

[1] Friday, 2nd July 1999
 [2] (10.30 am)
 [3] MR ANDREW LAZENBY (continued)
 [4] Cross-examined by MR COX (continued)
 [5] Q: You know very well that you discussed the multibrand
 [6] loyalty concept with Mr Donovan on 24th November 1992,
 [7] do you not?
 [8] A: As I said yesterday, no, I have no memory of talking
 [9] about it at all.
 [10] Q: As you said yesterday, in the last few months, you have
 [11] had a dim and stirring recollection about the Concept
 [12] Four, is that right?
 [13] A: What I said was in looking at Concept Four as a
 [14] collection of - a variety of generic, different
 [15] promotional items, we had those things coming in all the
 [16] time, so as a kind of thing that I might remember, it
 [17] came in from all sorts of different people at different
 [18] times.
 [19] Q: No, Mr Lazenby. You said yesterday that you had
 [20] a recollection of having read Concept Four.
 [21] A: What I meant was I might have seen it, and all it was
 [22] was a generic string of different bits of a promotion,
 [23] which were not presented in any particularly coherent,
 [24] holistic manner, which could have been developed into a
 [25] promotion. We had those things coming in all the time,

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[1] wrote to me, unsolicited mail, as we perceived, 20 or 30
 [2] a week. What I normally did with those is to ask round
 [3] the office, particularly if people claimed to have
 [4] worked with Shell in the past, for what people in the
 [5] office thought about the people who had written it. On
 [6] that occasion, people said, "Yes, Mr Donovan was
 [7] involved with us in Make Money and a few other things,
 [8] particularly Star Trek recently", and the recommendation
 [9] seemed to be that we should have a talk to him.
 [10] Q: Are you saying that you did not believe in 1992, and
 [11] throughout 1992, that he was trading on the old boy
 [12] network with Mr King?
 [13] A: Mr King spoke, I seem to recall, quite highly of him; he
 [14] recommended that we speak to him. I therefore met him.
 [15] Q: Will you answer my question? Are you saying -
 [16] A: No, I do not think that I knew or thought that
 [17] Mr Donovan was trading on any kind of old boy network
 [18] with Mr King at the time. I saw Mr Donovan because he
 [19] was recommended, he obviously had a good track record in
 [20] games. He had worked with Shell in the past. Therefore
 [21] there was a point and a reason to seeing him. I did not
 [22] directly link Mr Donovan with Mr King at all. He was
 [23] indeed, I think, at the time, working on a variety of
 [24] promotions with Mr King, as far as I recall, but nothing
 [25] more than that.

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[1] and therefore I would not be able to possibly remember
 [2] distinguishing between all of the different ones that we
 [3] had coming in. I may have seen it, I may not, as I said
 [4] before.
 [5] Q: Do you remember, in late 1993, when it first twigged
 [6] with you that you may have a problem, because Mr Donovan
 [7] seemed to believe he had a right, in your view - that
 [8] is to say you realised he seemed to believe he had a
 [9] right to a multibrand loyalty concept.
 [10] A: Sorry, what was the question again?
 [11] Q: Do you remember realising, in late 1993, that you had a
 [12] problem with Mr Donovan about the multibrand loyalty
 [13] concept?
 [14] A: No, I never realised anything like that. Mr Donovan and
 [15] Don Marketing were clearly and only a games agency, and
 [16] they were a good one at that. I never ever linked
 [17] Mr Donovan with anything to do with loyalty or other
 [18] retailers, beyond working with Make Money or Mega Match.
 [19] Q: You believed that Mr Donovan was trading on his old boy
 [20] network relationship with Paul King, did you not?
 [21] A: When?
 [22] Q: When you met him in 1992, you believed that he was
 [23] trading on his old boy network relationship with
 [24] Mr King, did you not?
 [25] A: No, I did not. What had happened was that Mr Donovan

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[1] Q: I am going to ask you just once more, and I want you to
 [2] think about it carefully: just as you formed rather
 [3] critical judgments about others in other respects, you
 [4] formed the view in 1992 and early 1993 that Mr Donovan
 [5] was just trading on an old boy relationship with
 [6] Mr King, did you not?
 [7] A: No, I did not. I do not know why you are suggesting
 [8] that I was speaking to Mr Donovan as a games
 [9] professional, the one who we had done more games
 [10] promotions with than anyone else, and possibly not done
 [11] them with anyone else at all. He came in with a few
 [12] unsolicited ideas, one of them seemed to be quite good,
 [13] I thought it was quite good, Mega Match was new to me.
 [14] We put it into research, it did not research
 [15] particularly well, and we did therefore not run it.
 [16] That is the long and the short of it. It is nothing to
 [17] do with old boy networks or anything like that. I knew
 [18] nothing about prior relationships or detailed work;
 [19] I knew nothing about the past, beyond the fact that
 [20] Mr Donovan had worked with Shell on Make Money and Star
 [21] Trek, and one or two other promotions.
 [22] Q: Did you find Mr Donovan and Mr Sotherton congenial
 [23] people to meet and to work with?
 [24] A: How do you mean congenial?
 [25] Q: I mean, would you have found it possible and been able

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[1] to work with them?
 [2] A: I am sure I would have been able to work with them.
 [3] Q: And you are saying, are you, that you did not form the
 [4] view that they were simply trading on an old
 [5] relationship with your predecessor?
 [6] A: As I said earlier on, that is not what I believed about
 [7] them. They were games professionals, they were very
 [8] knowledgeable about games.
 [9] Q: Would you look at volume 5, please, page 2322? This is
 [10] a note that you wrote, is it?
 [11] A: It is my handwriting.
 [12] Q: It is dated 24th June in the corner, is it not?
 [13] A: It is.
 [14] Q: This is dealing with the claim - by this time,
 [15] 18th June, you had launched the Nintendo promotion, had
 [16] you not? Yes or no?
 [17] A: 18th June 1993 we launched the Nintendo promotion.
 [18] Q: On 24th June -
 [19] A: 1993.
 [20] Q: Yes. You knew by then, because Mr Donovan had
 [21] telephoned you, that he thought that you had used an
 [22] idea he had put forward to you, did you not? Yes or
 [23] no? You knew by then that he thought you had used an
 [24] idea put forward by him.
 [25] A: Yes, that is what he had had extensive conversations

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[1] Q: "Marketing 2.30 pm 12th May".
 [2] A: "Mtg" is meeting.
 [3] Q: Forgive me. That is, in fact, the meeting you had with
 [4] him, is it not?
 [5] A: Yes.
 [6] Q: Mr Donovan in that letter set out his long established
 [7] relationship, as he saw it, with Shell, did he not?
 [8] A: He did. He mentioned all of the previous promotions
 [9] that he had been involved with.
 [10] (10.45 am)
 [11] Q: When you met him on 12th May, he also filled you in
 [12] about the history of his relationship with Shell, did he
 [13] not?
 [14] A: So far as I recall, he did what all agencies did, which
 [15] was to present credentials, explain what work they had
 [16] done with a variety of companies, and in this case in
 [17] particular, he mentioned the work that he had done in
 [18] previous promotions alongside Shell, particularly the
 [19] ones he is talking about here.
 [20] Q: And, of course, he mentioned that he had worked closely
 [21] and for many years with Mr Paul King, did he not?
 [22] A: I do not recall that he did.
 [23] Q: You do not recall it, but you knew it, did you not, by
 [24] 12th May 1992? You knew that Paul King and Mr Donovan's
 [25] company went back a long way?

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[1] with me about. That is what he thought.
 [2] Q: On 24th June, you are recording your dealings for the
 [3] purposes of Nintendo, and it is headed "Nintendo:
 [4] Don Marketing". Would you turn the page? Would you
 [5] read out the last but one paragraph, please?
 [6] A: It says:
 [7] "Trading on old boy network and old relationships
 [8] (PK)", which means Paul King.
 [9] Q: You believed that Mr Donovan was trading on old
 [10] relationships with your predecessor, did you not?
 [11] A: By 24th June 1993, I think I did. The reason for that
 [12] is because in the course of the various conversations
 [13] related to Nintendo, Mr Donovan had at length and
 [14] extensively mentioned his previous relationship -
 [15] previous working relationship with Paul King and others
 [16] in Shell, and that is, so far as I can recall, the first
 [17] time that I thought about that.
 [18] Q: Would you put that document away, and close up that
 [19] file now? Please turn to volume 2, page 952. On
 [20] 27th April 1992, Mr Donovan wrote to you, introducing
 [21] himself, did he not?
 [22] A: Yes.
 [23] Q: Indeed, there appears to be a note in the top right-hand
 [24] corner of that; is that your writing?
 [25] A: It is.

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[1] A: I knew it only insofar as Mr King had been in the
 [2] department for a long time, and Mr Donovan had done a
 [3] large number of promotions with us. So yes, I could put
 [4] two and two together, I guess, and I assume, say, that
 [5] Mr King and Mr Donovan had been working together.
 [6] Q: Please be serious. When you received the letter on
 [7] 27th April, or just a day or so after, you asked around
 [8] the office, did you not?
 [9] A: I did.
 [10] Q: To find out about Don Marketing, did you not?
 [11] A: I asked around the office, because Mr Donovan was saying
 [12] that he had been involved in these various games, and
 [13] I had never heard of the company. I asked around the
 [14] office, all the other people there, who this
 [15] Don Marketing were.
 [16] Q: And in the course of asking, no doubt you spoke to
 [17] Mr King?
 [18] A: I cannot remember whether I did or I did not, but
 [19] probably did.
 [20] Q: It is a small office, is it?
 [21] A: It was quite a small office.
 [22] Q: And as a result of asking around the office, you did
 [23] indeed call in Don Marketing for a meeting, correct?
 [24] A: Correct.
 [25] Q: And no doubt before having done so, the purpose of that

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[1] exploration was to determine what the people in the
[2] office knew about Don Marketing?

[3] A: Correct.

[4] Q: And are you saying that you did not establish in that
[5] exercise that Mr King thought highly of them, and they
[6] had a long track record with Shell?

[7] A: What I am saying is that I cannot recall any detailed
[8] conversation with Mr King. All I can remember is asking
[9] around the office, and everyone in the office said, "We
[10] have worked with Don Marketing in the past, they did
[11] Make Money, they did Star Trek", and therefore they
[12] seemed a credible company to come and talk to about
[13] future promotions.

[14] Q: Mr Donovan had a reputation as being an original and
[15] excellent thinker for promotional games, did he not?

[16] A: He had a reputation for being - for coming up with good
[17] ideas about promotional games, yes.

[18] Q: And Mega Match was one of those, as you yourself admit
[19] you thought? Mega Match was one of those, as you
[20] yourself admit you thought?

[21] A: Admit I thought what?

[22] Q: That it was a good one?

[23] A: Yes, I said, it was an interesting new idea which I had
[24] never heard of when it was revealed to me on 12th May.
[25] It seemed like a good development of Make Money.

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[1] according to you, on 4th June 1992, correct?

[2] A: Correct.

[3] Q: You say that you were not enthusiastic about the idea,
[4] not least because you were keener on Mega Match,
[5] correct? Paragraph 127.

[6] A: Yes, I was keener on Mega Match. I was not keen on the
[7] approach to this game for a variety of reasons, one of
[8] which was I knew that management were still not
[9] interested in competitions. There was not going to be a
[10] suitable gap for us to run this promotion that I could
[11] see coming up.

[12] Q: All I want to do is confirm the history with you
[13] reasonably shortly, all right?

[14] A: That is fine, but I will give you some background which
[15] will help.

[16] Q: If you want to elaborate, please do, but let us see if
[17] we can keep it reasonably short, because I am not at the
[18] moment suggesting anything to you about this, I am
[19] simply dealing with your witness statement to acquaint
[20] your memory.

[21] Over six months later, you say, you received an
[22] unsolicited fax from Business Development Partnership
[23] Limited, and you turned them down, yes?

[24] A: Correct.

[25] Q: On 19th February, paragraph 130, Mr Donovan wrote to you

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[1] Q: May I ask you, before I come on to the subject that
[2] I want to discuss with you this morning, a little bit
[3] about that Nintendo? I do not want to take long on it,
[4] please. What was the name of the operation under which
[5] it was developed?

[6] A: The actual promotion when we ran it?

[7] Q: Yes.

[8] A: I cannot remember.

[9] Q: Was it Operation J?

[10] A: It could have been. That name rings a bell.

[11] Q: Do you remember that the Nintendo launch on 18th June,
[12] according to you, had really first been actually begun
[13] to be developed, at least, when a company called BDP had
[14] resubmitted a proposal to you, in May 1993; do you
[15] remember that?

[16] A: I cannot remember whether it was April or May, but the
[17] company called BDP indeed submitted what was a fully
[18] worked up proposal, which was on the verge of - which
[19] was ready for direct implementation.

[20] Q: Yes. Would you turn to your witness statement? You
[21] deal with this aspect of matters at page 58; do you have
[22] that?

[23] A: I do.

[24] Q: Just to reacquaint you with it, Mr Donovan had submitted
[25] his proposal to Nintendo for a Nintendo themed game,

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[1] about, amongst other things, his Super Mario Land idea,
[2] which is Nintendo, is it not?

[3] A: That was the name that he gave to the promotion.

[4] Q: Yes. You say:

[5] "I was very busy with Project Hercules at the time
[6] and, in keeping with my general practice of not
[7] upsetting agencies unnecessarily, I faxed the letter
[8] back to him with a note saying thank you and that
[9] I would revert when we had made any further progress.
[10] I have to admit that this was really an euphemism for
[11] 'stop bothering me'."

[12] Could we look please, at, that fax, which you will
[13] find in volume 4 at 1589? There is the fax to you; the
[14] first point deals with a movie promotion, and the
[15] possibility of a promotion with Warner Brothers:

[16] "Warners could make an excellent partner for the
[17] 'Hollywood Collection'."

[18] Just dealing with that very quickly, Mr Donovan
[19] had also put forward to you, had he not, the Hollywood
[20] Collection as an idea for a promotion?

[21] A: Yes, so far as I recall, that was in November 1992.

[22] Q: That was exactly at the meeting of 24th November 1992.
[23] This was a follow-up fax, commending to your attention
[24] the timeliness and possibilities for (1) the Hollywood
[25] Collection promotion and (2) the Nintendo promotion

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[1] which he had put forward to you the previous year,
 [2] correct?
 [3] A: Correct.
 [4] Q: When you received that fax, what we have just read from
 [5] your witness statement is that you appended this note:
 [6] "Thanks John. I'll be back in touch when we've
 [7] made any further progress. Cheers, Andrew."
 [8] A: Yes.
 [9] Q: And that, you say, was your way of simply saying, "Stop
 [10] bothering me".
 [11] A: Yes.
 [12] Q: On 27th April 1993, back to your witness statement, BDP
 [13] resubmitted their Nintendo proposal, correct?
 [14] A: Correct.
 [15] Q: And you say they had developed it in the meantime, since
 [16] they had originally submitted it to you. 27th April, by
 [17] my calculation, is about nine weeks after you had
 [18] received the fax on February 19th.
 [19] A: That is about right.
 [20] Q: On 27th April, this Nintendo proposal was resubmitted.
 [21] Now you contend, do you not, that you had forgotten that
 [22] Mr Donovan had put forward a Nintendo proposal when you
 [23] received the BDP resubmitted proposal?
 [24] A: I had no memory at all that there was - that Mr Donovan
 [25] had put forward any Nintendo promotion at that stage.

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[1] they said that at the last minute, BP had gone to their
 [2] competitor, Sega, and therefore they were left with a
 [3] fully worked up promotion which they had developed for a
 [4] competitor, and that is what their pitch was to me at
 [5] that stage.
 [6] Q: You knew, of course, that Mr Donovan had approached
 [7] Mr Patten, when he had first put forward the idea to you
 [8] on 4th June - indeed there had been a subsequent
 [9] meeting on 4th September, as I shall show you in due
 [10] course.
 [11] But when Mr Donovan put forward his Nintendo
 [12] proposal to you, you knew, because he told you, that he
 [13] had already been to Nintendo and discussed the matter
 [14] with a Mr Patten, did you not?
 [15] A: Yes, he told me that on 4th June, at that meeting.
 [16] Q: And that Nintendo was happy with the game and the
 [17] proposal being put forward?
 [18] A: I cannot remember the details of the meeting, but he
 [19] probably, in telling me that he had discussed it with
 [20] David Patten, said that David Patten was happy for it to
 [21] be used with us.
 [22] Q: When BDP submitted its proposals, you also knew that BDP
 [23] was the agency, and it had worked up the scheme on
 [24] behalf of Nintendo, did you not?
 [25] A: When BDP first got in touch with me in November 1992, it

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[1] Q: That is what I understood you to say.
 [2] A: Correct. In a nine week period in between, we would
 [3] have had hundreds of proposals of all sorts, and at the
 [4] time, Nintendo was quite a hot property. We had a
 [5] number of people proposing our use and linkage with
 [6] Nintendo in a number of ways all through.
 [7] Q: Right. I just want to ask you, before we leave
 [8] 27th April: was that in fact the first time you had
 [9] discussed with BDP since they had submitted on
 [10] 11th November 1992 a Nintendo proposal, or had in fact
 [11] you spoken to them before 27th April 1993?
 [12] A: I did not speak to them in the immediate time before
 [13] 27th April or whenever they put it in; I discussed maybe
 [14] once with them immediately after they had first put up
 [15] the proposal in whenever it was, 1992 - 11th November
 [16] 1992. They would have faxed the proposal to me.
 [17] I spoke to them shortly after that, and decided not to
 [18] use it. Between their contact with me on 11th November
 [19] and 27th April 1993, I had no contact with them
 [20] whatsoever.
 [21] Q: None whatsoever?
 [22] A: None whatsoever, and on 27th April 1993, they came back
 [23] to me, completely out of the blue and unprompted, with a
 [24] proposal which they claimed they had worked up and
 [25] developed on behalf of BP, so far as I can recall, and

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[1] was speculative, and I cannot remember what they said
 [2] about who they were acting on behalf of, or indeed
 [3] whether they were acting or not on behalf of Nintendo.
 [4] Certainly at 27th April 1993, they claimed to me that
 [5] they had had approval from Nintendo to develop the idea
 [6] with BP.
 [7] (11.00 am)
 [8] Q: When they put the proposal to you, they told you that
 [9] they had worked it up on behalf of Nintendo, did they
 [10] not?
 [11] A: I cannot remember exactly what they said. All I was
 [12] clear on was that they had developed it for linkage with
 [13] BP, who had pulled out, and Nintendo was still keen -
 [14] or certainly the agency, sorry, were still keen to run
 [15] the promotion.
 [16] Q: The BDP proposal was taken up by you, and the first
 [17] agenda document is at volume 5, page 2087.
 [18] Do you know a company with the initials PDP? Does
 [19] that ring any bell?
 [20] A: No.
 [21] Q: We have not been able to find - it may be others can,
 [22] so let me say this now - any reference to a PDP in any
 [23] documents. So can you recollect a PDP?
 [24] A: I cannot off the top of my head. Maybe if you give me
 [25] some context, or is it referred to in documentation?

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[1] That might jog my memory.

[2] Q: If you take your diary of 26th March 1993, at page 6073
[3] in bundle 13, I just want to ask you about this; it may
[4] be there is a very simple answer, and that is why I want
[5] to ask you. Do you see on 26th March there is a
[6] reference there to PDP?

[7] A: I do.

[8] Q: Can you tell me what that is?

[9] A: I used to use initials for a number of things, to book
[10] meetings into my diary. It could be - or a time
[11] blocked out for myself to put together a promotional
[12] development plan, or something like that.

[13] Q: You dropped your voice just then. Could you repeat what
[14] you said?

[15] A: It could stand for "promotional development plan" or
[16] something like that, but I do not know. I cannot
[17] remember now.

[18] Q: Can we move on a bit and see what happened with your
[19] proposal for Nintendo?

[20] MR JUSTICE LADDIE: Can we put away that bundle?

[21] MR COX: No, my Lord, if your Lordship would hold on to
[22] that? I am grateful.

[23] Would you turn to 6th May in your diary,
[24] page 6143? You record a meeting at 2.00, "Nintendo"; do
[25] you see that?

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[1] A: I do not think they are connected. The two things were
[2] never connected. The first entry, "Hercules", was
[3] either a meeting with David Pirret or was preparation
[4] for it, and the arrow probably indicates that the whole
[5] time is booked out for that. And the Nintendo meeting
[6] could well have been - I cannot remember, but it could
[7] well have been me sitting down with Charlie to work
[8] through the further implications of how to run the
[9] Nintendo promotion at that stage.

[10] Q: By this time, you had given it the name Operation J, had
[11] you not?

[12] A: I seem to recall, if I can rewind a bit, we were running
[13] a promotion which was beginning to look as if it was not
[14] going to be completely successful. We needed to do some
[15] support for it therefore. I was becoming increasingly
[16] involved with Hercules, and therefore - I think it was
[17] David's idea that we gave the rest of my team -
[18] Charlie Fox, Liz and Jackie - their own almost discrete
[19] project, to run a small support promotion.

[20] J was not my project name for it. I have
[21] a feeling it was Charlie Fox's. I used Greek gods and
[22] heroes for my project names. J, I think, came from
[23] Charlie Fox, if I remember rightly, and he had a number
[24] of ideas - concepts that they were going to use as the
[25] support for a summer promotion which was a linkage with

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[1] A: Yes.

