete advertising campaign for 'Mega Match', including a TV commercial based on a 'Santa Claus - The Movie'. The intended message to consumers was that the multi-partner promotion would be on such an unprecedented scale, with a huge quantity of gifts, that it would actually seem like Christmas had arrived. The advertising campaign was extremely well received by the prospective partners.

DMML's proposal included John Donovan's idea of a multi-partner loyalty promotion using a common promotional currency. A reference to the concept was contained on page 41 of DMML's proposal, and it was discussed briefly during the presentation. I do not recall precise details of the relevant discussions, nor do I recollect that a loyalty card was discussed or even envisaged at that time. To the best of my recollection, in general terms the idea of accelerating the collection of vouchers or points by them being issued as a universal currency across a range of retail outlets, was accepted as being a potential winning vehicle for future collaboration between the partners.

After the presentation had been completed, a number of the participants had lunch with me. John Donovan, Roger Sotherton, and Ken Brown represented DMML. Mr Ken Danson, Shell's Sales Development Manager was present, together with the Promotions Managers representing Woolworth and Bass. Based on positive comments made over lunch by Mr Danson and the other parties, prospects for the MegaMatch project being given the green light seemed favourable.

Unfortunately, in a lunch meeting which I had several months later with Mr Danson, he informed me that Shell had withdrawn from the consortium because of a major change in Shell's marketing policy. He acknowledged that the proprietary rights to the concept remained with DMML and the rights to the advertising campaign with Leo Burnett Advertising. The news was very disappointing, but not a major blow, as Leo Burnett is one of the world's largest advertising agencies, and new business pitches were always being worked on.

I believe that Mr Danson's acknowledgement extended to all of the information and ideas in the DMML proposal dated 26th June 1986, which included the loyalty promotion outline concept described on page 41.

Soon after John Donovan started Don Marketing UK Limited, he advised me that he was having further discussions with Shell in respect of the multi-brand loyalty scheme, and he wanted to know if I could recall the basis on which matters had been left with Shell. He knew that I was the last person to discuss Project 100 with Mr Danson. I mentioned that I still had a copy of a Leo Burnett memorandum (dated 6th January 1987), which recorded the outcome of the discussion with Mr Danson. I was happy to let John Donovan have a copy of this memo, as he wanted to politely remind Shell of the background circumstances to the multibrand project, and their recognition of the associated proprietary rights.

Finally, having spent all of my working life in the advertising, marketing and sales promotion business, I have met many highly creative people. As far as devising unique promotional concepts is concerned, I have not met anyone to match John Donovan's extraordinary track record in this area. His creative imagination in structuring promotional games which work securely, is combined with a flair for knowing what makes the promotions exciting to the public at large.

The time I spent as Managing Director of Don Marketing was one of the most exciting and productive periods of my career, and the whole team at DMML provided an extremely professional and state-of-the-art service to our clients.

A handwritten signature in black ink, appearing to read "John Chambers". The signature is written in a cursive, flowing style with a large initial "J".

JOHN CHAMBERS
17th April 1999