[2] Q: Would you tell me what that refers to?

[3] A: I cannot remember in detail. There is a meeting with
[4] BDP booked in later on in the afternoon.

[5] Q: Indeed there is.

[6] A: What I normally would have done preparatory to that
[7] would be to get together with my team, and we would
[8] prepare what we were going to say, how we were going to
[9] run the meeting.

[10] Q: Does that not indicate that you had a meeting with
[11] Nintendo?

[12] A: No, not at all. I have never met Nintendo; I have never
[13] met Mr Patten or anyone from Nintendo. What this was,
[14] I surmise or guess, was because the promotion was going
[15] to be run by one of my colleagues, Charlie Fox, I got
[16] together with him, because he was quite inexperienced,
[17] and we together planned how we would run the meeting.
[18] Because he was going to run the meeting and he was going
[19] to run the promotion, so -

[20] Q: Would you turn over to the next full page, 6145? Again,
[21] 4.00, "Nintendo". There is an arrow going down from
[22] Hercules there; can you help me with the meaning of
[23] that?

[24] A: Of the arrow?

[25] Q: Yes, both entries. They seem connected.

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[1] InterCity. This became one of them, and therefore it
[2] inherited the code name J.

[3] Q: In fact, Nintendo became J1, and the video promotion
[4] that you launched some time later became J2, did it not?

[5] A: Which video promotion was that?

[6] Q: You worked on a video promotion with a company called
[7] Tequila, did you not?

[8] A: Are you referring to the promotion we ran in the middle
[9] of 1994, which came out of a completely open pitch
[10] process?

[11] Q: I am referring to a promotion referred to you by - or
[12] an idea for a promotion referred to you by a company
[13] called Tequila, do you remember?

[14] A: Could you give me a date, just so I can be clear?

[15] Q: Just bear with me a moment. If you look at your
[16] diary - mine is cut off, I am afraid. Do you see the
[17] diary at 6157? I think that is the 14th.

[18] A: Correct.

[19] Q: We have a name - is that "J" at 8.00?

[20] A: 8.00 in the morning?

[21] Q: Yes.

[22] A: It looks to me like there is a meeting before that on a
[23] project called Ajax, and then at 8.30 one about J.
[24] I mean, I do not know whether that refers to the
[25] promotion or to an individual.

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[1] Q: No.
 [2] A: As I say, we were looking at a number of J concepts at
 [3] the time.
 [4] Q: What does that mean, "a number of J concepts"?
 [5] A: As I said earlier on, we needed a filler, we did not
 [6] know what it was going to be. Charlie, Jackie and Liz
 [7] were mandated to go and find ideas; they came up with a
 [8] number. I cannot remember exactly when the decision was
 [9] made over which one was best, but certainly over time
 [10] they were looking at a number of different options.
 [11] Q: Yes. Turn back to the 13th:
 [12] "J brief 9.00 Bob Bailey."
 [13] He is from Option One, is he not?
 [14] A: He is. He was the Managing Director, I think.
 [15] Q: At 1.00:
 [16] "J Tequila."
 [17] Do you see that?
 [18] A: Yes, and Tony - again, Tony Wass - Tom Wass was their
 [19] Managing Director.
 [20] Q: It was Tequila who put forward a pitch or a promotional
 [21] idea for a themed promotion using videos and the cinema,
 [22] was it not?
 [23] A: I cannot remember what they put forward at that stage.
 [24] Almost every agency put forward the concept of linking
 [25] with cinemas or cinema tickets or videos or video

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[1] the same idea. As I said, it was a common idea.
 [2] We went with Tequila because they had what we
 [3] thought was a better link with a cinema chain. We had
 [4] extended the promotion to include Blockbuster because we
 [5] knew that Option One had a good contact with
 [6] Blockbuster; indeed I seem to recall at the time we were
 [7] talking to Blockbuster through Option One for inclusion
 [8] in Hercules.
 [9] Q: Would you look at volume 5/2125? You should have that
 [10] volume still open in front of you. This is a note from
 [11] Mr Fox:
 [12] "Subject: Project J1."
 [13] Do you see that?
 [14] A: Yes, I do.
 [15] Q: And, of course, it refers to the Nintendo promotion,
 [16] dated 14th May.
 [17] A: Yes.
 [18] (11.15 am)
 [19] Q: Can you recall whether by this time there was a J2?
 [20] A: I cannot remember, but - I mean I have a vague
 [21] recollection that J2 might have been for use later on in
 [22] the summer promotion. It was a very long promotion, it
 [23] lasted from May to October, and we normally did not run
 [24] short-term promotions for six months, as we did there.
 [25] We were getting very concerned about how successful it

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[1] rental. That was almost one of the things we had every
 [2] week across our desks. It could well have been, or it
 [3] may not have been, that Tequila put that forward at that
 [4] stage. I cannot remember what we were talking to them
 [5] about.
 [6] Q: You do remember, do you not, that it was Tequila who put
 [7] forward the video promotion, and Option One negotiated a
 [8] link with Blockbuster, and it was run in 1994?
 [9] A: Are you now referring to 1994 promotions?
 [10] Q: Yes. It rolled out in 1994 -
 [11] A: What did?
 [12] Q: A video promotion called "Now Showing".
 [13] A: The Now Showing promotion rolled out in 1994. It was a
 [14] direct result of a competitive pitch -
 [15] Q: I am not asking you that. I am just asking you; do you
 [16] recall that Tequila were involved?
 [17] A: Tequila were one of the five agencies that we invited to
 [18] pitch. What you are trying to make a link between,
 [19] which is not correct, is the fact that that Tequila
 [20] pitch and Now Showing was referred to at this stage.
 [21] That is absolutely not the case. The Tequila promotion
 [22] which was called Now Showing came directly out of an
 [23] unprompted five way pitch between Tequila, Option One,
 [24] and three other agencies. As it happens, both Tequila
 [25] and Option One, in that completely open pitch, proposed

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[1] would be.
 [2] Q: You cannot help me as to what J2 was that you were
 [3] considering at this time?
 [4] A: No, I mean, I was only very peripherally involved in the
 [5] J promotions, as I explained. It was run very much by
 [6] Charlie and Liz Halford. It was designed as their
 [7] project, to try and give them a bit of interest, a bit
 [8] of autonomy in the job that they were doing, and I was
 [9] fully committed in developing Hercules at the time.
 [10] Q: Of course, we have seen from your diary that you
 [11] attended meetings on the 6th and the 7th concerning
 [12] Nintendo.
 [13] A: Mm.
 [14] Q: You were also involved, were you not, in discussions, or
 [15] at least writing notes, on 10th May?
 [16] A: Why do you say that? I mean, I may have been, I cannot
 [17] remember.
 [18] Q: 2106; this may explain the tie-in with Hercules:
 [19] "Hercules DP sell-in actual."
 [20] Is that what it says?
 [21] A: Yes.
 [22] Q: DP stands for?
 [23] A: David Pirret. I think this was probably a meeting note
 [24] to myself, either preparatory for the meeting - were we
 [25] having a big meeting with David Pirret at the time about

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[1] Hercules?

[2] Q: I think it may well have been, yes.

[3] A: I suspect it was either a preparatory note, myself
[4] making notes about what I was going to say, or notes
[5] that I made in or immediately after the meeting about
[6] what was actually said.

[7] Q: And the whole point of J, of course - J1 and query J2
[8] - was to be the leader to a launch for Hercules, was
[9] it not?

[10] A: No, as I said, as far as I can remember, the main reason
[11] for it was because we were suspecting that the summer
[12] promotion, which was a linkage with InterCity, was not
[13] going to be as successful as we needed.

[14] All of our promotions at the time - all of our
[15] promotions from the beginning of 1993 were targeted at
[16] generating leads, generating data, generating names and
[17] addresses of customers, so that when we went into
[18] a long-term promotion, which was confirmed by that
[19] stage, or we were pretty sure we were going to do it, we
[20] had a big database of people who were customers and were
[21] also promotionally active, so that we could hit those
[22] straight away at the beginning of the launch of it.

[23] Q: Was Nintendo or was it not linked, in the sense that
[24] these were supposed to fill in before Hercules launched,
[25] at that time still thinking or hoping for an end of 1993

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[1] Q: If you look at 2106, back in volume 5, you will see it
[2] is "launch 1/11 or 1/12"?

[3] A: Yes. I seem to recall that at the David Pirret meeting,
[4] at 2107 and 2108, which was the same time, we were
[5] discussing launch date, and I seem to recall we were
[6] proposing that by now, that was too late - we were not
[7] going to get the approvals and so on necessary to launch
[8] before the end of 1993.

[9] I seem to recall that we were by now saying that
[10] launch would have to be in early 1994, and Mr Pirret, as
[11] was the wont with all management, gave us a stretch
[12] target to try and focus our minds and get it happening
[13] as quickly as possible, and I suspect that he said, "Try
[14] and launch it by 1st November or 1st December", which
[15] I thought was challenging, to say the least.

[16] Q: Anyway, end of 1993 or possibly early 1994, it was
[17] thought.

[18] A: Yes.

[19] Q: I do not need a long explanation, but we know it went on
[20] being put back, for various understandable reasons, into
[21] 1994.

[22] A: Indeed.

[23] Q: But in the meantime, you were considering the run-up; if
[24] you were going to launch at the end of 1993 or early
[25] 1994, you needed fillers in the meantime, did you not?

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[1] launch?

[2] A: At that time, I think we were still aiming for an end of
[3] 1993 launch. Nintendo was absolutely not designed as a
[4] fill-in towards Hercules, that was not the object of
[5] it. We ran it as an overlay to our ongoing short-term
[6] promotion, which as I said was InterCity. We did not
[7] normally run another national promotion on top of a
[8] national promotion. We only did it to support what we
[9] saw was going to be not as successful as we wanted in
[10] the national promotion.

[11] Q: Would you look at 6156, please, in your diary? This is
[12] why I have asked you whether you can help me with what
[13] J2 was, because there is a note in your diary, at 6156,
[14] of J2. Do you see you are listing your Greek gods, or
[15] at least your Greek heroes: Ajax, Achilles and then J2?

[16] MR JUSTICE LADDIE: Where are we?

[17] MR COX: My Lord, I am sorry. It is just under the box
[18] marked "CNF".

[19] MR JUSTICE LADDIE: I have it.

[20] MR COX: There are three bullet points and there is a
[21] reference to J2.

[22] At this time, you are considering a launch date
[23] for Hercules of late 1993, are you not?

[24] A: I cannot remember when we were planning to launch at
[25] that stage.

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[1] A: Yes.

[2] Q: And so you considered one of them was - I appreciate
[3] InterCity may or may not have been going to go forward,
[4] but you were having to put in fillers in the meantime,
[5] to think of fillers?

[6] A: Just to be absolutely clear, we always had to have a
[7] national promotion running. We had a contract with
[8] InterCity which meant that we had to finish the
[9] InterCity promotion at a certain date. We had committed
[10] to do six months of it, and so far as I can recall, it
[11] finished in early October, but we would have to look at
[12] the detail.

[13] I therefore needed another promotion to run on
[14] after that, as another national promotion. I would not
[15] call it fillers, but one might have looked at it like
[16] that.

[17] Q: Well I may be using the wrong word, but you know what
[18] I mean; you just needed promotions.

[19] A: We always needed a national promotion in place.

[20] Q: Now you were considering J1, Nintendo, and you were also
[21] considering J with Tequila, were you not, on 13th May?

[22] A: As I say, I was only very peripherally involved in all
[23] of these things.

[24] Q: You were there; I am looking at your diary, 6155.

[25] A: Yes, I was going to explain. This sheet would face the

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[1] sheet that follows it, 6157, Friday, 14th May, which was
 [2] the day before I went on holiday.

[3] Q: Indeed it was.

[4] A: What this list of project names basically is is an
 [5] agenda to talk to various members of the team who
 [6] I worked with, to make sure that they were clear what
 [7] needed to be done whilst I was away on holiday.

[8] Q: Tequila you did not work with as part of your team; it
 [9] was an agency, was it not?

[10] A: Yes.

[11] Q: It was the very same agency that just happened to come
 [12] out with the Now Showing proposal in 1994, which
 [13] Mr Donovan also lays claim to?

[14] A: As I said, almost every other person who proposed a
 [15] concept to us proposed something to do with
 [16] entertainment or cinemas or films or whatever. It was
 [17] not unusual; in fact it was very common.

[18] Q: Would you look at 1589 again in volume 4, which should
 [19] still be open? The two proposals Mr Donovan has put
 [20] forward to you on 19th February, in the fax, are his
 [21] Hollywood Collection and his Nintendo ideas. Nintendo,
 [22] put forward by BDP, becomes J1, does it not?

[23] A: Yes.

[24] Q: The Hollywood Collection, or at least a promotion themed
 [25] with cinemas, linked to video rentals and cinema

[1] and speak to them.

[2] Q: You liked high-profile, buzzy agencies, did you?

[3] A: There were certainly a lot of benefits to working with
 [4] people like that, and since this agency in particular
 [5] had had a lot of marketing press coverage at the time,
 [6] and they had run a lot of very good, successful, fun
 [7] promotions in the near past, of course it was going to
 [8] be worth speaking to them, to see what they said to us.

[9] Q: Like Option One; they were a high-profile, buzzy agency,
 [10] were they not?

[11] A: Indeed.

[12] Q: Yes. But what you did not like were Concept Systems and
 [13] other irritating people, is that right, not high-profile
 [14] and buzzy agencies?

[15] A: As I have explained yesterday, Concept Systems had a
 [16] particular attitude which was not annoying, it was just
 [17] that they never put anything concrete to us. Anything
 [18] was always possible, but there was nothing ever
 [19] concrete. These agencies that we are talking about here
 [20] have a whole string of credentials and promotions which
 [21] they have all done. That is the nature of the
 [22] difference between a big and a small agency, and
 [23] particularly as things get more complex, the bigger
 [24] agencies, with more resources, were better able to meet
 [25] our needs.

[1] tickets, in fact went out in February 1994, a similar
 [2] promotion, with Tequila having generated it as a filler
 [3] before Hercules, did it not?

[4] A: Sorry, what was the question?

[5] Q: A video promotion like Hollywood Collection went out,
 [6] with Tequila generating it for Shell, as a filler for
 [7] Hercules in early 1994, did it not?

[8] A: Well, as I said earlier on, the Now Showing was not
 [9] anything to do with Hollywood; I do not even recall that
 [10] it was a collection promotion. It was very different
 [11] from that.

[12] As I have explained, it came from a completely
 [13] unprompted pitch process, where we invited five agencies
 [14] to come and give us their response to our request for
 [15] them to suggest ideas for a particular period of time,
 [16] which we needed. I cannot remember when it started. It
 [17] was February or March.

[18] Q: Why were you talking to Tequila on 13th May 1993, having
 [19] established J1, Nintendo, with Tequila on 13th May 1993?

[20] A: We talked to all sorts of agencies all the time. As
 [21] I said, we had 10 or 20 or 30 unprompted contacts per
 [22] week. Some of them were interesting. At the time,
 [23] Tequila were a very high-profile, buzzy, fun, new,
 [24] active agency. When they got in touch with us,
 [25] therefore, it was certainly one which we would take up

[1] Q: We will look at that in a while. But you thought
 [2] Mr Donovan's company was trading on an old relationship
 [3] with Paul King, did you not?

[4] A: Well, Mr Donovan had told me that, in so many words, in
 [5] his telephone conversations with me at mid 1993.

[6] Q: You know as well as I do what the significance of your
 [7] words were in June 1993, about trading on an old boy
 [8] network and an old relationship with Paul King.

[9] A: What do you mean, sorry?

[10] Q: It was a derogatory comment, was it not?

[11] A: No, it was meant to - I guess it was meant to summarise
 [12] the power or the value, and the approach was somewhat
 [13] degraded by the fact that Mr Donovan was relying on
 [14] saying that he had always had a good relationship with
 [15] previous Shell managers, blah blah blah, because what
 [16] anyone should be relying on is the power of their actual
 [17] concept or proposition in front of us, rather than
 [18] trying to say, "Well, you know, he would have taken up
 [19] my idea, why do you not?"

[20] (11.30 am)

[21] Q: On 14th May, you were busy getting ready to go on
 [22] holiday, were you not?

[23] A: Correct.

[24] Q: And you had much to do before you went on holiday?

[25] A: Correct. I mean, you can see the list of appointments in

[1] my diary.
 [2] Q: What is "doing a J" on somebody, please?
 [3] A: I do not know.
 [4] Q: What is "doing a J" on somebody?
 [5] A: I do not know. Is it somewhere referred to in my notes
 [6] or document?
 [7] Q: It is your words; that is why I am asking you. Does it
 [8] ring any bells? What does it mean to "do a J" to
 [9] somebody?
 [10] A: "To do a J" to somebody?
 [11] Q: Yes.
 [12] A: I have not got a clue. We often would say, particularly
 [13] in the context of the J promotion, which was a string of
 [14] ideas which Charlie had put together for use in
 [15] contingencies, I might well have said, "Well, let us do
 [16] a J", at that time, or let us do one of the Js, meaning
 [17] one of the J ideas. I might have said that.
 [18] Q: No, no, I do not mean that. I am asking you when you
 [19] used the expression, or used it in 1993, "do a J" on
 [20] somebody what you meant?
 [21] A: I think you will have to help me with the context
 [22] because I cannot remember ever using the words. I have
 [23] explained why I might have used them.
 [24] Q: Volume 5, please, 2129. In fact if you will go - yes,
 [25] 2129. You are busy preparing for your summer holiday?

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[1] Q: In this case, you got along very well?
 [2] A: Indeed.
 [3] Q: I in fact, I think you went away for weekends with Mr
 [4] Bonnet?
 [5] A: Bonnet, probably.
 [6] Q: Forgive me, if I call him Bonnet - I am not up to
 [7] French pronunciation. It is Bonnet, is it?
 [8] A: That is his name.
 [9] Q: Here, you penned a note to Jeremy and Tim:
 [10] "My last note before heading for the sun. The
 [11] Company has a huge batch of paperwork Achilles. Can you
 [12] work with Charlie to get our CSC into the customer
 [13] services.
 [14] "Number 2, brief Bob on Bob. When briefing Bob" -
 [15] Bob Bailey works for Option One, does he not?
 [16] A: He was the Managing Director so he was the top of the
 [17] pile.
 [18] Q: "When briefing Bob on J, we alluded to our Operation Bob
 [19] but did not specify it. Can you let him know the
 [20] outline. We will let you have the full details in due
 [21] course."
 [22] What was operation Bob?
 [23] A: I cannot remember. You will have to help me.
 [24] Q: We will see if we can get it together. I am hoping you
 [25] can help me.

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[1] A: No, it was a spring holiday.
 [2] Q: Well, we will not argue about May.
 [3] A: It was a short holiday, a week.
 [4] Q: And you prepared a number of notes and an update for Mr
 [5] Leggatt?
 [6] A: Yes.
 [7] Q: But, also, a note, if you will turn the page, 2133, to
 [8] Jeremy Taylor of Option One, copied to Mr Watson,
 [9] Hercules part 2, dealing with project fee and design fee
 [10] responsibilities. If you will turn the page to 2135, you
 [11] send a note, e-mail this one, to Fox, copied to Watson,
 [12] about Nintendo:
 [13] "Brief Ian Sutcliffe on this at lunch time. Can
 [14] you keep him up to speed with everything that is
 [15] happening on it, particularly any changes."
 [16] You are preparing to go away obviously?
 [17] A: Yes.
 [18] Q: Turn the page. You then pen a more personal note to
 [19] Jeremy and Tim. You had established in 1992 a friendly
 [20] personal working relationship with Jeremy and Tim of
 [21] Option One, had you not?
 [22] A: Yes, as one does normally with any relationship you work
 [23] with closely.
 [24] Q: It is not always; sometimes you hate each other?
 [25] A: Not always, indeed.

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[1] Turn the page, if you would, and go down to your
 [2] G. One of the questions preoccupying you with Hercules
 [3] was how to keep it quiet, was it not?
 [4] A: Yes. You always try to keep promotions as confidential
 [5] and out of the public eye as possible until you launched
 [6] so you could achieve maximum publicity at launch.
 [7] Q: "As we go into the open, have you any idea how we keep
 [8] what we are doing concealed from the market at large.
 [9] Specifically, how do we counteract" - are you reading
 [10] with me, over the page - "or avoid all of our
 [11] competitors from doing a J on us?
 [12] A: Okay.
 [13] Q: "Ask Charlie".
 [14] Now, what does that mean?
 [15] A: What that means is BDP have brought a proposal which had
 [16] been worked up, they maintained, with BP and BP had
 [17] pulled out of it at the last minute and -
 [18] Q: BP pulled out?
 [19] A: They brought that to us.
 [20] Q: But BP pulled out; that was not doing a J on anybody; BP
 [21] had turned it down?
 [22] A: I am just explaining, BDP claimed to us, maintained all
 [23] along, that BP had worked it up, got BDP to work it up
 [24] to a usable state, and then, at the last minute, had
 [25] switched horses from Nintendo to Sega and, therefore,

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[1] leaving BDP and Nintendo with no promoter. So,
 [2] therefore, they bought a fully worked up concept to us
 [3] for use. I assume they contacted all the other agencies
 [4] - sorry, all my other competitors; that was a standard
 [5] thing to do in the market.

[6] Q: So "doing a J" was, effectively, pinching an idea, was
 [7] it, pinching somebody's else's idea?

[8] A: What we were very keen to do at this stage was to beat
 [9] - and this is at the forefront of our minds at this
 [10] stage - BP to launch our Nintendo promotion. BDP,
 [11] correctly or not, were telling us that BP had jumped
 [12] horses to Sega, and they were going to launch their Sega
 [13] promotion, for the sake of argument, in mid-June.

[14] We felt it very important at the time to beat BP
 [15] to market, in other words, to steal their thunder. That,
 [16] again, is part of, I mean, I am speculating again but,
 [17] so far as I can remember, when I refer here to "doing a
 [18] J" it does refer to BP beating to us market with Sega,
 [19] their Sega promotion.

[20] Q: This promotion had originally been worked up by BDP with
 [21] Nintendo's consent and approval for BP?

[22] A: Yes.

[23] Q: But BP had turned it down, pulled out and rejected it,
 [24] had it not, after some time?

[25] A: As I just explained, BDP told us we could not speak to

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[1] with them. We thought they were a good agency.

[2] Q: Help me with this; when did you first consider bringing
 [3] in Option One to advice on Project Hercules? Your
 [4] witness statement helps us a little with this, I think,
 [5] if you would like to refresh your memory with it. It is
 [6] at page 16, paragraph 33, the bottom of the paragraph:

[7] "One idea that was discussed during the meeting"

[8] - this is dealing with 11th January 1993?

[9] A: Yes.

[10] Q: "...was to involve Option One, who had designed a number
 [11] of short-term promotions for us, and had also raised in
 [12] discussion the options for long-term promotions."

[13] Do you see that?

[14] A: Yes.

[15] Q: When did you first consider - was that the time -
 [16] bringing in Option One?

[17] A: It was, I mean, Option One, certainly Jeremy Taylor and
 [18] Tim Bonnet, were clear, although I guess somehow they
 [19] had worked out we were working on other things, they
 [20] were constantly going on at us to do long-term
 [21] promotions and so on. Until the end of 1992, we were
 [22] very careful to keep them in their box, just doing the
 [23] two promotions which they had proposed to us in early
 [24] 1993.

[25] David and I, as this says, as it says here,

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[1] BP. So we did not know directly. BDP told us they got
 [2] them to work it up to a finalised stage and, at the last
 [3] minute, had then switched horses, not cancelled the
 [4] promotion or the promotional period, or not completely
 [5] decided against it. In fact they led us to believe - as
 [6] most agencies did, and on that occasion we believed them
 [7] - that BP actually liked it so much they had gone to
 [8] one of their competitors.

[9] Q: When you used the expression "do a J" on somebody you
 [10] meant that, did you?

[11] A: As I say, now, thinking about it, and talking through
 [12] it, I am quite sure that this was about beating us to
 [13] market with a Sega or Nintendo themed promotion.

[14] Q: All of this time you had forgotten that Mr Donovan, as
 [15] you contended and have said before, had proposed to you
 [16] a Nintendo promotion?

[17] A: Yes, indeed. I mean, a number of people put Nintendo or
 [18] Sega as a theme to us. So, indeed, I had completely
 [19] forgotten.

[20] Q: Option one became involved during 1993, not only in
 [21] advising on Project Hercules but also in suggesting and
 [22] putting forward promotions in the meantime before
 [23] Hercules was launched, did it not?

[24] A: Indeed, we thought they were a good agency, everybody in
 [25] the team, David Watson had a good working relationship

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[1] decided that the way forward was going to be using
 [2] Option One.

[3] Q: Yes, because of course, in late 1992, you were working
 [4] with Mr King. I wonder if I could use this opportunity
 [5] to show you a letter which is the one we spoke of
 [6] yesterday. It has another detail in it which I want to
 [7] refer to.

[8] MR JUSTICE LADDIE: Is this one I have?

[9] MR COX: My Lord, I am not sure it is. It is dated 9th
 [10] December 1992.

[11] MR JUSTICE LADDIE: I will just have a quick look. 9th
 [12] December?

[13] MR COX: My Lord, yes.

[14] MR JUSTICE LADDIE: No, I do not believe I have that, unless
 [15] it was put in. It was not put in?

[16] MR COX: I do not think so yet, no.

[17] MR JUSTICE LADDIE: Then I do not have a copy of that.

[18] MR COX: I apologise. Has your Lordship got one now?

[19] MR JUSTICE LADDIE: No. This should go where in the file?

[20] MR COX: My Lord, this should -

[21] MR JUSTICE LADDIE: It will have to go in the earlier file,
 [22] E3.

[23] MR COX: It should go into volume 3.

[24] MR JUSTICE LADDIE: Yes. I am told it is not in, but if it
 [25] is in, then this -

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[1] **MR COX:** In that case, it is in already, 1353. In that case,
 [2] there is no need to worry. Could you turn to that. I am
 [3] very grateful, my Lord. Volume 3, 1353, this letter.
 [4] **A:** Sorry, I have not got there. Give me a second.
 [5] **Q:** 1353.
 [6] **A:** Okay.
 [7] **Q:** Because, of course, in 1992 Option One, among other
 [8] things, you were still dealing with Senior King and GHA
 [9] who you had selected?
 [10] **A:** They were the people who had put forward better
 [11] proposals than the other four.
 [12] **Q:** Exactly.
 [13] **A:** In September/October.
 [14] **Q:** This simply helps us with what we were discussing
 [15] yesterday. I do not want to go through it in detail, but
 [16] you will see it is a letter to you from Senior King
 [17] saying:
 [18] "The current situation seems to be you are still
 [19] waiting to make a final recommendation to the UK Retail
 [20] Board regarding the future of electronic promotions.
 [21] This meeting remains scheduled for pre-Christmas and
 [22] should you decide that it may be an advantage for me to
 [23] assist in making this presentation I am available to
 [24] take the heat."
 [25] Then some discussion about the concerns, as he

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[1] the back end of 1993.
 [2] **Q:** They are looking forward to working with you in the new
 [3] year?
 [4] **A:** Yes.
 [5] **Q:** So, as you say, it is not until 11th January that you
 [6] consider using Option One?
 [7] **A:** Indeed.
 [8] **Q:** That is not true, is it?
 [9] **A:** What do you mean?
 [10] **Q:** You considered using Option One much earlier than 11th
 [11] January?
 [12] **A:** No, I did not.
 [13] **Q:** You knew you were going to take over this project as
 [14] early as the latter part of November, did you not?
 [15] **A:** As I just said, I cannot remember when it was decided
 [16] that I took over the project, but I was clearly becoming
 [17] more and more involved in it and taking a lead role,
 [18] taking over from Tim.
 [19] I mean, from early August, Tim was -
 [20] **Q:** Somebody has told King that you are taking over the
 [21] project as of 9th December?
 [22] **A:** Aha.
 [23] **Q:** So, by that time, at the very least, it is getting
 [24] about, certainly to the chosen and selected one of the
 [25] two, that you are taking over. You knew that as early, I

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[1] understood them to be, of your senior colleagues about
 [2] electronic systems.
 [3] Bottom of the page:
 [4] "As you are aware, Hughes are being pressed by the
 [5] USA parent to get Cipher moving. They have great
 [6] ambitions for this product as you probably noted from
 [7] their letter. Consequently, they are planning to very
 [8] regretfully lift exclusivity at Christmas unless there
 [9] is a clear indication from Shell that it intends
 [10] proceeding. I am very sympathetic to their situation,
 [11] having invested (as we have) so much in its development.
 [12] However, to try to delay this action, in the hope that
 [13] it buys sufficient time to allow a decision to be made,
 [14] we are arranging lunch with the Managing Director to
 [15] discuss its future.
 [16] "In the meantime, I understand you are taking
 [17] responsibility for this project in the new year and that
 [18] you expect to be working with us in developing the test
 [19] programme. We look forward to that."
 [20] So it would appear, as at this stage, Senior King
 [21] are of the understanding (A) you are taking over the
 [22] project, so it looks as though that decision was in the
 [23] air, was it, in early December?
 [24] **A:** I cannot remember when the decision was made. I was
 [25] clearly becoming more and more involved in it towards

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[1] suggest to you, as the latter part of November, did you
 [2] not?
 [3] **A:** I mean, I suspect it was clear to the six people who we
 [4] were talking to in September and October that I was
 [5] taking the lead role in it. I was organising the
 [6] presentation, the meeting and sending out much of the
 [7] literature.
 [8] **Q:** But you did take over the project in the new year, did
 [9] you not? You named it. You took it over as Project
 [10] Manager, did you not?
 [11] **A:** There was no formal process to doing that. I mean, I was
 [12] the Promotions Manager. It was, therefore, logical I
 [13] would manage any future promotions. As I said, it was a
 [14] general migration from Project Onyx, which Tim was
 [15] focused on, to Project Hercules. There was no one time
 [16] when there was a decision taken I was going to be
 [17] Project Manager on it, as far as I recall.
 [18] **Q:** Really? Were you not appointed by Mr Watson, or
 [19] instructed by Mr Watson, given a commission by Mr
 [20] Watson, whatever you would like to call it, to head the
 [21] Project Hercules that you named?
 [22] **A:** At what stage?
 [23] **Q:** In January.
 [24] **A:** We probably confirmed that by then I was managing it or
 [25] running it. It was clear by then that I was. But, as I

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[1] have said, if I was moving to a lead role in it, anyway
 [2] I was the National Promotions Manager. I was the senior
 [3] promotions person in the department. It was completely
 [4] logical I would run such a key project.
 [5] Q: And Mr Leggatt, too, put you in charge, did he not?
 [6] A: I was the Promotions Manager. I was in charge of all
 [7] promotions. This was just one of the other promotions.
 [8] Q: I suppose it would have been possible, would it not, for
 [9] Mr Watson to have assumed control of it?
 [10] A: It would have been highly unusual, because his
 [11] management position meant that he was focussed on
 [12] promotions and advertising in, as far as I can remember,
 [13] a 50/50 split.
 [14] Q: You knew that in late November you would be placed
 [15] fairly and squarely at the head of a project, of a
 [16] project that you subsequently named Hercules to run a
 [17] multi-brand loyalty concept, did you not?
 [18] A: Well, there are two questions there, I think. As I have
 [19] already said, I was the National Promotions Manager and,
 [20] therefore, there was no question that anyone else would
 [21] be running such a significant project. I was moving to
 [22] that role from the beginning of August, maybe July. I
 [23] mean, that was clear.
 [24] The second part to your question, so far as I
 [25] understand it, was: Did we know that we were definitely

[1] short-term promotions. We had not launched any
 [2] promotions with them yet. We were all spending most of
 [3] our time working on short-term promotions.
 [4] Q: In fact, two days after Mr Donovan had met you on 24th
 [5] November 1992, you telephoned Mr Bonnet and spoke to him
 [6] about this project, did you not?
 [7] A: I have no recollection of that at all.
 [8] Q: It would not be consistent with what you have said,
 [9] would it? There would be no reason to speak to Bonnet
 [10] about a long-term multi-brand loyalty concept two days
 [11] after Mr Donovan had given you his idea, as I suggest to
 [12] you, once again, for a multi-brand loyalty concept?
 [13] A: As I say, I cannot remember Mr Donovan ever talking to
 [14] us about such things at any stage.
 [15] Q: There would be no reason, according to what you have
 [16] just told his Lordship, for you to be speaking to Bonnet
 [17] about a multi-brand loyalty concept or the project at
 [18] all, would there?
 [19] A: As I said, Option One were a very professional promotion
 [20] agency. They were going on at us all the time to do a
 [21] load of things; one of them, which I do recall them
 [22] continually going on about, was loyalty long-term. They
 [23] were also very close with a number of retail partners,
 [24] potential retail partners.
 [25] Now, I cannot remember the details of every

[1] running a multi-brand loyalty scheme and so on at the
 [2] end of November? The answer to that was no, but we had
 [3] our suspicions, as we have been through already.
 [4] Everybody was talking about that kind of thing. We all
 [5] thought long-term. We all thought linkage with third
 [6] parties. We all thought technology is the key
 [7] differentiator and enabler. The logic said that. It is a
 [8] big step from that to actually making something happen.
 [9] Q: You had begun to become excited and enthusiastic about
 [10] the idea of running eventually for Shell a multi-brand
 [11] loyalty promotion, had you not?
 [12] A: I was getting more interested in it as 1992 went on. For
 [13] the reasons I said yesterday, I could see that
 [14] short-term promotions were not sustainable. We needed to
 [15] do something big and better and different and so on.
 [16] Q: You brought in, you say, Option One kept in their box,
 [17] but you talked to Option One weeks before about the
 [18] project, or what became Project Hercules, did you not,
 [19] and took them in to your confidence?
 [20] A: No, I did not. I do not know why you say that? As I said
 [21] earlier on, they were very keen and quite insistent on
 [22] trying to find out what our longer term plans were. They
 [23] kept going on at us because they thought we should be
 [24] doing long-term schemes. We wanted to keep them out. We
 [25] wanted to keep their focus on doing a good job on the

[1] conversation I had with them.
 [2] Q: You telephoned Mr Bonnet two days afterwards and you
 [3] spoke to him about Onyx, something with which Option One
 [4] had nothing to do with at that point?
 [5] A: I cannot remember whether I spoke to him or not.
 [6] Q: Have a look at your diary, please.
 [7] MR JUSTICE LADDIE: Is this, again, 13?
 [8] MR COX: 5360, my Lord, 11 B.
 [9] Option One were being kept in their box, according
 [10] to you, on two short-term promotions, but, Mr Lazenby,
 [11] just 48 hours after you spoke to my client - 26th
 [12] November, my Lord, 5360 - you spoke to Tim Bonnet about
 [13] Project Onyx, did you not?
 [14] A: Well, it seems that I did from my diary. I have no
 [15] recollection of that.
 [16] Q: There would be, on your account, no reason to speak to
 [17] Option One at this point about Project Onyx, would
 [18] there?
 [19] A: As I have said, Option One were keen to get into our
 [20] books as a retained agency. They wanted to be far more
 [21] involved with us. I cannot remember honestly when we
 [22] first spoke to them about long-term schemes, but for a
 [23] long term they were pushing to get involved and to find
 [24] out about all the projects we were doing.
 [25] Q: What was Onyx?

[1] A: Project Onyx, as is clear from previous questions in
 [2] this, was about long-term schemes using technology.
 [3] Q: You made a note for yourself in your diary to contact
 [4] Bonnet about Onyx, did you not?
 [5] A: The notes here?
 [6] Q: Yes.
 [7] A: I cannot remember.
 [8] Q: You did, did you not?
 [9] A: Yes, I did. I cannot remember what was said at the
 [10] conversation.
 [11] Q: Within 48 hours of speaking to Mr Donovan, and, as I
 [12] suggest to you, being given the full details, though you
 [13] had already had them, in writing of a multi-brand
 [14] loyalty concept that Mr Donovan had devised, were you
 [15] not?
 [16] A: Was I not what?
 [17] Q: Given those details?
 [18] A: No. I have never seen the Sainsburys letter.
 [19] Q: And 48 hours later, you made a note, or at least very
 [20] soon after that meeting, to ring Bonnet of Option One
 [21] about Onyx, something which, on your story, would not be
 [22] consistent?
 [23] A: I was talking to all sorts of people about Onyx, for all
 [24] sorts of reasons, all the time. I cannot remember why I
 [25] spoke to Tim Bonnet about this at this stage.

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[1] a good one.
 [2] Q: You got on well with Tim, did you not, and Jeremy?
 [3] A: Everyone in the promotions department got on well with
 [4] the whole of their team.
 [5] Q: They were buzzy, they were high profile and you liked
 [6] them?
 [7] A: And they were a good, professional, large agency, with a
 [8] large number of credentials and a good number of
 [9] successful promotions in the very recent past.
 [10] Q: And you were socialising with them, were you not?
 [11] A: Yes, as was normal in the industry, I guess.
 [12] Q: Really?
 [13] A: I socialised with everyone that I worked with.
 [14] Q: You went to dinners and you went to the new year's
 [15] party, for example?
 [16] A: Client entertainment is a standard part of the industry.
 [17] Q: For Option One?
 [18] A: For almost every agency that I had experience of. Now,
 [19] we did not accept many of the invitations and so on that
 [20] we got. Ones we did accept were always on management
 [21] approval and normally after, well, always after work had
 [22] been done.
 [23] Q: Did you go to the new year's party of any other agency?
 [24] A: I cannot recall.
 [25] Q: Did you go away for weekends with members of any other

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[1] Q: There is not another note in this diary up until this
 [2] point of you speaking to Option One about Onyx. Do you
 [3] want to have a look?
 [4] A: If you --
 [5] Q: Or would you expect there to be?
 [6] A: If you have checked, then I do not need to look. All I
 [7] can remember is, however long it is, seven years ago,
 [8] for a long time Option One were wanting to get involved
 [9] in something they could sense was going on in the
 [10] department. Now, I do not know when they found out about
 [11] Onyx, or about the technology developments and so on
 [12] that we were doing, I do not know.
 [13] Q: You made a note to ring them about it, did you not?
 [14] A: Yes, and that could have been pro-actively from my side.
 [15] It could also have been in response to a question from
 [16] them, or a telephone message, as I explained yesterday.
 [17] Q: Option One were your favourite partners for Hercules,
 [18] were they not?
 [19] A: No, they were not. The status of Option One at November
 [20] 1992, all that we had done was to adopt two of their
 [21] proposals and developed them to a certain stage. We had
 [22] never even run a promotion with them yet. We were one or
 [23] two months away from launching the first one. So they
 [24] were, to a certain extent, an unproven agency, although
 [25] the indications at that stage were they were going to be

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[1] agency?
 [2] A: No, I did not, because, I mean, can you point me to
 [3] where the weekend was or weekends?
 [4] Q: Not immediately, but you can remember going away for a
 [5] weekend, can you?
 [6] A: Yes, with Tim Bonnet. He became a very good friend.
 [7] Q: Did you go out to dinner with members of other agencies?
 [8] A: I had one or two lunches or dinners with people we had
 [9] done work with. I can remember one with Senior King, for
 [10] example.
 [11] Q: Lunches?
 [12] A: There was a lunch with Senior King.
 [13] Q: Not dinners?
 [14] A: If you can point me to actual instances.
 [15] Q: I am asking you to remember, please.
 [16] A: I cannot remember any other dinners. I also entertained
 [17] Tim Bonnet to my own house and cooked him dinner with a
 [18] variety of my other friends, as you would normally do
 [19] with a friend.
 [20] Q: Yes, two days after Mr Donovan's idea was given to you,
 [21] you telephoned him about Onyx?
 [22] A: But I do not think any of the dinners, or whatever,
 [23] would be prior to this. The relationship developed, as
 [24] friendships do, as you work with people.
 [25] Now, I cannot remember doing any socialising, or

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[1] whatever, prior to 26th November 1992. I cannot remember
 [2] the particular date. It might have been before, but it
 [3] is more likely to have been 1993 and onwards.
 [4] **Q:** Would you turn to the claimant's witness statements,
 [5] please, in bundle C1, page 14, tab one. The yellow file,
 [6] I believe, C1.
 [7] **A:** Yes.
 [8] **MR JUSTICE LADDIE:** Can you just hang on a second, will you,
 [9] please. I have so many files here. C1, plaintiff's
 [10] witness statements. Mine is not called C1 either.
 [11] **MR COX:** It is not?
 [12] **MR JUSTICE LADDIE:** It does not matter. You want tab 1, page
 [13] 14, paragraph what?
 [14] **MR COX:** 60, my Lord.
 [15] **MR JUSTICE LADDIE:** Have you got that, Mr Lazenby?
 [16] **A:** Page 14, paragraph 60, I do.
 [17] **MR COX:** Just read through, please, perhaps it would be
 [18] better if you took it from 59. Read through to yourself
 [19] paragraph 59 through to 62. (Pause)
 [20] Ring any bells?
 [21] **A:** Yes. We had the meeting and talked about two short-term
 [22] promotions, Hollywood Collection and Make Merry, the
 [23] game.
 [24] **Q:** You also talked after sometime on the subject of Don
 [25] Marketing's multi-brand loyalty concept, did you not?

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[1] the moment. Let us concentrate on the letter.
 [2] You, on 28th October, had recommended to Watson to
 [3] write to Sainsburys. He had done so on the 30th. For the
 [4] next 10 or 13 days, you are trying to get in touch with
 [5] Sainsburys and, latterly, with Tim Johns at Sainsburys
 [6] for some reason or other?
 [7] **A:** Yes.
 [8] **Q:** We have seen that.
 [9] **A:** No, can I just add there, having thought about it after
 [10] yesterday's meeting, Tim Johns was, indeed, the
 [11] Sainsburys Executive involved with Comic Relief.
 [12] **Q:** Surely, of course.
 [13] **A:** He was in a different department from Mr Hawly, I think.
 [14] As far as I can remember, he was in the public affairs
 [15] department.
 [16] **Q:** It does not matter whether he was in the same department
 [17] at all.
 [18] **A:** So I was probably wanting to speak to him about matters
 [19] relating to Comic Relief, there is no other reason.
 [20] **Q:** He was the man you knew at Sainsburys personally,
 [21] because you had been in touch with him before on Comic
 [22] Relief, had you not?
 [23] **A:** I had met David Noble once or twice as well.
 [24] **Q:** And Johns was the contact with Comic Relief. So, of
 [25] course, it would be natural for you to telephone

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[1] **A:** As I said yesterday, and repeatedly, I do not recall any
 [2] conversation about such a subject.
 [3] **Q:** Did you talk about it or not?
 [4] **A:** I do not recall any conversation about it at all.
 [5] **Q:** You also looked at the letter of 24th July 1990, did you
 [6] not?
 [7] **A:** I have never seen the letter of 24th July 1990 to
 [8] Sainsburys until it was shown to me. It rang absolutely
 [9] no bells in my memory. I have never heard of a gentleman
 [10] called Mr Hawly. There is absolutely - I am absolutely
 [11] sure I have never seen it before.
 [12] **Q:** You are lying, Mr Lazenby. Look at volume 1, page 450,
 [13] please. Have you rehearsed this line?
 [14] **A:** Which line?
 [15] **Q:** "I have never seen the letter before. I cannot remember
 [16] Mr Hawly or any details about it."
 [17] **A:** No, I have not rehearsed it; that is the truth.
 [18] **Q:** You have not gone through it with anybody before you
 [19] have come to this court?
 [20] **A:** I have not gone through it with anybody. I gave my
 [21] witness statement and that was my clear recollection at
 [22] the time, having been shown the letter to Sainsburys, I
 [23] had never seen it, and I had no recollection at all of
 [24] Mr Hawly.
 [25] **Q:** Have a look at 450 A, please. Forget about Mr Hawly for

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[1] somebody you knew, would it not?
 [2] **A:** As I say, I cannot remember why I was needing or wanting
 [3] to speak to Tim Johns at the time. It is most likely it
 [4] was related to Comic Relief, which was what we were
 [5] spending a lot of time at that time developing.
 [6] I mean, putting together a promotion of that sort,
 [7] particularly with multiple partners, takes a lot of time
 [8] and effort.
 [9] **Q:** You had just recommended Mr Watson had written about a
 [10] new joint promotion lifestyle, just along the lines of
 [11] the multi-brand promotion that subsequently you became
 [12] in charge of running.
 [13] Let us move on, if we may, to this letter, please.
 [14] Could you turn the page to the note:
 [15] "Meeting with AL, 24th November 1992."
 [16] Mr Sutherton, you have agreed, was present at the
 [17] meeting with you on 24th November, was he not?
 [18] **A:** He was.
 [19] **Q:** Mr Sutherton has come to this court to say that he
 [20] appended that note either at the meeting or on the train
 [21] home on 24th November 1992. Are you saying that Mr
 [22] Sutherton is not only lying but has forged that note on
 [23] that letter?
 [24] **A:** I am personally not saying anything of the sort. I do
 [25] not know when he wrote that note. I am sorry, I cannot

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[1] help you. I did not see him write it. I do not know when
 [2] he wrote it.
 [3] **Q:** I beg your pardon. If your version is correct, and you
 [4] have never seen this letter, that note is a forgery, is
 [5] it not?
 [6] **A:** If you tell me so, I mean ...
 [7] **Q:** What are you doing; asking me the definition of forgery?
 [8] You know what I mean, do you not?
 [9] **A:** I have never claimed - I have not seen the letter. I
 [10] have absolutely no recollection in the slightest of ever
 [11] having seen this, or linking Sainsburys with Mr Donovan
 [12] in my mind. I do not know when this note was written.
 [13] **Q:** Are you saying that this note, recording these facts -
 [14] just look at them again, if you would, please, a meeting
 [15] with AL, 24.11.92?
 [16] **A:** Yes.
 [17] **Q:** "Shell will negotiate royalty arrangements with us if
 [18] they progress the scheme at a future date. Don could
 [19] work with Shell International to exploit overseas. A
 [20] copy of this letter left with AL."
 [21] Now, are you saying that that note is untrue and
 [22] has been appended there falsely?
 [23] **A:** All I am saying is that, to the very best of my
 [24] recollection, I have never seen this letter. I do not
 [25] recall any discussion of any sort of this sort at the

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[1] falsely?
 [2] **A:** I do not recall discussing any of this at that meeting.
 [3] To the very, very best of my memory and knowledge, even
 [4] having seen this note recently, this letter, I have no
 [5] recollection of ever having seen it before.
 [6] **Q:** Ever having seen what before; the letter or the note?
 [7] **A:** The letter and, indeed, the note as well.
 [8] **Q:** Now, let us just -
 [9] **A:** I absolutely cannot recall ever having seen this letter
 [10] before and I do not recall the content of it or Mr
 [11] Hawly, the name.
 [12] **Q:** Leave aside Mr Hawly, because I can quite understand you
 [13] may not recollect a name.
 [14] But with you was discussed the question of this
 [15] concept, with the letter in front of you, and gone
 [16] through with you in about ten minutes during the course
 [17] of that meeting; is that false or not?
 [18] **A:** I have absolutely no recollection of talking about
 [19] long-term schemes at that meeting; that is as much as I
 [20] can say.
 [21] **Q:** There is no room for mistake here, is there, Mr Lazenby?
 [22] Somebody is lying. Either you did discuss this with the
 [23] letter in front of you or you did not. You are not
 [24] saying that there is some room for misrecollection, are
 [25] you?

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[1] actual meeting. I made no notes about it. As I said
 [2] about the meeting in May, it could have been mentioned
 [3] in passing in a minute or a couple of minutes
 [4] conversation. I do not recall. I do not know when this
 [5] note was written though. I cannot help you with that. I
 [6] did not see it written.
 [7] **MR JUSTICE LADDIE:** Mr Lazenby, Mr Cox is putting something
 [8] very specific to you. He is not suggesting this is
 [9] something that was just mentioned in passing. The case
 [10] made against you is that you telephoned Don Marketing;
 [11] you asked for a copy of the letter to be brought; the
 [12] letter was brought; it was discussed with you, and you
 [13] made certain express assurances that this note records
 [14] part of that. Do you understand that?
 [15] Mr Cox is not putting to you, "Oh, I might have
 [16] discussed a long-term loyalty project as an offer." What
 [17] is being put to you is that you asked for this letter;
 [18] it was brought on your request; it was left with you.
 [19] This note is consistent with that. That is why Mr Cox is
 [20] putting to you very clearly that, as he would put it,
 [21] somebody is not telling the truth.
 [22] Now, Mr Cox will you put it to him again.
 [23] **MR COX:** I will. Just have one more look at the note. Read
 [24] it through to yourself, please. (Pause)
 [25] Are you saying that that note has been appended

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[1] **A:** How do you mean?
 [2] **Q:** Just have a look at that note again, please. Are you
 [3] saying that you may have seen this letter but forgotten
 [4] it?
 [5] **A:** I have absolutely no recollection of ever having seen
 [6] it; so if that is answer to your question.
 [7] **MR JUSTICE LADDIE:** One moment, Mr Cox. This is so
 [8] important. Mr Cox is putting this to you fair and
 [9] square. You have to understand what he is saying.
 [10] What Mr Cox is putting to you is that there is no
 [11] room for mistake?
 [12] **A:** Yes.
 [13] **MR JUSTICE LADDIE:** If you asked for this letter, it was
 [14] discussed with you, what Mr Cox is saying is you could
 [15] not have forgotten it now. That is why Mr Cox is putting
 [16] to you that someone is lying.
 [17] Will you think about the question Mr Cox has put
 [18] to you. He is saying - the words were - there is no
 [19] room for mistake. Will you answer his question. That is
 [20] the way he puts it?
 [21] **A:** Sorry, what was the question again?
 [22] **MR COX:** The question is this; are you saying that you could
 [23] have seen this letter but failed to recollect it, or are
 [24] you saying that those who say you did see it are lying?
 [25] **A:** I have absolutely no recollection. There is, I suppose,

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[1] a chance that it was put in front of me or flipped up; I
 [2] have absolutely no memory of that.
 [3] **Q:** Put in front of you or flipped up?
 [4] **A:** The meeting was about two concepts. We discussed other
 [5] things during meetings. If you put it to me in the way
 [6] that you have put it to me, my memories are not hundred
 [7] per cent but, on this particular subject, I have
 [8] absolutely no recollection.
 [9] **Q:** Put in front of you or flipped up. There is a chance
 [10] that this letter was put in front of you or flipped up;
 [11] is that your evidence to his Lordship?
 [12] **A:** You asked me a very direct question. I am trying to
 [13] answer it as well as I possibly can. I have no
 [14] recollection and absolutely no recollection of ever
 [15] having seen these.
 [16] In trying to answer your question as fairly and
 [17] squarely as possible, there is always a chance that
 [18] something was passed in front of me that I have
 [19] forgotten about.
 [20] **Q:** Have you sat there almost every day during the course of
 [21] these proceedings, have you?
 [22] **A:** Almost every day.
 [23] **Q:** Almost every day. Have you heard Mr Hobbs put to my
 [24] client that he is a fraudster, a forger and a liar on
 [25] his oath, and that no letter was shown to you on 24th

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[1] telephone call, yes.
 [2] **Q:** Yes.
 [3] **A:** Because I could not remember the concept that Mr Donovan
 [4] was talking about, because I could not put my hands on
 [5] it, I probably said to him, "We have had an office
 [6] move", and in the course of office moves we always used
 [7] to clear out old files. I indicated that I might have
 [8] lost or discarded old files and, therefore, I might not
 [9] have the proposal that he was referring to to hand.
 [10] **Q:** Mr Lazenby, where are the files accumulated by Shell, by
 [11] Mr King, within your department and the rest of your
 [12] department, for 1990, for example?
 [13] **A:** I have not got a clue where Mr King's files would be.
 [14] Some files - I mean, we had a lot of paperwork going
 [15] through the department. Some files were archived, I
 [16] guess, I cannot remember. I do not know what happened in
 [17] 1991 because I was not in the department.
 [18] Some files would have been archived. Some files or
 [19] paperwork would have been thrown away. We could not
 [20] possibly keep every piece of paper.
 [21] **Q:** Where are the files? There are very, very few copies,
 [22] originals, coming from Shell's offices pre-1992. Most
 [23] are copies supplied by the claimant in this case in
 [24] previous litigation proceedings, almost all of them in
 [25] fact.

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[1] November 1992? Did you hear those questions?
 [2] **A:** I heard all of those questions. I mean, that is why I am
 [3] clear of what the importance of this in the context of
 [4] what has gone on in the last couple of weeks. I still
 [5] have absolutely no memory of ever having seen it before.
 [6] **Q:** Did you move offices in 1992?
 [7] **A:** So far as I can remember, yes, we did.
 [8] **Q:** Do you remember when?
 [9] **A:** I do not remember exactly, but I suspect it was between
 [10] May or June. In fact it was between June and November.
 [11] The reason why I say that is that we are accustomed to
 [12] having meetings with external people in offices attached
 [13] to our main office. I can remember the first meetings
 [14] with Mr Donovan were in one office, and that the
 [15] November meeting was in a different office.
 [16] **Q:** Do you remember telling Mr Donovan that you had lost
 [17] some files in the course of your move?
 [18] **A:** In the course of the conversation with Mr Donovan in
 [19] mid-1993, I think, we were discussing whether I had a
 [20] record of certain things that he had put to me
 [21] beforehand. Since I did not have any recollection of him
 [22] putting up Nintendo to me, which was the subject of that
 [23] meeting, as a throwaway comment in conversation -
 [24] **Q:** A what?
 [25] **A:** As a comment which was made in the course of a long

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[1] Where are those originals that Shell would have
 [2] had; do you know?
 [3] **A:** I do not know. I was not in the department so I do not
 [4] know what they did with them. I never saw them. I saw
 [5] very few files when I came into the department and I saw
 [6] none of Paul King's files.
 [7] **Q:** So you cannot account for where any files prior to 1992
 [8] have gone, you, personally?
 [9] **A:** I, personally, cannot account for them, no.
 [10] **Q:** I accept that. Except this; that what we do know is that
 [11] when you moved offices, sometime between June and
 [12] November 1992, you got rid of a lot of stuff; is that
 [13] right?
 [14] **A:** We, as a department, did not carry all the paperwork we
 [15] had with us, indeed.
 [16] **Q:** So the department got rid of a lot of stuff?
 [17] **A:** It is standard practice. We could not possibly keep
 [18] every piece of paper we had, particularly stuff which
 [19] was not directly relevant to current business.
 [20] **Q:** Yes. Indeed, as you rightly say, during the course of a
 [21] conversation with Mr Donovan, you referred to it.
 [22] I wonder if you could take down volume 5, 2273 A
 [23] is where it begins.
 [24] **A:** Yes.
 [25] **Q:** In fact, if you will go to 2296 A, first. This, as you

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[1] rightly say, was the conversation in which Mr Donovan -
 [2] first in the day at least, this may have been the second
 [3] conversation - first broached to you his concerns and
 [4] shock to see a Nintendo theme promotion having been run.

[5] I think we can agree that, can we not?

[6] A: I think it is the same day, yes. I cannot remember.

[7] There were two phone calls on that day.

[8] Q: Yes, 18th June 1993?

[9] A: Yes.

[10] Q: You told Mr Donovan that you simply had not remembered
 [11] that he had put forward a Nintendo promotion idea when
 [12] BDP in April had put up or resubmitted theirs?

[13] A: Correct.

[14] Q: You said that, despite the 19th February fax, you were
 [15] simply unaware of it because of the number of ideas that
 [16] were coming into you, the business, the busy time you
 [17] had. Also, if we look at this 2296, you are discussing

[18] MR JUSTICE LADDIE: 2296 or 2296 A?

[20] MR COX: 2296 A, my Lord.

[21] You are discussing there Mr Donovan's suggestion
 [22] to you about another case with Esso; do you remember?

[23] A: Yes, he was talking about the Esso Noughts and Crosses
 [24] promotion.

[25] Q: Exactly. He had informed you about that. You are saying,

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[1] A: At this stage, I had not had a chance to look. I had no
 [2] memory of the promotion being put forward. I was purely
 [3] trying to give Mr Donovan a rational reason why I might
 [4] not have it. I then checked my files and did find it.

[5] Q: And low and behold, there it was?

[6] Q: But, at this time, you were conscious that you had in
 [7] the move cleared out a lot of files.

[8] If we go on, Mr Donovan accepted that, but you
 [9] went on:

[10] "When you came in in November, we were in a
 [11] different room, and when we went through that discussion
 [12] at which if you check back to your notes, you will
 [13] remember that ."

[14] Now, does it follow that you knew notes were being
 [15] taken during the November meeting?

[16] A: That is supposition. I do not know what I was getting
 [17] at.

[18] Q: I wanted to ask you because it is your words, and you
 [19] remember the conversation. You have the advantage of a
 [20] transcript, which no doubt you have looked at prior to
 [21] coming into this trial?

[22] A: I have flipped through it. I have not looked at it in
 [23] detail.

[24] Q: When you said we had moved offices:

[25] "When you came in in November we were in a

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[1] at the bottom of the page:

[2] "Well, did they take the proposal and change it
 [3] and put it out themselves?"

[4] Over the page:

[5] "Yeah", you say. "They both had a copy of the
 [6] visual, the colour visual side of them, as I recall, and
 [7] they probably both were" - and this is you speaking now
 [8] - "destroyed, thrown away in July when I cleared out
 [9] the last office. We have moved offices since then, as
 [10] you know."

[11] So it does look, does it not, as if it is close to
 [12] the time, 18th June, that you indeed had moved offices,
 [13] and at that point you were saying that the Nintendo
 [14] proposal was probably destroyed when the office had been
 [15] cleared out?

[16] A: I was saying that is probably what had happened because
 [17] many papers that were not being used did not get carried
 [18] over.

[19] Q: In fact, of course, you had not, as it turned out,
 [20] thrown away the Nintendo proposal, had you?

[21] A: No, I subsequently found it.

[22] Q: Because you were then able to find it?

[23] A: Yes.

[24] Q: But, at this time, according to this conversation, you
 [25] thought that might or probably had happened?

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[1] different room, and when we went through that discussion
 [2] at which if you check back to your notes you will
 [3] remember that", what did you think Mr Donovan might have
 [4] a note of?

[5] A: I mean -

[6] Q: Not that you had moved rooms, surely?

[7] A: I did not have a clue what Mr Donovan might have a note
 [8] of. I mean, I do not even know, I have no recollection
 [9] of, what I was getting at in this conversation. This is
 [10] six, seven years ago.

[11] Q: But you are referring to the 24th November meeting, are
 [12] you not, because there was no other meeting in November?

[13] A: Correct, yes.

[14] Q: What did you think Mr Donovan might have a note of?

[15] A: I do not have a clue. I do not know what was being
 [16] discussed here.

[17] Q: Did you think he might have a note of the fact that you
 [18] had changed rooms, the room you were in?

[19] A: As I just said, I do not know what I was getting at. I
 [20] do not know what I was talking about.

[21] Q: Were you possibly referring to the fact that you had
 [22] mentioned that files had been thrown away in an office
 [23] move in November?

[24] A: I cannot remember what we talked about at all.

[25] Q: Were you possibly referring to the fact that, in

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[1] November, you mentioned that files had been thrown away
[2] in an earlier office move?

[3] A: It is possible. I mean, that is supposition, but I do
[4] not recall. I cannot say yes or no.

[5] Q: You go on in the conversation to say:

[6] "All the proposals you have ever put forward on
[7] file" - in fact it was a question because further down
[8] we see what you are saying.

[9] The question was:

[10] "Do you think we have kept all of the proposals
[11] you have put forward to us on file?"

[12] Mr Donovan says: "No, well, I would not have
[13] thought that. I would have thought all those I have put
[14] forward since you have been there, because that has only
[15] been, what, just over a year. I would have thought,
[16] well, you know, I did not particularly try to take it up
[17] at the time. Also moved offices at the time. Just, what,
[18] a couple of months afterwards", and of course the
[19] Nintendo meeting had been 4th June, had it not?

[20] A: Yes.

[21] Q: A couple of months afterwards. "And when you move
[22] offices you have to clear out your files. What happens
[23] when I clear out the files is that I chucked a lot of
[24] stuff away, which is what you have got to do when you
[25] move offices."

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[1] Now, you refer to Mr Donovan having notes
[2] available to him in that conversation. It certainly
[3] follows, does it not, that you were aware that notes
[4] were being taken?

[5] A: That is supposition. I do not know what I was getting at
[6] here. I could have been referring to notes which I made.
[7] I always made notes. I may have been assuming that Mr
[8] Donovan was keeping notes as well. I mean, I do not
[9] recall the detail and what I was thinking when we had
[10] this conversation, which was late at night, after a busy
[11] day, about a subject which I did not recall very clearly
[12] at all.

[13] Q: There are two possibilities, are there not, 2296 B, when
[14] you said to Mr Donovan on the telephone, "If you check
[15] back to your notes you will remember that", that he was
[16] either to remember that you had moved offices and you
[17] were in a different room, or that you had lost or thrown
[18] away stuff in the move?

[19] A: There could have been a number of other reasons for
[20] saying this. In the heat of a conversation on the
[21] telephone, you say all sorts of things, and some of them
[22] are not logical. Clearly some of this conversation is
[23] not logical. I honestly cannot remember what I was
[24] getting at with these particular two lines of words. I
[25] cannot remember.

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[1] Q: Why would you have told Mr Donovan on 24th November
[2] that

[3] you had moved offices and cleared out a lot of stuff?

[4] A: I cannot remember. I mean, I cannot remember discussing
[5] it.

[6] Q: Could it be as a reason why you were asking for
[7] Sainsburys letter?

[8] A: It is a fairly remote possibility.

[9] Q: I did not catch that answer.

[10] A: I said that is complete supposition, because I cannot
[11] remember what this was referring to but, when you put it
[12] like that, of course it is possible. Anything is
[13] possible.

[14] Q: No, Mr Lazenby -

[15] A: But I am saying that I have no recollection of talking
[16] about office moves or anything in the November meeting.
[17] There is no reason to talk about this that I can
[18] remember.

[19] Q: But, in June, you clearly had such a recollection.

[20] You recollected a discussion in November and you asked
[21] him to consult his notes?

[22] A: I cannot remember whether - I remember the discussion.

[23] I cannot remember whether - this says I asked him to
[24] look at his notes. I cannot remember what that meant.
[25] All I was trying to do in this conversation, which bear

[26] in mind he had called me on the spur of the moment, and

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[1] was discussing a particular subject that I did not know
[2] very much about, was merely trying to calm his concerns,
[3] which were related to that particular proposal.

[4] Now, at this stage, I had not looked at this
[5] proposal for a long time, clearly. Therefore, one of the
[6] options which I was trying to lay out was that I might
[7] have lost it, or might have binned it when we did an
[8] office move.

[9] Q: No, it was not an option you were trying to lay out?

[10] A: Honestly, that is an option which I was trying to lay
[11] out in this conversation, which, as I say, when it is
[12] written down like this, it is a lot easier to read it.

[13] When you are having a conversation on the phone,
[14] sometimes it gets very quick and sometimes you do not
[15] think with hundred per cent clarity about what you say.

[16] Now, I do not know what I was thinking about or
[17] trying to say at this stage in this conversation, except
[18] that I was trying to suggest that the Nintendo proposal
[19] might have got lost or mislaid in an office move.

[20] Q: Which it had not in fact?

[21] A: Which, when I had time to go and check my files, after
[22] this conversation, it had not.

[23] Q: What you were saying is it had probably been destroyed.

[24] Do you not remember the November discussion? It was in a
[25] different room when we had that discussion, and I do not

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[1] keep every copy of a proposal that you give to me; that
[2] is what you were saying, is it not?

[3] A: It sounds like possibly two different discussions. Do
[4] you not remember the November meeting was in a different
[5] office and, therefore, we had had an office move, and,
[6] as a separate point, we do not keep every proposal you
[7] have given us. I mean, that is consistent.

[8] Q: When you talk to people, do you habitually say things
[9] that you do not mean?

[10] A: No.

[11] Q: Do you habitually tell people, for example, that you
[12] will come back to them and use their idea when you do
[13] not really mean it?

[14] A: As I have said about the note on the Nintendo proposal,
[15] I was trying to - it was very much a response of
[16] saying, "Do not call us. We will call you." That is what
[17] I was trying to say.

[18] Q: Do you habitually say to agencies and people,
[19] particularly ones you do not find buzzy, that you will
[20] get back to them if you use their idea and never really
[21] mean it?

[22] A: Sometimes I said that. Sometimes I said very explicitly
[23] that we would not be using an idea at a particular time.
[24] I would normally, as a normal commerciality, reserve a
[25] position, or try to get them, from their point of view,

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[1] Q: You were affected by the presentation of Roger Sutherland
[2] and Mr Donovan. You did not find them people that you
[3] would wish to work with, did you?

[4] A: I would not have said that at all. I mean, some of their
[5] ideas were good. We researched Mega Match. I would have
[6] been very happy to work with Mr Donovan and Mr Sutherland
[7] on Mega Match.

[8] Q: Really? I thought you said in your witness statement you
[9] had suffered a loss of credibility or confidence in them
[10] because they mentioned too short a time period for Mega
[11] Match?

[12] A: Yes. I mean, when somebody comes and says to you they
[13] can put on a promotion in six weeks, that is clearly
[14] going to take a lot longer than that, then their
[15] credibility goes down.

[16] However, from their track record, I assumed when
[17] they had said that, which was a direct response to a
[18] question I had said over a meeting table, I just assumed
[19] it was their natural enthusiasm to encourage us to take
[20] up the idea. I mean nothing more than that, but it did
[21] indicate some credibility problem. Bear in mind, that
[22] is, I think, the first meeting I had had with them.

[23] Q: Confidentiality. When you came to the department, did
[24] you have any briefing, or training, or policy given to
[25] you about confidentiality?

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[1] to keep an idea for our use later on.

[2] As I said yesterday, it was standard industry
[3] practice that if we told somebody absolutely no, they
[4] would normally go straightaway and tout whatever the
[5] idea might have been around all our competitors. We knew
[6] that.

[7] Q: Did you find Don Marketing buzzy?

[8] A: Some of their ideas were interesting, some were not.

[9] Q: Did you find Roger Sutherland and John Donovan buzzy,
[10] high profile and buzzy?

[11] A: They got very enthusiastic when they talked about some
[12] of their ideas, yes.

[13] Q: That is not what you meant by buzzy, is it?

[14] A: That is part of what I mean by buzzy.

[15] Q: What else did you mean by buzzy, when you used the
[16] expression?

[17] A: When I used the expression "buzzy" it encapsulates a
[18] mode of doing business, or an approach, which will
[19] include the ideas that they would have, as well as a
[20] manner of presenting them.

[21] Q: And John Donovan and Roger Sutherland were not buzzy, as
[22] you understood the word?

[23] A: Their ideas were good. Their manner of presentation -
[24] some of their ideas rather were very good. Their manner
[25] of presentation was not very buzzy, no.

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[1] A: No.

[2] Q: Was there nothing written down to suggest a way of
[3] dealing with agencies that came forward to you?

[4] A: No, there was nothing written down. So far as I can
[5] remember, there was no standard approach which we all
[6] adopted, or which I was briefed on. I mean, I was never
[7] briefed on what to do.

[8] Q: Do you consider that, with hindsight, to have been
[9] regrettable?

[10] A: I think, ideally, such a department would have a
[11] standard policy for dealing with such things.

[12] Q: Some companies do and did at the time. There are
[13] documents in discovery from MacDonaldis, for example,
[14] saying that ideas were returned unread and sealed. No
[15] such policy prevailed at Shell?

[16] A: No.

[17] Q: You can put away volume 5, I think. If it helps to clear
[18] the decks, why do you not put away the files you have in
[19] front of you.

[20] A: Okay.

[21] Q: Because we are moving onto another file now, a different
[22] time of event.

[23] MR JUSTICE LADDIE: Have you finished on the 24th, the
[24] Sainsburys letters?

[25] MR COX: No, my Lord, no.

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[1] **MR JUSTICE LADDIE:** So I will clear everything away and
[2] start from scratch.

[3] **MR COX:** Yes, my Lord, I suggest so.

[4] Volume 7, please, once you have cleared away,
[5] 2976.

[6] **A:** Sorry, that was file 7?

[7] **Q:** File 7, please. Now, during 1993, you had had the
[8] unpleasant shock, I suppose, to you of realising from
[9] 18th June onwards that Mr Donovan was, or felt,
[10] aggrieved, because he believed - and I make it clear
[11] still does, but this case is not concerned with that -
[12] that you had used a Nintendo promotion that he had
[13] promoted to you.

[14] As you know, between 18th June and November 1993,
[15] you, I think, had had discussions with various people
[16] within Shell including the legal department about that
[17] claim, correct?

[18] **A:** So far as I recall, yes.

[19] **Q:** On 19th November, after a number of conversations with
[20] you and Mr Watson, Mr Donovan wrote to Mr David Watson
[21] this letter. He attached a copy of the Shell letter
[22] covering joint rights to the Make Money promotion.

[23] You had said to Mr Donovan - we can look at it if
[24] you like, but I am sure you remember - during the
[25] course of one of the conversations in June that you felt

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[1] envisaged as having big appeal?

[2] **A:** Yes.

[3] **Q:** It would draw people's attention in?

[4] **A:** It would attract a large number of people and we would
[5] get a large number of names to launch the database with,
[6] yes. Logically, it fitted nicely.

[7] **Q:** So the plan was - do you dispute this, because if you
[8] do I will have to go to another document, if you want to
[9] see it, do, but there is a document from Option One in
[10] 1993, saying "the plan is always that we will run Make
[11] Money immediately before the Hercules launch"?

[12] **A:** I cannot remember when that became the detailed plan but
[13]

[14] **Q:** Consistent with what you are -

[15] **A:** It is logical, yes, consistent.

[16] **Q:** So, as of June, would you say that had become the plan?

[17] **A:** As of June?

[18] **Q:** 1993.

[19] **A:** As I said just now, I do not recall when that became the
[20] plan. Make Money was always going to be one of the
[21] promotions which we wanted to rerun at some stage.

[22] **Q:** And so when you said to Mr Donovan in June, "We could go
[23] out and do that without reference to you", it is because
[24] you had in mind that you may well be going to, that is
[25] to say run Make Money?

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[1] you could run Make Money without reference to Mr
[2] Donovan?

[3] **A:** Yes, I did say that. I had no reason to believe anything
[4] else at the time.

[5] **Q:** Right. Mr Donovan, having originally been concerned
[6] about Nintendo, became also concerned about Make Money,
[7] you know that?

[8] **A:** I know that.

[9] **Q:** And had had conversations with Mr Watson concerning Make
[10] Money. This letter, responding to those things, deals
[11] first with Make Money, referring to various documents
[12] and the history of Make Money. Middle paragraph to
[13] commission and the terms of payment.

[14] "Like Andrew Lazenby, you expressed some doubt
[15] over our proprietary claim to the Mega Match concept."
[16] Pause there. It was always intended, was it not,
[17] certainly by November 1993, that Make Money would
[18] precede any Hercules roll-out?

[19] **A:** It was one of the plans, one of the stronger ideas. I
[20] mean, in fact Make Money was one of the first things
[21] people suggested we should rerun when I joined the
[22] department in 1992. It had been one of our best, most
[23] successful promotions ever.

[24] **Q:** It was always intended, certainly by November 1993, that
[25] Make Money would precede Hercules because it was

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[1] **A:** I cannot remember how Make Money came up in the
[2] conversation, but that is logical, yes.

[3] **Q:** You knew, which is why you said to Mr Donovan, "We do
[4] not need you for Make Money", that Make Money featured
[5] significantly in the preliminary plans for Hercules?

[6] **A:** I do not think I did know at that stage. I do not recall
[7] when it became entrenched. It was clearly one of the
[8] many ideas we had. As the best promotion we had ever
[9] had, it was always going to be one of the ones we wanted
[10] to look at and run again at some stage.

[11] **Q:** So it may have had a use pre-Hercules?

[12] **A:** It may well.

[13] **Q:** By June.

[14] **Q:** And so, by 19th November, dealing with the context of
[15] the letter again:

[16] "Like Andrew Lazenby, you expressed some doubt
[17] over our proprietary claim to the Mega Match concept,
[18] involving retailers in different trades, participating
[19] in a single promotion with a common promotional
[20] currency."

[21] You knew that to be the Mega Match idea, did you
[22] not?

[23] **A:** Knew what is referred to here?

[24] **Q:** Yes.

[25] **A:** Yes.

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[1] Q: The Mega Match concept?
 [2] A: It mentions Mega Match, yes.
 [3] Q: "Involving retailers in different trades, participating
 [4] in a single promotion with a common promotional
 [5] currency."
 [6] And of course with Mega Match it was a game?
 [7] A: Yes.
 [8] Q: You knew what Mega Match was because you had researched
 [9] it in 1992?
 [10] A: Yes.
 [11] Q: "Please note; I am in possession of a multitude of
 [12] documents regarding presentations and contact with Shell
 [13] over several years, which confirm our rights to that
 [14] concept. These proposals also cover promotional schemes,
 [15] whereby the common currency points, vouchers, tokens,
 [16] etceteras, are collected, or rewarded at outlets
 [17] belonging to the various types of retailer participating
 [18] in the activity."
 [19] Now, you discussed this letter with Mr Watson, did
 [20] you not?
 [21] A: I cannot remember; I might have done.
 [22] Q: It is not a question of might. It is inconceivable, is
 [23] it not, that David Watson, as we see later, would have
 [24] replied to this letter without first consulting you?
 [25] A: It is not inconceivable.

[1] Paul King was talking to Don Marketing when I arrived
 [2] about promotions for car washes or shops or something
 [3] like that. He might have met with them. I do not know. I
 [4] can only speak so far as I am concerned.
 [5] Q: Let me then put a question to you, with which I am sure
 [6] you will be able to agree. The only meetings in relation
 [7] to Nintendo, or any, or Now Showing had been with you?
 [8] A: I had been in meetings on my own, as the only
 [9] representative of Shell, regarding those subjects with
 [10] Mr Donovan and Mr Sutherland, yes.
 [11] Q: And Mega Match?
 [12] A: And Mega Match, which was the first meeting.
 [13] Q: Yes, so it is highly unlikely, when Watson received this
 [14] letter, that he would not have at least spoken to you
 [15] and discussed his approach to the replies, is it not?
 [16] A: I do not think it is highly unlikely. It is quite
 [17] possible he did not talk me because, by that stage, we
 [18] had talked a great deal about the various subjects we
 [19] were discussing with Mr Donovan.
 [20] Q: How would Watson be able to answer the last paragraph?
 [21] A: I cannot speak for how Mr Watson would have answered
 [22] this letter.
 [23] Q: Well, it is talking about the Mega Match concept, which
 [24] you personally were involved with and put out to
 [25] research, and then also other promotional schemes,

[1] Q: It is highly unlikely?
 [2] A: I would not even say it is highly unlikely. It is
 [3] possible. I cannot remember.
 [4] Q: With whom had been the meetings between Shell and Mr
 [5] Donovan and Mr Sutherland by this time?
 [6] A: The meetings had been with me. What was actually
 [7] happening by November 1993 was that David was trying to
 [8] release my time almost exclusively to work on Hercules.
 [9] Therefore, when Mr Donovan started to talk to us about
 [10] Nintendo, I was involved at the beginning. When things
 [11] got very heated, particularly between myself and Mr
 [12] Donovan on the phone, Mr Watson decided that it was
 [13] going to be better if he took over and sorted the
 [14] problem out.
 [15] Q: With whom had been any face-to-face meetings between Don
 [16] Marketing Limited and Shell, from 1st February 1992 to
 [17] 19th November 1993?
 [18] A: Well, certainly with my self. I do not know whether
 [19] there had been meetings with Mr King. I cannot speak for
 [20] who else might have had meetings. But I had two
 [21] meetings, three meetings.
 [22] Q: The only dealings face-to-face between Shell and Don
 [23] Marketing had been through you, face-to-face?
 [24] A: As I say, I admit I had meetings with them. It is clear.
 [25] I do not know whether anyone else did. But I know that

[1] whereby the common currency collected or rewarded.
 [2] Now, Watson certainly had no dealings that would
 [3] have enabled him to know what had passed between you and
 [4] Don Marketing on that subject, would he?
 [5] A: I cannot remember whether we would have discussed it or
 [6] not beforehand. I cannot speak for what Mr Watson would
 [7] have known or not known.
 [8] Q: All right. Let us have a look at the reply, please, 2nd
 [9] December, 3066: "Dear John". Did you see this letter
 [10] before it went?
 [11] A: I do not have a clue. I do not remember it at all.
 [12] Q: Do you not remember when Mr Watson replied to this
 [13] letter, dealing with Mega Match and with multi-brand or
 [14] multi-retailer loyalty programmes?
 [15] A: No. As I just said, I do not remember the letter. I do
 [16] not remember whether David talked to me or not. I do not
 [17] know what he was thinking at the time. What he had done
 [18] was he had taken on, taken over, responsibility for
 [19] speaking to Mr Donovan clearly to enable me to deal
 [20] full-time with Hercules. He was not consulting me on
 [21] every conversation and subject that came up with Mr
 [22] Donovan. In fact, I cannot remember dealing with
 [23] Nintendo or Mr Donovan after June or July until after,
 [24] towards the end of the year.
 [25] Q: I am not asking whether you dealt with Mr Donovan. I am

[1] asking whether you simply discussed it with your junior
[2] colleague?

[3] A: What I am saying is I discussed it at certain times
[4] during 1993. I cannot remember when, I cannot remember
[5] what was said.

[6] Q: With Mr Watson?

[7] A: With Mr Watson, who took over responsibility for sorting
[8] out it out with Mr Donovan.

[9] Q: Perhaps I will be able to ask Mr Watson what he
[10] remembers of these conversations, but let us come onto
[11] this:

[12] "Thank you for your letter enclosing a copy of the
[13] letter of 3rd June 1991, regarding the 1984 promotion,
[14] based on Make Money. It may well be you have rights
[15] jointly with Shell in respect of design, artwork and
[16] playing pieces that were used in the 1984 promotion,
[17] which was based on the Make Money concept."

[18] Pause there. Now, you certainly - because as I
[19] recollect it is referred to in your evidence - knew and
[20] had been involved in establishing whether Don, as you
[21] thought at least, had rights in the Make Money
[22] promotion, had you not?

[23] A: As I just said, we discussed it on the phone during
[24] June, one of the conversations. As I also said, I knew
[25] no reason to say anything else. I thought it was a Shell

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[1] share. On the other hand, Charlie Fox of Option One, his
[2] conclusion was Donovan only owned rights over the
[3] revamped artwork, and the promotion was based on this
[4] basis in April and June."

[5] Now, does that passage mean that you knew of it at
[6] the time, or are you simply reciting what you had been
[7] told later?

[8] A: I knew that Charlie and Option One were investigating
[9] it. I was not directly involved with that.

[10] Q: Right. Option One were involved; incidentally, why?

[11] A: They were involved in this, I think, because they had a
[12] large degree of professionalism in promotions.

[13] Q: We were working directly with them. We used them on a
[14] number of occasions to investigate certain aspects or
[15] features of every promotion we did during 1993 and 1994,
[16] as far as can I recall, when we were looking for someone
[17] to trace ownership, I guess, when the question of
[18] ownership of Make Money came up. We certainly in our
[19] department had no expertise or knowledge or, indeed, to
[20] some extent, facilities to make such investigations.

[21] Therefore, Charlie, I think, got in touch with
[22] Option One, and together they went to try and trace the
[23] audit trail, if you like, of the Make Money promotion.

[24] Q: Why not ask the experts who had been responsible for
[25] that, whom you acknowledge to be good at games? Why not

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[1] promotion.

[2] Q: Had you not been involved with Option One in researching
[3] whether Donovan, Don Marketing had rights to Make Money?

[4] A: I do not think I talked to Option One about that
[5] subject. It was handled by my colleague, Charlie Fox, at
[6] the time. This was another of the promotions which, to
[7] enable me to focus on Hercules, we basically gave it
[8] over to Charlie when it became more definite that we
[9] were going to run it.

[10] Q: Page 64 of your witness statement, just have a quick
[11] look if you would, paragraph 143 and 144. You are
[12] detailing your understanding of the Make Money story.

[13] MR JUSTICE LADDIE: Did you say 143?

[14] MR COX: 64, my Lord, 143 paragraph.

[15] In order to investigate whether there was any
[16] substance to Mr Donovan's allegations, Charlie Fox, of
[17] Option One, carried out investigations into the
[18] ownership of the rights to Make Money. It transpired
[19] that King had written a letter dated 3rd June to Mr
[20] Donovan, in which he agreed that Don Marketing could
[21] work up a promotional concept with a new slant", and you
[22] signed that, Mr King's letter.

[23] "Cover 500 for artwork costs and we understand
[24] that this promotional idea remains the sole rights. Mr
[25] Donovan evidently believed the letter gave him a half

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[1] ask Don Marketing?

[2] A: I think that it is unlikely we would ask someone with
[3] whom we were in the middle of argument to some extent.

[4] Q: But you were not before June, and you already knew by
[5] that time that Make Money was likely to be a feature in
[6] the roll-out to Hercules. Why not say - because there
[7] is no dispute before 18th June, is there? Answer that
[8] question first, please. There is no dispute before 18th
[9] June with Don Marketing at all, is there?

[10] A: No.

[11] Q: No. By 18th June, as you have already said, you knew
[12] that Make Money was going to be an important element in
[13] the run-up to Hercules?

[14] A: As I said, Make Money was on the agenda for running -
[15] right from the first day I was in the department
[16] everyone was saying we should do it again. It was a
[17] logical progression that we do it at some stage. It was
[18] logical at some stage we should work out how we would do
[19] it, and when we would do it.

[20] Now, my clear understanding at the time, which was
[21] incorrect, because I was not in knowledge of all the
[22] facts, particularly the letter that has been raised
[23] here, I thought, personally, that we had the rights to
[24] it. I knew the legacy, from our point of view.

[25] Q: Forgive me, that is not an answer to my question. You

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[1] may well have thought that, but in order to run the
 [2] promotion, why not get back in touch with Don Marketing,
 [3] the people who devised it, the lawful way of playing it,
 [4] and had massive success with it?

[5] **A:** I suspect that by the time we were seriously looking at
 [6] whether to run it or not, and planning doing the
 [7] logistics planning and so on, then there was some kind
 [8] of argument with Mr Donovan, but, as far as I remember,
 [9] we were only really thinking about seriously putting it
 [10] together towards the back end of quarter three or
 [11] quarter four 1993 is when we started to put it together.

[12] **Q:** You see, it was in fact considered, was it not, going
 [13] back to Don Marketing in relation to Make Money, even in
 [14] late 1993?

[15] **A:** It might have been. I cannot remember.

[16] **Q:** Bear with me just a minute. I need to check whether you
 [17] were involved with that.

[18] **MR JUSTICE LADDIE:** Do you want to do that -

[19] **MR COX:** My Lord, yes.

[20] **MR JUSTICE LADDIE:** Mr Lazenby, could you leave court for
 [21] the moment, please.

[22] (Matters in Camera)

[23] (1.10 pm)

[24] (Lunch Adjournment)

[25] (2.10 pm)

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[1] paragraph?

[2] **A:** As I said before lunch I think, I cannot remember
 [3] whether he consulted me or not and particularly whether
 [4] he asked me or showed me this particular paragraph. He
 [5] was dealing directly with Mr Donovan on all of these
 [6] issues by this stage and, as far as I can recall, I was
 [7] not very involved. I was focussing on Hercules.

[8] **Q:** How would Mr Watson have been able to know the
 [9] information that he could base his remarks, "You may
 [10] have rights over some particular promotions based on the
 [11] concept of various retailers using a common promotional
 [12] currency but not over the concept itself", where would
 [13] he have been able to get that information, if not from
 [14] you?

[15] **A:** I do not know where he got that information from. I did
 [16] not write the letter.

[17] **Q:** He could only be talking, could he not, of the Megamatch
 [18] concept and the multibrand loyalty concept?

[19] **A:** I do not know what he was talking about. He mentions
 [20] the Megamatch concept. He does not mention anything
 [21] else.

[22] **Q:** What he says is:

[23] "You may have rights over some particular
 [24] promotions ..."

[25] In the plural. Do you see that?

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[1] **MR COX:** Mr Lazenby, do you have the letter of 2nd December
 [2] still in front of you?

[3] **A:** Yes, the one to John Donovan from Shell UK, yes.

[4] **Q:** Yes, 3066. Could we continue looking at that.

[5] I had asked you questions about the first two
 [6] paragraphs. That subject was continued in the third
 [7] paragraph:

[8] "Although you may have some rights as outlined
 [9] above, those rights would not in any event extend to a
 [10] scheme, rule or method for playing the game or to the
 [11] original concept for the promotion. I note the last
 [12] paragraph of your letter regarding the Megamatch concept
 [13] but do not, however, entirely understand your position.
 [14] You may have rights over some particular promotions
 [15] based on the concept of various retailers using a common
 [16] promotional currency. But you cannot have any rights
 [17] over the concept itself and there have been many such
 [18] schemes already. One that readily springs to mind is
 [19] the Air Miles promotion."

[20] Mr Watson is telling Mr Donovan in that
 [21] paragraph that he is not entirely understanding the
 [22] position, but that he may have rights over some
 [23] particular promotions based on the concept of retailers
 [24] using a common promotional currency. Are you saying
 [25] that he did not speak to you before he wrote that

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[1] **A:** Yes.

[2] **Q:** "... based on the concept of various retailers ..."

[3] The only two promotions based on that concept put
 [4] forward to you, Mr Lazenby, or indeed to Shell, were the
 [5] Megamatch concept and the multibrand loyalty concept,
 [6] were they not?

[7] **A:** Well, as I say, I have absolutely no recollection that
 [8] Mr Donovan put the multibrand loyalty concept to us.
 [9] That had certainly been put forward to us by GHA insofar
 [10] as this line, as I can read it, is quite general.

[11] **Q:** In confidence GHA had put forward to you something we
 [12] have looked at. But, from Mr Donovan, the only
 [13] promotion or promotions that had been put forward to you
 [14] which dealt with retailers using a common promotional
 [15] currency were the Megamatch concept - that was
 [16] one - and the multibrand loyalty concept: that was two,
 [17] was it not?

[18] **A:** I will say again - I have said it before - I agree
 [19] with you Megamatch. I have absolutely no recollection
 [20] of Mr Donovan ever putting forward a multibrand retailer
 [21] loyalty concept to us. It was not something which has
 [22] ever been associated in my mind with Mr Donovan or his
 [23] company. It has never been associated. His company is
 [24] a games company.

[25] **Q:** I thought you at least accepted that you had had

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[1] Concept Four?
 [2] A: No, I said it is possible that I had had it. I had a
 [3] variety of them at the time. It is in their files, so
 [4] there is no reason to believe I had not had it and could
 [5] not have possibly seen it.
 [6] Q: Let us just base ourselves for now on the multibrand
 [7] loyalty concept idea in Concept Four. The only two
 [8] promotions that could correspond with that last
 [9] paragraph are Megamatch and the multibrand loyalty
 [10] concept, are they not?
 [11] A: I do not know what Mr Watson had in his mind when he was
 [12] writing this letter or this paragraph. I did not write
 [13] it. I do not know what he was thinking about or what he
 [14] had in his mind.
 [15] Q: Unless he had the multibrand loyalty concept in mind,
 [16] what on earth did he mean when he goes on to say, do you
 [17] think, based on your knowledge:
 [18] "You may have rights over some particular
 [19] promotions based on the concept of various retailers
 [20] using a common promotional currency."
 [21] A: I do not know.
 [22] Q: You discussed with him surely what your dealings had
 [23] been with John Donovan and Roger Sotherton before this
 [24] letter?
 [25] A: I had discussed with David Watson on a number of

[1] scheme, were you not?
 [2] A: We were on the verge of having it signed off. Again,
 [3] I do not know if I ever saw this letter. I cannot
 [4] remember anything about it. Mr Watson was dealing with
 [5] this particular subject with no reference to me by this
 [6] stage.
 [7] Q: You think with no reference to you?
 [8] A: He might have referred to me, but I cannot remember at
 [9] all. He was dealing with it from his own point of view.
 [10] Q: Then he writes back the letter at 3066:
 [11] "You may have rights over some particular
 [12] promotions based on the concept of retailers but not the
 [13] concept itself. One that readily springs to mind is the
 [14] Air Miles promotion."
 [15] Air Miles has nothing to do with the game, does
 [16] it?
 [17] A: No.
 [18] Q: So, when Mr Watson writes and refers here to Air Miles,
 [19] he plainly has in mind a non-game multiretailer scheme,
 [20] does he not? When he writes:
 [21] "One that readily springs to mind is the Air Miles
 [22] promotion", he is plainly not referring to a game there,
 [23] is he?
 [24] A: When he refers to Air Miles, he is clearly not referring
 [25] to a game. It looks to me like he is giving an example

[1] occasions the dealings that I had had with Mr Donovan in
 [2] the period whilst I was in the Promotions Department.
 [3] Nothing specifically stands out about the period before
 [4] or in the months before this promotion in particular.
 [5] I handed the dealing with Mr Donovan over to David
 [6] because it was a more contentious issue which management
 [7] would want to deal with and David wanted to release me
 [8] to focus on Hercules.
 [9] Q: Keep your finger, if you would, at 3066 and have a look
 [10] back at 2976. This letter at 2976 must have rung alarm
 [11] bells surely in the department? Because what Mr Donovan
 [12] is asserting, albeit only in the last four lines of this
 [13] letter, is that, quite apart and additional from
 [14] Megamatch, his proposals also covered:
 [15] "... promotional schemes whereby the common
 [16] currency is collected or rewarded at outlets belonging
 [17] to the various types of retailer participating in the
 [18] activity."
 [19] So it is not just the Megamatch concept, it is
 [20] also a promotional scheme:
 [21] "... whereby the common currency is collected or
 [22] rewarded at outlets belonging to the various types of
 [23] retailer participating in the activity."
 [24] That must have rung bells. Because, at that time,
 [25] you were engaged and embarked upon exactly such a

[1] of another scheme that is in the public arena where a
 [2] variety of retailers are using the same currency. That
 [3] is the logic of the sentence. He is talking about
 [4] promotional currencies and whether the simple fact of
 [5] using a promotional currency shared by a number of
 [6] retailers it is possible to own that property. So far
 [7] as I can see.
 [8] Q: It is not a question of ownership. That may be our
 [9] difficulty here. But I repeat: it is clear, is it not,
 [10] that Mr Watson is addressing the question of whether or
 [11] not Mr Donovan was able to have a claim in relation to a
 [12] loyalty scheme using multiretailers issuing a common
 [13] currency?
 [14] A: He does not say a loyalty scheme. You are making an
 [15] assumption that he is linking Air Miles with the concept
 [16] that he is mentioning in the sentence before. I could
 [17] not possibly say what he had in his mind, or confirm or
 [18] deny your assumption there.
 [19] Q: Let me ask you straightforwardly: is it not the case
 [20] that you spoke to Mr Watson at this point and told him
 [21] that there had indeed been a presentation which had
 [22] included a multiretailer loyalty scheme?
 [23] A: No, absolutely not. If you mean from Mr Donovan?
 [24] Q: I mean from Don Marketing, yes.
 [25] A: At this stage the fact of - as I say, I have no

[1] recollection at all of ever talking about this stuff
 [2] with Mr Donovan. At this stage the fact was the same.
 [3] Q: With Mr Watson -
 [4] A: At this stage that fact was the same. Therefore, I am
 [5] sure that Mr Watson consulted me at the time. We always
 [6] talked on a regular basis, sometimes a few times a day.
 [7] I cannot remember every time he talked to me, I cannot
 [8] remember the details of it. There is no reason, if
 [9] I had forgotten or was never aware that I had talked to
 [10] Mr Donovan in any detail about such things, then there
 [11] is no reason why I might have mentioned it or might
 [12] not. I do not know why David wrote these things in this
 [13] letter.

[14] Q: I simply suggest to you that the reason why is because
 [15] he was concerned that you were about to launch, or
 [16] rather, you were deeply involved in launching a
 [17] multibrand loyalty concept and he saw that Mr Donovan
 [18] appeared to be suggesting that he maintained a claim to
 [19] such a concept. And that he would have had to have
 [20] discussed that with you in order to compose this letter;
 [21] is that not right?

[22] A: Which bit?

[23] Q: The last paragraph of it.

[24] A: No, which bit of your sentence are you asking me is
 [25] right or not?

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[1] you denied any knowledge of the previous two - or any
 [2] recollection of the previous two letters. But certainly
 [3] you dealt with this one and, in order to deal with this
 [4] one, surely you would have seen the correspondence which
 [5] had ensued beforehand?

[6] A: I cannot remember or not whether I saw the previous
 [7] correspondence. I am sorry. I cannot remember.

[8] Q: Let us have a look at this letter:

[9] "Dear David, thank you for your letter dated
 [10] 2nd December ...", and we know that you saw this letter:
 [11] "... the content of which I have read with
 [12] interest."

[13] So, the moment you were asked to deal with
 [14] replying to this letter, you would have seen it referred
 [15] to a letter - Watson's letter - of 2nd December, would
 [16] you not?

[17] A: I knew there had been ongoing correspondence and contact
 [18] between Mr Watson and Mr Donovan, yes.

[19] Q: When you replied to it, would you not at least have
 [20] looked at the letter of 2nd December?

[21] A: I may have done, or I may not. I cannot remember. It
 [22] may help if I look at the letter that I sent.

[23] Q: Let us deal with this one first, if we may:

[24] "...The content of which I have read with
 [25] interest."

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[1] Q: That he would have had to have discussed it with you
 [2] before writing the last paragraph?

[3] A: I do not know who he discussed it with. I do not know
 [4] why he wrote that. He might have talked to me about
 [5] it. He might not. I cannot remember. Sorry.

[6] Q: Could you move on to 3214, please. This is the answer.
 [7] I think you did see this letter, did you not? You
 [8] disclaim all knowledge of having seen the two earlier
 [9] letters in this chain, but you did see, did you not,
 [10] 20th December 1993, which is the answer to the letter?

[11] A: I think I ended up having to deal with this letter.

[12] Q: Indeed you did, Mr Lazenby.

[13] A: The ones beforehand, I was not consulted before they
 [14] were sent or may have been. I cannot remember.

[15] Q: That is what I want to suggest to you: again, are you
 [16] really doing your best to help the court? Because you
 [17] replied to this letter, did you not?

[18] A: I replied to this letter and I am definitely doing my
 [19] very best to reply to the court. These are all matters
 [20] which are some years ago, at a time when there was a lot
 [21] of activity going on. Many, many agencies were coming
 [22] to us with all sorts of ideas and all sorts of people
 [23] were speaking to us all the time. I am doing my best to
 [24] remember. It is very difficult, however.

[25] Q: I can understand the difficulties of recollection. But

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[1] He expresses the forlorn hope:

[2] "Prior to the current dispute, I had hoped Shell
 [3] would have wanted us to be involved [in the game]. My
 [4] comments regarding the Make Money game ... were made in
 [5] reply to Mr Lazenby's unprovoked assertion that Shell
 [6] could run these promotions without any involvement by
 [7] Don Marketing."

[8] Moving on down:

[9] "I provided the copy letter and some further
 [10] background information just to illustrate how
 [11] inappropriate it was for Andrew Lazenby to be so
 [12] dismissive. However, unless Shell is actively
 [13] considering running one of the relevant promotions, it
 [14] seems to me that further discussion is unwarranted at
 [15] the moment. Discussions relevant to a particular
 [16] concept could be undertaken at the appropriate time,
 [17] should it ever become necessary."

[18] So that is the answer Mr Watson's letter gets
 [19] back; all right?

[20] A: Yes.

[21] Q: You were asked to answer that, were you not? Because
 [22] Mr Watson left at the end of December; correct?

[23] A: Mr Watson left at the end of December. The letter
 [24] needed an answer. I cannot remember whether I was asked
 [25] to respond to it or how that happened. But I did

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[1] respond to it.
 [2] Q: You did. If you look at volume 8 at 3740.
 [3] (2.30 pm)
 [4] There you will see your reply; 17th February 1994.
 [5] So quite a while later in fact?
 [6] A: Yes.
 [7] Q: The letter from Mr Donovan had been on 20th December and
 [8] you are writing back here on 17th February?
 [9] A: Correct.
 [10] Q: "Dear Mr Donovan, thank you for your letter of
 [11] 20th December 1993. As you know, David Watson has left
 [12] Shell UK to take up a post with Shell International and
 [13] your letter has been passed to me for attention. I am
 [14] not sure I am able to add much to David's letter of
 [15] 2nd December. This basically set out the legal position
 [16] in respect of the Make Money concept. The concept
 [17] itself predates your involvement in the 1984 promotion
 [18] and, therefore, you have no proprietary rights in the
 [19] game concept, although you may have some rights in the
 [20] design, artwork and playing pieces which were used in
 [21] the 1984 game. Those rights would not, in any event,
 [22] extend to the scheme rules or method of playing the
 [23] game."
 [24] If you have open with you already number 3214,
 [25] from 20th December -

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[1] actually remember. I have not looked at this for a
 [2] while. But the final paragraph here is talking later,
 [3] when we are thinking about using other promotions. It
 [4] could relate to the 2nd December letter. I do not
 [5] know. I have not looked at this letter since I sent it,
 [6] I do not think.
 [7] Q: Let me be fair to you, because I think it is important.
 [8] It is dealing, is it not, with the last paragraph of
 [9] 20th December 1993?
 [10] A: It is.
 [11] Q: Which says:
 [12] "Unless Shell is actively considering running one
 [13] of the relevant promotions" - one of the relevant
 [14] promotions - "it seems to me that further discussion is
 [15] unwarranted at this moment. Discussions relevant to a
 [16] particular concept could be undertaken at the
 [17] appropriate time, should it ever become necessary."
 [18] So, when you say, "I am not certain of the
 [19] relevance of the final paragraph", it appears it is that
 [20] paragraph you are uncertain about?
 [21] A: It is that paragraph I am looking at and, from reading
 [22] the first sentence, I think it looks as though I am not
 [23] clear what is being talked about here. Because, if you
 [24] take it on its own, it is quite a general, unspecific
 [25] paragraph.

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[1] A: Yes.
 [2] Q: - you are dealing with matters that Mr Watson had dealt
 [3] with and plainly had seen his 2nd December letter, had
 [4] you not?
 [5] A: I looks as though I had, yes.
 [6] Q: It is inconceivable that you had not, unless you were
 [7] just misrepresenting it. Because, in order to
 [8] say, "I am not sure I am able to add much", you must
 [9] have read it. "This basically set out the legal
 [10] position", and then you go on:
 [11] "Therefore, I am not certain of the relevance of
 [12] the final paragraph of your letter. In that, given the
 [13] example of Make Money, there is no proprietary right in
 [14] the concept."
 [15] What did you mean when you said you are not sure
 [16] of the relevance of the final paragraph of the letter?
 [17] A: I am sorry, I have not looked at this letter for a
 [18] while.
 [19] Q: Quite. You have the letter of 20th December that you
 [20] are replying to?
 [21] A: Yes.
 [22] Q: What did you mean?
 [23] A: It looks like - reading through my paragraph - again,
 [24] I am referring back to the proprietary rights in the
 [25] principle of using multiple currencies. I cannot

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[1] Q: But did you not appreciate that what Mr Donovan was
 [2] saying is: "I would need to be consulted by Shell before
 [3] you ran Make Money, the Megamatch concept and any scheme
 [4] involving multiretailers issuing a common currency at
 [5] each of its sites"?
 [6] A: No.
 [7] Q: I have not put it very well. Let us go back to the
 [8] letter of 19th November, please. I want you to
 [9] understand what I am putting to you. 2976 in the same
 [10] volume. The last paragraph of that document. You must,
 [11] I suggest to you, have seen this document to make your
 [12] answer on 17th February. It would have been natural,
 [13] surely, to look at the chain of correspondence, would it
 [14] not?
 [15] A: I cannot remember whether I saw the chain of
 [16] correspondence. It looks as though I saw certainly the
 [17] letter of 2nd December. So far as I can recall,
 [18] Mr Watson was dealing with Mr Donovan regarding Make
 [19] Money.
 [20] Q: But, if you had read it - have a look at the last
 [21] paragraph. He mentions his rights to Megamatch. Then
 [22] he says:
 [23] "...also promotional schemes whereby the common
 [24] currency [points et cetera] are collected or rewarded at
 [25] outlets belonging to the various types of retailer

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[1] participating in the activity."

[2] If you had read that, you would have recognised
[3] the possibility, would you not, that it applied to a
[4] multibrand loyalty concept?

[5] **A:** That is in the most general sense --

[6] **Q:** In a very general sense?

[7] **A:** -- referring to a multibrand loyalty concept. I am not
[8] sure that I read this letter.

[9] **Q:** Right.

[10] **A:** I have no memory of reading it. In the handover from
[11] Mr Watson to wherever this correspondence went, I do not
[12] know where it was all put.

[13] **Q:** Mr Watson then replies saying, "You do not have rights
[14] to that general concept. Look at Air Miles", and you
[15] then take up the correspondence in February saying, "You
[16] have no rights to Make Money", and you are not sure of
[17] the relevance of his final paragraph. Is the position
[18] not that you knew by then quite well that Mr Donovan was
[19] suggesting that he had rights to a scheme that
[20] could -- and when I say "rights", I mean in the loosest
[21] sense -- he had a claim upon a scheme that was a
[22] multiretailer loyalty scheme?

[23] **A:** No, I did not know quite well at all. It was not in my
[24] mind for any moment, so far as I can remember, in the
[25] relevant period. It looks to me like my response was on

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[1] originals.

[2] **MR JUSTICE LADDIE:** I am sure there is nothing sinister in
[3] it.

[4] **MR COX:** I am prepared to accept it.

[5] **MR JUSTICE LADDIE:** Who made up these photocopies?

[6] **MR COX:** I do not know. They were supplied to us by the
[7] defendant. My learned friend is telling me that I have
[8] been supplied with the wrong bundle. In any event, let
[9] us proceed.

[10] Mr Lazenby, may I then ask you, with my apologies,
[11] to go to 94, which is, we hope --
[12] (2.45 pm).

[13] **MR JUSTICE LADDIE:** It is volume 12.

[14] **MR COX:** It is volume 12, my Lord, yes. Page 5548.

[15] 16th February 1994. 5549, the middle of the page,
[16] Don Marketing:

[17] "Shot down Nintendo --

[18] **A:** Sorry --

[19] **Q:** This is your note, is it?

[20] **A:** This is my note. It is my writing. It says, "Shut down
[21] Nintendo".

[22] **Q:** "Shut down Nintendo, establish position on Make Money,
[23] ditto, ditto, multiretailer promos."

[24] Do you see that?

[25] **A:** Yes.

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[1] the basis of David Watson's 2nd December letter and
[2] reading of that indicates reference to Make Money and to
[3] the ownership of issuing points or whatever, or game
[4] pieces, from multiretailers. He uses the example of
[5] Air Miles. I am probably building on that. But
[6] I honestly cannot remember what I had in my mind.

[7] **Q:** You knew quite well. You thought, I suggest to you,
[8] that Mr Donovan had stumbled on exactly the right
[9] target, did you not? That he was maintaining a right to
[10] a multiretailer concept that you were busy embarked upon
[11] implementing?

[12] **A:** No.

[13] **Q:** You knew that quite well by 17th?

[14] **A:** You keep suggesting that. I keep having to say, "I do
[15] not know that. I did not know that".

[16] **Q:** Really? Have a look at your diary, please.
[17] 16th February 1994?

[18] **MR JUSTICE LADDIE:** Which volume?

[19] **MR COX:** My Lord, I think it is volume 13.

[20] It does not appear to be in the copy, my Lord.
[21] I apologise for that. Strangely, my Lord, it is not in
[22] the copy your Lordship has. If your Lordship turns to
[23] 6017. But 6018 is copied. But there is a missing
[24] page which has not been copied. Which I had not
[25] previously detected, because I have been looking at the

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[1] **Q:** You knew quite well that Mr Donovan was asserting claims
[2] to a multiretailer promotions. You were in the process
[3] of establishing the position, were you not?

[4] **A:** When you read the various letters that you have drawn my
[5] attention to, it seems now to be clear.

[6] **Q:** What do you mean "now"?

[7] **A:** Well, on reading them through now. I cannot remember
[8] reading them at the time or looking at them. Or
[9] I cannot remember what I talked to Mr Watson about. But
[10] you have just taken me through them. I am saying, when
[11] you read through them in order like this, it is clear
[12] there is some kind of claim over multiretailer
[13] promotions. Which seems to be going beyond Megamatch.
[14] That is what you have just taken me through here in
[15] these letters.

[16] **Q:** You knew it very well. And you have just spent the last
[17] five minutes going blue in the face, I suggest to you,
[18] asserting that you did not know it and that you could
[19] not recollect anything about it?

[20] **A:** I cannot recollect. I still cannot. I have written it
[21] down here. Clearly that was on the agenda on
[22] 17th February.

[23] **Q:** 16th February, I think.

[24] **A:** No, I think that is the 17th. I think these notes refer
[25] to the page after rather than the page before.

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[1] Q: They are on the back of 16th February. Which would that
[2] be?

[3] A: That is referring to notes I made on 17th February.
[4] I would normally make notes on the page opposite the
[5] date.

[6] Q: So, if it is facing the page, it is on the 17th, is it?

[7] A: Yes.

[8] Q: Right. "Establish position on multiretailer promos".

[9] So, when you wrote the letter that we have just been
[10] looking at on 17th February 1994, you knew quite well
[11] that multiretailer promotions were an issue, did you
[12] not?

[13] A: It looks like I did, yes.

[14] Q: You did indeed. And you chose - you chose - simply to
[15] say: "You have no right in the concept of Make Money",
[16] Shell would otherwise be free to promote a game based on
[17] that concept. I.e. Make Money?

[18] A: That was the best of my knowledge at the time, I think.

[19] We had had the letter, clearly from the correspondence
[20] which David had been dealing with, which he had somehow
[21] handed over to me. I cannot remember the process for
[22] handing it over. I cannot remember what his brief to me
[23] was about that.

[24] Q: Why did you not say in the letter:

[25] "Furthermore, you do not have any right to a

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[1] and implement it - and I had the two things separate in
[2] my mind - on our own.

[3] Q: Shall I suggest to you why it was you did not? He had
[4] written to Mr Watson, to Shell, to you, meaning
[5] Shell, "There is no point in discussing this unless you
[6] are going to run one of these promotions". You, if you
[7] had written back saying: "You have no rights in the
[8] multibrand loyalty scheme concept idea", would have
[9] tipped him off that you were indeed going to roll out a
[10] concept similar to that which you knew he claimed. Is
[11] that not right?

[12] A: I cannot say what he would have thought or done as a
[13] consequence of anything I might have said.

[14] Q: I am asking what was in your mind.

[15] A: That is what I am saying. I cannot say what he would
[16] have said if I had said something which I did not say.

[17] Q: You did not want to tip him off, did you? You did not
[18] want that trouble then, did you?

[19] A: As I say, I did not say that -

[20] Q: I am asking you. You chose not to saying anything about
[21] it because you knew it would lead to a big row, did you
[22] not?

[23] A: I did not know - I cannot remember clearly what I was
[24] thinking at the time, I cannot remember why I became
[25] involved with this and I cannot remember which of

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[1] multiretailer promotion in which there is issuing of
[2] points at each retailer?"

[3] A: I do not know.

[4] Q: Was is that you did not want to tip Mr Donovan off?

[5] A: I do not know.

[6] Q: Because, you see, the last time you had done that, on
[7] 18th June, and said you could go ahead with Make Money,
[8] it had led to all this row, had it not? About Make
[9] Money?

[10] A: Well, that is the case, yes. The relationship with
[11] Mr Donovan was - had rapidly gone downhill and we were
[12] having problems by this stage. So, therefore, we had to
[13] be careful what we did or did not say to Mr Donovan in
[14] writing or on the phone.

[15] Q: If you had told Mr Donovan that: he had no rights to
[16] multiretailer promotions, he would have suspected that
[17] you were going to run one; is that not right?

[18] A: I do not know. I cannot say what he would have thought.

[19] Q: As I say, when you told him that in relation to Make
[20] Money, he had become very concerned, had he not? When
[21] you had told him that, if you wanted to, you could run
[22] Make Money without reference to him, he had become
[23] concerned?

[24] A: He had become concerned about Make Money indeed. I had
[25] said that we could run it, which meant use the concept

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[1] letters in particular I read. But it was - it all
[2] seemed very confusing at the time. I did not certainly
[3] know why Mr Donovan seemed to think it was going beyond
[4] Megamatch. In my mind, he was a games man. Megamatch
[5] was definitely clearly his game. That was the long and
[6] the short of it. I would imagine that I was not sure
[7] why he was suggesting anything else.

[8] Q: What do you mean, you would imagine? You knew quite
[9] well.

[10] A: I did not know quite well.

[11] Q: You knew quite well, Mr Lazenby. He had told you. You
[12] had Concept Four. At least you accept that, do you not?

[13] A: I cannot add anything to what I have said previously
[14] about Concept Four. It was one of many various, vague
[15] and some worked up collections of ideas which came in at
[16] the time. I certainly, by early 1994, would not be able
[17] to remember distinctly something which I had not looked
[18] at for months, if not years, if I ever did. I certainly
[19] would not be able to remember that after almost two
[20] years on.

[21] Q: No. In any event, let us just see, if we may, how this
[22] proceeded. On 3rd March at volume 9A, please.

[23] MR JUSTICE LADDIE: Mr Cox, have you finished with this?

[24] MR COX: My Lord, yes.

[25] MR JUSTICE LADDIE: May I ask the witness some questions?

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[1] **MR COX:** My Lord, yes.

[2] **MR JUSTICE LADDIE:** Mr Lazenby, I understand your evidence

[3] that you cannot remember what you looked at and what you

[4] did not look at. What Mr Cox has been putting to you

[5] is, he is suggesting to you that you would have seen the

[6] letter. If you were going to take up the correspondence

[7] which had been initially dealt with by Mr Watson, it

[8] only made sense for you to actually look at all the

[9] correspondence to see what you were getting into. That

[10] is what is put to you. As I understand it, your

[11] position is you do not recall whether you did or did

[12] not?

[13] **A:** Yes.

[14] **MR JUSTICE LADDIE:** I would like you to open page 2976 in

[15] file E7.

[16] **A:** Yes.

[17] **MR JUSTICE LADDIE:** I want you just to look at that last

[18] sentence and imagine you read that Mr Donovan was

[19] claiming rights in promotional schemes. He describes

[20] them as:

[21] "... promotional schemes where there is a common

[22] currency collected or rewarded at outlets belonging to

[23] various types of retailers participating ..."

[24] **A:** Nothing more, nothing less.

[25] **A:** Yes.

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[1] go to volume 12, your diary.

[2] **A:** Yes.

[3] **MR JUSTICE LADDIE:** Page 5549, the one that Mr Cox just put

[4] to you. Is that what you think you meant by "establish

[5] position"? Are you saying that means "find out", as

[6] opposed to "assert"?

[7] **A:** Yes.

[8] **MR COX:** Do you see the bottom line:

[9] "Our legal counsel form an opinion ..."

[10] **A:** Yes.

[11] **Q:** You were looking to establish the position with legal

[12] counsel, were you not?

[13] **A:** It looks like I was. The whole of this subject had got

[14] to a stage where we needed to - if we had not already

[15] referred to our legal advisors or our legal department,

[16] then we needed to refer to them on a regular basis.

[17] This looks to me like it was me making a note to myself

[18] to ask them what they thought the legal position was -

[19] **Q:** On multiretailer promos?

[20] **A:** I could not say what that refers to. It might be

[21] multiretailer promos. It is more likely to be

[22] Make Money. We knew that we were talking to Mr Donovan

[23] about Make Money. It looks to me, from the letters,

[24] that we were not quite sure what Mr Donovan was saying

[25] about multiretailer promos.

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[1] **MR JUSTICE LADDIE:** Pretend for a moment that you had seen

[2] that and you realised that he was making a claim in

[3] those very wide terms.

[4] **A:** Yes.

[5] **MR JUSTICE LADDIE:** Mr Cox is saying, from your diary, it

[6] looks like you did know that some claim in relation to

[7] promotions was being made.

[8] **A:** (Witness nods).

[9] **MR JUSTICE LADDIE:** Assume you had this letter in front of

[10] you in those wide terms, in not referring to it in your

[11] letter on page 3740, were you trying to avoid a dispute

[12] with Mr Donovan in relation to that wide claim over a

[13] very wide area of promotional schemes involving multiple

[14] retailers? Is that what you were doing?

[15] **A:** No, I think, if I read the first sentence, what I am

[16] trying to do is to -

[17] **MR JUSTICE LADDIE:** The first sentence of what?

[18] **A:** My letter of 17th February, number 3740. It looks to me

[19] like I am trying to establish quite what Mr Donovan is

[20] referring to or trying to say. When I say I am not sure

[21] of the relevance of the final paragraph, all of these

[22] things do seem quite general. What I suspect I am

[23] trying to say there is: "What are you trying to say?" I

[24] am trying to flush that out.

[25] **MR JUSTICE LADDIE:** I see. Just one other thing. Can you

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[1] **Q:** Yes. Could you turn to volume 9A, 3809. This is the

[2] reply to your letter. You had mentioned nothing in your

[3] letter of 17th February about multiretailer promos, had

[4] you?

[5] **A:** I had not mentioned anything specifically. I had said

[6] that I did not understand what Mr Donovan was referring

[7] to in his previous letter.

[8] **Q:** Quite. You had referred specifically to Make Money?

[9] **A:** Which was what I thought or believed the discussion was

[10] about at the time.

[11] **Q:** That is a little bit different. So are you saying that,

[12] from this correspondence, you had thought the discussion

[13] was about Make Money?

[14] **A:** What I was saying was I knew that Make Money was on the

[15] agenda. I did not quite know what else was on the

[16] agenda, and the diary note indicates I was clearly

[17] trying to establish what else was being referred to or

[18] what else was on the table.

[19] **Q:** You see it is a letter dealing particularly with Make

[20] Money, in which it complains that you were going to run

[21] it without Don Marketing and that your persistence in

[22] pursuing the matter confirms you were already aware -

[23] this is the second page:

[24] "... of the possibility we had of proprietary

[25] interest yet still chose to move forward without

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[1] resolving the matter. It was this very persistence
 [2] which gave the game away. While awaiting a response
 [3] regarding the proposed meeting, we are obtaining
 [4] specialist counsel's advice regarding Make Money."
 [5] So what he is saying there is that, without
 [6] resolving any dispute, you just pressed on with Make
 [7] Money. You can see that is what he is saying, can you
 [8] not?
 [9] A: Yes, and that would indicate -
 [10] Q: That is true, is it not?
 [11] A: That would indicate that - Shell presumably?
 [12] Q: Yes.
 [13] A: What is true, sorry?
 [14] Q: It is true that is exactly what happened: without coming
 [15] to Mr Donovan, though you knew since the summer of 1993,
 [16] Shell just went ahead and put into programme the running
 [17] of Make Money?
 [18] A: What is true is that we wanted to use Make Money.
 [19] I cannot remember when it was decided, but we wanted
 [20] to. We believed, with all the information we had to
 [21] hand at the time - we had not seen the relevant letters
 [22] which came to light later on in 1993 - that we could
 [23] run it. What is also true is that we knew that
 [24] Mr Donovan had a problem with that of some sort. Of
 [25] course we continued to develop it, because we wanted to

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[1] Don Marketing Position."
 [2] Do you see that?
 [3] A: Yes.
 [4] Q: So one of the key actions, even on 15th September 1993,
 [5] was to finalise the Don Marketing position?
 [6] A: This is what I said. We were pushing ahead with doing
 [7] the promotion, and one of the things we were doing in
 [8] the process was trying to determine exactly what
 [9] Mr Donovan's position or claim was. We did not know.
 [10] Q: If you look at 2641 in the same bundle - I think this
 [11] is the history you are talking about - this is a note
 [12] from Fox to Watson 22nd September, a week later:
 [13] "Cupid and Don Marketing", there is then a
 [14] reference to some rights. What is being looked at here
 [15] of course were rights such as copyright and patents,
 [16] were they not?
 [17] A: I was not involved in this part of the process, so
 [18] I cannot comment very much. I know at a very general
 [19] high level sense that the search was going on, driven by
 [20] Charlie Fox, with Option One helping out. I was not
 [21] involved closely at all.
 [22] Q: "Option One's view is that Don Marketing do not have a
 [23] claim over Cupid. We still need to establish, however,
 [24] who first introduced Make Money to Shell. Was it
 [25] invented by Shell in 1966 or was it Don Marketing who

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[1] use it, whilst the problem or whatever, the claim that
 [2] Mr Donovan had over it, was being sorted out separately.
 [3] Q: Yes. But it was not in fact sorted out. Can I just ask
 [4] you to look - because there were moments along this
 [5] road where plainly it was considered speaking to
 [6] Mr Donovan about it?
 [7] (3.00 pm)
 [8] Have a look, if you would, at volume 6, 2609.
 [9] Note of 15th September 1993. Operation Cupid; that was
 [10] the name for Make Money, was it not?
 [11] A: Yes.
 [12] Q: Operation Cupid planned at that time for
 [13] 1st February to 27th March 1994?
 [14] A: Yes.
 [15] Q: "The interim period of eight weeks between the end of
 [16] Ajax and the start of Hercules provides a window for
 [17] Cupid."
 [18] 2609:
 [19] "Researched well in 1991 and 1992 ... means of
 [20] attracting loyal competitor customers, retailer
 [21] demand ... do not expect Cupid to perform as well as
 [22] 1984 because the market was different, but it should
 [23] gain market share."
 [24] If you look at the bottom of the page, you will
 [25] see, under one of the bullets for key actions "Finalise

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[1] rejigged the idea in 1984 and who reintroduced the
 [2] concept? Future action; quiz John Smeddle", he being,
 [3] as we know, one of the persons who had worked on it with
 [4] Don Marketing in 1984 and previously:
 [5] "Seek PM's", that is Pamela Marsh, is it not?
 [6] A: It is.
 [7] Q: "... PM's legal approval ... ask John Donovan whether he
 [8] will consider working for Shell again in the future.
 [9] If "no", please put it in writing. If "yes", decide if
 [10] we want to use him for Cupid."
 [11] I do not know whether you know, do you, that
 [12] question was never asked of Mr Donovan?
 [13] A: I do not know. I never asked it.
 [14] Q: If you will turn in the same bundle to 2668, from Mr Fox
 [15] to Mr Watson on 1st October 1993.
 [16] A: Sorry, I think this one is from Tim Hannagan to Fox,
 [17] Halford and Watson.
 [18] Q: Yes, I beg your pardon. It is from Hannagan to Fox,
 [19] copied to Watson:
 [20] "Subsequent to our meeting with Howitts, I now
 [21] have their preliminary costings. These people are very
 [22] experienced in designing (mechanical), printing and
 [23] running games promotions, matching halves et cetera.
 [24] They have recently run game promotions for Shell Oils,
 [25] Shell France and a number of competing cereal and drinks

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[1] manufacturers. I suggest we explore their ability to
 [2] manage Cupid with us before we start talking to the
 [3] likes of Don Marketing. After all, these people usually
 [4] go direct to Howitts to find out what can be done and
 [5] then charge us for it. Let me know what you think."

[6] I suppose you would say you had no input into
 [7] this?

[8] A: I was not at all closely involved in any of the activity
 [9] over the preparation of Cupid or establishing the
 [10] position with Mr Donovan.

[11] Q: Right. So it would appear at least that consideration
 [12] had been given to working with or speaking to or
 [13] resolving the dispute with Don Marketing, but the choice
 [14] was not to do so and to press on, is that right?

[15] A: I cannot assume what the string of events was. I know
 [16] we were trying to establish what Mr Donovan's position
 [17] was.

[18] Q: So, if we look again at the letter that is in front of
 [19] us on 3rd March 1994 to you from Don Marketing?

[20] MR JUSTICE LADDIE: Which file, which page?

[21] MR COX: My Lord, put away all the files but 9A, my Lord.

[22] I am sorry, there is one document I need you to look at
 [23] before we do that, in volume 6 at 2798. This is a
 [24] letter from Withers & Rogers, European Patent Attorneys,
 [25] dated 5th October 1993 to a Miss Karen Gillon of

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[1] Q: Did you believe that an idea put forward to you, people
 [2] did not have rights in them? When an agency came to you
 [3] and proposed an idea to you, did you believe that that
 [4] agency had a right to that idea or not?

[5] A: I do not fully understand what you mean by "rights". If
 [6] an agency put an idea to me, and it was a novel, unusual
 [7] or unique idea which we had not seen before, then
 [8] clearly it was their idea and they would get rewarded
 [9] suitably for it. That was the case with a number of
 [10] promotions.

[11] Q: Right. When you saw an idea that was not original, or
 [12] did not strike you as original at the time, you would
 [13] write saying so, would you?

[14] A: On some occasions I would say so verbally in a meeting.
 [15] On some occasions I would write. I do not think,
 [16] certainly in 1992, I had a standard way of doing it.
 [17] I explained that I did not have a formal handover or
 [18] briefing about this kind of thing. I was using a
 [19] logical or sort of straightforward approach which seemed
 [20] sensible to me at the time.

[21] Q: Do you remember the letter that we discussed of
 [22] 31st July 1992 to the Hazell Consultancy?

[23] A: Yes.

[24] Q: That was a letter in which you said to the
 [25] Hazell Consultancy in effect, is it not: "We have

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[1] Option One. In your witness statement - we need not go
 [2] to it - you recite the fact, we have looked at it
 [3] already, that Option One's conclusion, and they had
 [4] researched it, was that there was no rights to Make
 [5] Money. I think this is a letter to Option One setting
 [6] out the opinion of Mr Wright of Withers on the question
 [7] of Make Money. Which concludes after an analysis of the
 [8] Patents Act and trade mark law, if you look at 2798:

[9] "There were no rights of that kind in Make
 [10] Money".

[11] Again, was this opinion - not this specific
 [12] opinion, but was the view that there were no rights
 [13] consistent with your view all along? As you had said to
 [14] Mr Donovan on 18th June?

[15] A: Yes, I mean, I knew nothing about the letter that
 [16] subsequently came to light. I believed that it
 [17] was - it had been a Shell promotion. I had no reason
 [18] to believe otherwise at that stage.

[19] Q: What this letter does not address and what your
 [20] conversation on 18th June does not address of course is
 [21] the issue of ideas that are communicated in confidence.
 [22] Did you believe in 1992 that, provided there were no
 [23] rights in terms of copyrights or patents, there was no
 [24] right in an idea?

[25] A: What do you mean when you say "right/rights"?

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[1] already got these ideas and, if we do them, we are going
 [2] to do them internally."

[3] A: Yes, that is what, in effect, that letter said.

[4] Q: Did you ever say anything like that after Concept Four
 [5] had been delivered to you on 14th, or shortly after, of
 [6] May 1992?

[7] A: I cannot remember discussing or referring to
 [8] Concept Four at all or the contents of it at all. It
 [9] was - I do not recall receiving it or reading it. The
 [10] content of it is all general stuff which was all in the
 [11] public arena at the time. Now it is clear that it would
 [12] not be unique or different from many other things
 [13] I would see at the time. Since it is in the form of a
 [14] general string of ideas, it is not a worked-up promotion
 [15] or anything like that, yes.

[16] Q: If you read Concept Four, are you saying that you would
 [17] have written back saying: "Thanks for it, but, on the
 [18] other hand, it really is a trite idea. We have already
 [19] had this pitched to us and you can get this from
 [20] anywhere."

[21] A: If I had read it, I might or might not have written back
 [22] in that manner. But that is supposition, is it not?

[23] Q: That is having it every way, forgive me. Why might you
 [24] not?

[25] A: I might not have had time. I might have been diverted

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[1] on other things. I might not have read it. As I said,
 [2] I cannot remember reading it. I did not respond to
 [3] every piece of paper that came across my desk, whether
 [4] it was faxed or E-mailed or presented in documentary
 [5] form or posted.

[6] Q: But you never said anything like that to Mr Donovan on
 [7] 4th June 1992, did you?

[8] A: I cannot remember discussing this at all on 4th June.
 [9] (3.15 pm)

[10] Q: If you would like to put away volume 9A, could we look,
 [11] please, at the state of your knowledge at the end of
 [12] 1992? After 24th November 1992, we have seen that you
 [13] have telephoned Mr Tim Bonnet concerning Onyx. We have
 [14] seen the letter of 8th December 1992 from Senior King,
 [15] which says that you are going to take over the project,
 [16] and they are looking forward to working with you; you
 [17] remember that one?

[18] A: Yes.

[19] Q: On 24th December, did you write a note -
 [20] volume 3/1356 - to Mr Leggatt?

[21] A: Yes.

[22] Q: Mr Leggatt had only recently been in office, had he not?

[23] A: I think he had been there for a couple of months by
 [24] then.

[25] Q: You were, in this document, making recommendations to

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[1] A: Correct.

[2] Q: It was not part of the Powerpoints set-up or system.

[3] A: No.

[4] Q: But here you are, on 24th December, referring to,
 [5] effectively, would you agree with me, full partners, or
 [6] what came to be called in 1993 full partners, that would
 [7] be issuers and redeemers, and tactical partners or
 [8] associate partners, redeemer-onlys.

[9] A: I never used the term tactical or associate partners,
 [10] I do not think.

[11] Q: I think you did, but we will come back to it. It is
 [12] easily done.

[13] A: In my mind, there were issuers and redeemers or people
 [14] who just redeemed. There were reasons why particular
 [15] retailers would fit into each category.

[16] Q: Yes. Would you just take out page 450A again in
 [17] file 1? Do you see the bottom line on that page?

[18] A: Yes.

[19] Q: "Some other businesses might be linked to the scheme
 [20] only to the extent of redeeming the promotional
 [21] currency."

[22] Do you see that?

[23] A: Yes, I do.

[24] Q: That is exactly what you are suggesting to Mr Leggatt
 [25] under option five when you say:

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[1] Mr Leggatt concerning what should happen in the future;
 [2] could we just look at it? We have seen it before in
 [3] this case, so we need not perhaps spend a long time on
 [4] it. You review five options, do you not?

[5] A: Yes.

[6] Q: The last of which you describe as "the ultimate". It is
 [7] option 4, electronic points:

[8] "... but with partner promoters both redeeming and
 [9] issuing electronic points. Each individual partner
 [10] promoter will not necessarily both issue and redeem
 [11] points."

[12] A: Yes.

[13] Q: When did you build into your thinking the idea that not
 [14] only would there be a group of partner promoters
 [15] redeeming and issuing, but there would also be a second
 [16] tier, as it were, of redeemer-onlys?

[17] A: There was no particular time when suddenly I decided
 [18] that. That was a trite part of the promotion, I guess.

[19] It was always there, it was part of Collect and Select
 [20] from the mid 1980s. We had redeemer-only options with
 [21] both, as far as I recall, Little Chef and B&Q, where the
 [22] points people were collecting in Collect and Select were
 [23] taken to the store, albeit they were paper points.

[24] Q: But it was not a Powerpoints idea, as we have discussed
 [25] already.

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[1] "Each [partner] will not necessarily both issue
 [2] and redeem points."

[3] In other words, there will be some issuers and
 [4] redeemers and some redeemers-only, is that right?

[5] A: It is the same thing. As I say, redeeming only was a
 [6] standard part of - it was well-known in the market.

[7] Q: As a separate feature, of course it was well-known in
 [8] the market, but you have begun to build them together in
 [9] a scheme, have you not?

[10] A: We have been putting together the scheme, starting with,
 [11] I guess, Onyx, but certainly throughout the year.

[12] Q: Mr Lazenby, can I give you an analogy which I hope will
 [13] be helpful, or maybe not. Of course, ears, noses, eyes,
 [14] lips are all common to human beings, but it is the way
 [15] you assemble them together that produces the distinctive
 [16] thing, a human face, is it not? What you had begun to
 [17] do by the end of December was assemble features
 [18] together, the outlines of a scheme, had you not, in your
 [19] own mind?

[20] A: We had started to do that much earlier in the year
 [21] actually, probably in August, when we were talking to
 [22] the six technology suppliers.

[23] Q: And this scheme in your mind, by 24th December, already
 [24] had certain features, the ultimate scheme. It would
 [25] have a core group, would it not, of partners?

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[1] A: I would not have put it - the thinking at that stage
 [2] would not have put it like that. It would have put it
 [3] as some partners were issuing and redeeming points,
 [4] other ones were redeemers-only, who did not want to
 [5] issue points; they did not need to issue points which
 [6] had the result of getting loyalty from their customers.
 [7] That was the clear strategic position from their point
 [8] of view, and that was clear throughout 1992.

[9] Q: I want to define, if I can, the physiomy of this
 [10] scheme as at the end of December. We have looked at a
 [11] number of these documents, and plainly you had in mind,
 [12] at least as a good option, a Shell-led group of
 [13] retailers, did you not?

[14] A: I mean, what this says is a group of retailers. It does
 [15] not talk about whether it is Shell-led or not. That was
 [16] again another trite thing in the market. We would
 [17] always lead promotions ourselves. That was the way to
 [18] manage them, to handle them, to control them, and that
 [19] is the nature of how Shell does business.

[20] Q: 1132 in that bundle, please. We have already looked at
 [21] it, but just look at it again. In your mind at this
 [22] time - and this is August -

[23] A: The document is not dated.

[24] Q: We have established that the marketing brief was
 [25] prepared, you thought, possibly July into August?

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[1] joint venture, I would assume, and the first - it is
 [2] pointless, really, to make assumptions on how it would
 [3] go ahead, but you would normally get alongside your
 [4] other partners and decide who was going to develop it.
 [5] Other schemes of this sort - Fly Buys in Australia was
 [6] developed as a joint venture between the three
 [7] participating partners from the start. It was not
 [8] driven by Shell.

[9] Q: Did you know about the Fly Buys in Australia in 1992?

[10] A: Yes, clearly. Shell was absolutely part of it. I do
 [11] not know when I became aware of it or knew about it.
 [12] I spoke to the guy who was seconded on to it from Shell
 [13] some time during my tenure in promotions, so some time
 [14] in 1992, 1993, 1994, I became aware of it. I seem to
 [15] recall actually when I did I was quite surprised they
 [16] were doing something which was quite similar to Air
 [17] Miles which we were involved in, and that we did not
 [18] know about it already.

[19] Q: We will come back to that, but can we go to 1356, "the
 [20] ultimate"? You suggest to Mr Leggatt - and by this
 [21] time, in your mind, you can have a third party, you can
 [22] have equal partnership or you can have Shell-run and
 [23] managed, and this scheme is going to have, if it is the
 [24] ultimate that is adopted, issuers and redeemers, and
 [25] redeemers-only, correct?

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[1] A: This looks like a preparatory note for the marketing
 [2] brief which was used for the six people we selected and
 [3] talked to in September.

[4] Q: That is it. Therefore, in your mind by this time was
 [5] third parties, possibly issuing and redeeming; then
 [6] there were these three possibilities:

[7] "Shell run/managed scheme. Shell one of some
 [8] equal participants. Run by third party."

[9] A: Yes. Those are the three ways that we could have
 [10] participated in a scheme of this sort.

[11] Q: And the equal participants one only creeps in for the
 [12] first time here in this document, as I put to you
 [13] before.

[14] A: I cannot remember how it came in or when it came in, but
 [15] clearly this is a piece of strategic thinking. In a
 [16] piece of strategic thinking, you would come up with all
 [17] the options that could possibly have been done. That is
 [18] why I would expect to find such an option here.

[19] Q: So in your mind, if you will turn back to 1356, is a
 [20] scheme which could be run by a third party; could be all
 [21] equal participants; could be Shell owned and managed.
 [22] Of course, if it was equal participants, Shell would
 [23] still be organising it, because that was the point, was
 [24] it not?

[25] A: If it was equal participants, it would be some kind of

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[1] A: Yes.

[2] Q: And, of course, that is put forward to Mr Leggatt on
 [3] 24th December.

[4] A: Yes. This is the thinking from myself and David
 [5] Watson. We had been working on this, so far as
 [6] I recall, through just December.

[7] Q: The next thing that happens, according to you, is that
 [8] Option One is brought in, to review what you call the
 [9] Shell vision, is that not right?

[10] A: Well, the next thing that happened was myself and David
 [11] Watson trying to work out how we were going to take this
 [12] ahead. Probably we had a discussion with Frank Leggatt,
 [13] probably we got input from him. I think at that stage,
 [14] and certainly from Frank, it became clear that we did
 [15] have a mandate to go ahead and do something with this.
 [16] Then at that stage, David and I would have sat
 [17] down and tried to work through how we were going to take
 [18] it on. We would have evaluated whereabouts we were,
 [19] what our vision was, and looked at how we were able to
 [20] take it forward.

[21] Q: Right. Let us look again, if you would, at the letter
 [22] at 450A, which should be open in front of you.

[23] A: Yes.

[24] Q: Had you had this letter, you would have read about a
 [25] multibrand loyalty programme on the basis of

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[1] a consortium; under "Multibrand Loyalty Programme", with
 [2] Shell as the lead partner, do you see that?
 [3] A: Whereabouts is it, sorry?
 [4] Q: Second paragraph, under "Multibrand Loyalty Programme":
 [5] "As mentioned, if the project proceeds, Shell
 [6] would be the lead partner in organising the
 [7] consortium ..."
 [8] A: I see that.
 [9] Q: "... which would consist of a range of retailers, plus
 [10] possibly fast moving consumer good brands, and other
 [11] businesses, with each partner operating the scheme on an
 [12] exclusive basis within their own market sector.
 [13] "The programme could even be set up as a separate
 [14] business venture in which all of the partners issuing
 [15] and redeeming the common promotional currency could
 [16] share the costs and benefits."
 [17] That is the idea of a partnership sharing costs,
 [18] is it not?
 [19] A: Yes, it looks like that. It is the joint venture option
 [20] that I mentioned earlier on.
 [21] Q: "The partners could issue the currency against
 [22] a different purchase value, e.g. one point with every
 [23] £5 ... one point with every £2 ... Some other businesses
 [24] might be linked to the scheme only to the extent of
 [25] redeeming the promotional currency."

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[1] consortium, issuing and redeeming, exclusive in their
 [2] own sector, with some others associated as redeemers -
 [3] were present in your mind, coalesced together as a
 [4] distinct idea?
 [5] A: It was one of the options which was clearly available.
 [6] (3.30 pm)
 [7] Q: Let me get it quite clear so you can understand. By
 [8] let us say, 24th November, in your mind, coalesced as a
 [9] clear idea, was a scheme of an exclusive group of
 [10] retailers, Shell-led, right?
 [11] A: Do you want me to take them point by point?
 [12] Q: One by one. An exclusive group of retailers issuing and
 [13] redeeming a common currency.
 [14] A: Yes.
 [15] Q: You say that was in your mind by 24th November?
 [16] A: Clearly.
 [17] Q: Was it in your mind by 12th May?
 [18] A: That was what had been proposed by GHA at least.
 [19] Q: Yes.
 [20] A: So it was clearly in my mind that that was
 [21] a possibility, and at 12th May, I will remind you, I was
 [22] working on short-term promotions 90 per cent of the
 [23] time, so I was not really concerned or thinking about
 [24] how a long-term promotion would work.
 [25] Q: No. So as a result of GHA, you say, in your mind was

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[1] That, you agree with me, you suggested to
 [2] Mr Leggatt on 24th December in that note.
 [3] A: As I say, that was something which was standard in the
 [4] market, and it was indeed in that letter to Mr Leggatt
 [5] on 24th December.
 [6] Q: If we turn the page, the Shell-led consortium principle
 [7] is referred to in the second paragraph. Then we have:
 [8] "Either Don Marketing or Shell"; that is the third
 [9] paragraph dealing with an approach to Sainsbury's. Then
 [10] the fourth paragraph:
 [11] "The proposed multibrand loyalty scheme could
 [12] utilise plastic swipe cards. In the not too distant
 [13] future, a multipurpose 'smart-card' could not only
 [14] process the common promotional currency, but also
 [15] provide other functions, including data-capture and even
 [16] financial transactions (we have already discussed
 [17] possibilities with Barclays Bank). It is possible the
 [18] cards could, to some degree, be personalised in terms of
 [19] design and function to suit the marketing objectives of
 [20] individual partners, who could reap the benefits of
 [21] shared customer data, shared costs, and unprecedented
 [22] advertising exposure at many thousands of retail
 [23] outlets."
 [24] Are you saying that by 24th December, or let us
 [25] say 24th November, all of those features - a Shell-led

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[1] the idea of an exclusive group of retailers issuing and
 [2] redeeming a common currency.
 [3] A: That was what GHA had proposed.
 [4] Q: Indeed it was.
 [5] A: And therefore - that certainly was in my mind.
 [6] Q: Right, so there you had a model, a GHA model.
 [7] A: GHA had proposed - if you are looking at just a group
 [8] of retailers who are issuing and redeeming, yes, they
 [9] proposed the model.
 [10] Q: So there you have a model, right. I want to see if we
 [11] can chart your thinking. By 24th November, you had
 [12] moved on to the idea of an exclusive group of retailers
 [13] issuing and redeeming a common currency, but a second
 [14] tier of redeemers-only, had you not?
 [15] A: As I explained before, it was a standard marketing
 [16] activity, I guess, which we had used in the past on
 [17] frequent occasions, and we had used it frequently in
 [18] Collect and Select.
 [19] Q: What you had done, had you not, was move away from the
 [20] GHA model, at least by 15th January 1993, to something
 [21] different.
 [22] A: The GHA model was still on the table at the end of
 [23] 1992. We decided, for a variety of reasons, that GHA
 [24] were not the correct people to work with in early 1993,
 [25] in the same way as we decided that Senior King were not

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[1] correct at that stage.

[2] By that stage, we had a variety of ideas in our
[3] mind. We knew a variety of promotional activities or
[4] features of the promotion, and as I said yesterday,
[5] I think, the really exciting, innovative part of the
[6] whole thing was the technology, that was what was
[7] driving our excitement, which enabled us to do all sorts
[8] of new and different things.

[9] Q: I suggest to you that is just wrong. You were as
[10] excited about the promotional idea as you were the
[11] technology, as the documents in 1993 show?

[12] A: The technology was for the first time beginning to be
[13] able to be used, beginning to be accessible, because of
[14] the costs of it. The idea of linking with retailers was
[15] always there, but it could not necessarily have been
[16] implemented earlier on - although it could have been,
[17] I guess.

[18] Q: Let us come to your witness statement, page 17,
[19] paragraph 34, please, because this is an important
[20] moment which I want to explore with you. You tell the
[21] court that on 15th January, you and Watson had a further
[22] meeting:

[23] "We had considered Powerpoints' and Senior King's
[24] proposals further and while we were still interested in
[25] pursuing those ideas, we were not wholly convinced about

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[1] suit its needs, was it not?

[2] A: That was one of the alternative options, and I do not
[3] recall that we decided or agreed or had it approved to
[4] do that until much later in the year. That was one of
[5] the other ways of doing it.

[6] Q: That became your ultimate objective from, if not late
[7] 1992, certainly very early in 1993, did it not?

[8] A: I cannot remember when - if you are asking me
[9] personally, I cannot remember when I decided that that
[10] was the best way forward.

[11] Q: What was the Shell vision?

[12] A: At which stage?

[13] Q: At the stage of early 1993, what was the Shell vision
[14] that you prepared?

[15] A: Maybe you can refer me to it. I cannot remember exactly
[16] in detail.

[17] Q: No, I want to ask you, please. What was the Shell
[18] vision?

[19] A: The Shell vision was a summary of our thinking at that
[20] stage, and so far as I can remember, I put it together
[21] with David Watson, as part of this process of recouping,
[22] regathering, after 1992, when we had done quite a lot of
[23] investigation about the technology, and talked to a
[24] number of suppliers, and where I had got involved in
[25] this particular activity. This was an attempt to put

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[1] either of them. Powerpoints' proposal was a ready-made
[2] package and could not be flexible about Shell's needs."

[3] Now the model of Powerpoints we have already
[4] examined many times in this trial, and we have seen it.
[5] You are saying there, are you not, that Powerpoints was
[6] not suitable or flexible enough for Shell's needs.

[7] A: And there were other reasons why we rejected them as
[8] well. For example, we suspected that the cost of it
[9] would be too high; they were building all of the set-up
[10] costs into the price of the points, and therefore we
[11] expected it to be more costly for us. There was no

[12] indication that they were going to get any other
[13] partners, and without other partners, there would not be
[14] any point in us launching it. So there were a variety
[15] of reasons why they were becoming increasingly less
[16] interesting to us at that stage.

[17] Q: I did not actually ask you that question.

[18] You agree, I assume, with what you wrote for the
[19] purposes of this, that Powerpoints' proposal was
[20] "a ready-made package and could not be flexible about
[21] Shell's needs"?

[22] A: That is correct, and that is one of the reasons why they
[23] were much less interesting to us at that stage.

[24] Q: The alternative model was the model of a consortium, put
[25] together by Shell, Shell-led, with the flexibility to

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[1] together for ourselves, David and myself, and then
[2] communicate it probably to Frank Leggatt, the ways that
[3] we could go forward.

[4] Q: At paragraph 38, you say:

[5] "I also set out our vision for the next generation
[6] of strategic loyalty promotions."

[7] You briefed Option One to act as your promotions
[8] agency to review this vision. What, as you now recall
[9] it, sitting there, was the vision that you communicated
[10] to Option One, and asked them to look at and review?

[11] A: Just to pick up one point there, Option One were asked
[12] to do four things, which it says there. Reviewing the
[13] vision was one of those four things.

[14] What I think the vision was, so far as I can
[15] recall, was a long-term scheme, utilising technology,
[16] linked with third parties, with exciting new and
[17] innovative promotions which would - "promotions"
[18] meaning rewards and reward mechanisms, which would be
[19] derived from the use of the technology. I think the
[20] vision was quite broad and top level, and we were
[21] looking to put something together along the lines of
[22] that broad vision.

[23] Q: During this time, you were in close contact -
[24] certainly, I suggest to you, from late 1992,
[25] 26th November, when you rang Bonnet about Onyx, you were

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[1] going out with, socialising with and in close personal
 [2] contact with people at Option One, were you not?
 [3] A: We were definitely working very closely, we were putting
 [4] together concurrently two very major national
 [5] promotions. I have already said that. I cannot
 [6] remember, without reference to my diaries, when we
 [7] actually went out privately, but I was developing a good
 [8] private relationship with Mr Bonnet as well as a good
 [9] working relationship.

[10] Q: By January, you had already in your own mind, if not
 [11] before, kicked out GHA and Senior King, had you not?

[12] A: As I explained, David and I looked at the options during
 [13] January, and we decided that both GHA and Senior King
 [14] were not appropriate.

[15] Q: You replaced them with Option One because you wanted
 [16] them, Option One, to do no more than check and research
 [17] a vision, an idea that you already had, did you not?

[18] A: We had a vision, we wanted them to review it, to tell us
 [19] whether they had any other thoughts or ideas, or whether
 [20] that was what they agreed with, because we believed in
 [21] their strategic and promotional experience at that
 [22] stage. So we would do that with a good promotions
 [23] agency, which we had had experience of by that stage,
 [24] and we wanted them to do these other three things as
 [25] well.

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[1] would have no mediator of any scheme, no third party;
 [2] that you would go direct to the third parties - Shell,
 [3] or an agency on your behalf - and deal with them
 [4] direct, had you not?

[5] A: I think at this stage, after - I think you are right.
 [6] At this stage, after a year of talking to all sorts of
 [7] agencies with absolutely no developments in the concept,
 [8] David and I saw it as the only way forward, in our
 [9] second or third meeting to discuss this, that we would
 [10] have to do something ourselves if we were going to move
 [11] this thing forward at all.

[12] Q: The brief to Option One; it is suggested for them to:
 [13] "... produce a strategic plan and implementation
 [14] plan of the marketing offer and the means to present
 [15] that offer."

[16] The marketing offer had already been determined by
 [17] then, had it not, and there were several third parties
 [18] who had at least expressed interest? You knew where you
 [19] were going.

[20] A: I have just explained what we saw the vision as, and
 [21] this is consistent with that.

[22] Q: And the vision was of a group, a consortium, as Shell
 [23] called it, of partners, exclusive in their own fields,
 [24] issuing and redeeming a common currency, was it not?

[25] A: I just explained what I thought the vision was at the

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[1] Q: And you thought, in the meantime, though you had already
 [2] decided that, that you would go down and check out
 [3] Powerpoints, just to learn what you could from them, did
 [4] you not?

[5] A: I would not put it like that. I think so far as
 [6] I recall, David and I both went down to see
 [7] Powerpoints. I cannot remember whether we requested
 [8] a meeting with them or they requested a meeting with
 [9] us. When we actually went to visit them, which
 [10] I thought was to be related to this subject, I have
 [11] a feeling that when we got there, they talked to us
 [12] about something completely new and different, some new
 [13] technology, as if they had lost interest in what they
 [14] had been talking to us about earlier on. They talked to
 [15] us about touchscreen technology or something like that,
 [16] which was very unrelated.

[17] Q: Volume 4, page 1511, 15th January; this is the meeting
 [18] you are dealing with in your witness statement at
 [19] paragraph 34, between yourself and Watson:

[20] "Option One. Only promos and a bit of PR and
 [21] design. We will not allow them to start acting as
 [22] 'general strategic consultants'. Not cheap. Same
 [23] account team, i.e. Jeremy Taylor and Tim Bonnet. Option
 [24] One act as intermediary to all of the third parties."

[25] By this time, you had clearly decided that you

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[1] time, yes.

[2] Q: And at the end of that document, you say:
 [3] "DW and AL to visit Powerpoints - get update on
 [4] where we are - visit their operation, get feel of what
 [5] they do."

[6] At that point, having decided and got as far in
 [7] your thinking as that, why bother to go and get the feel
 [8] of what Powerpoints do?

[9] A: I do not know. I cannot remember the meeting. I cannot
 [10] remember discussing these exact words. We certainly
 [11] needed to finally tie up the ends with them, certainly.
 [12] So far as I remember, they had not been formally told
 [13] that we were not going to go with them at that stage.
 [14] Q: Mr Lazenby, you never told them that. You went on
 [15] ringing them and telling them that you were still
 [16] talking about it for some weeks after this point, did
 [17] you not?

[18] A: I cannot remember.

[19] Q: Do you remember a letter in which you explained and
 [20] regretted and apologised that though they had been
 [21] selected, you were not going to do anything with them?

[22] A: It sounds like the kind of thing I might have written.

[23] Q: Well, there is none such. If you can find one, if it
 [24] can be found, I would be very grateful to see -

[25] A: I do not know.

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[1] **Q:** What happened in fact was you had already decided to go
 [2] for a Shell-led consortium, I suggest to you. You
 [3] decided to pop down to Powerpoints to get the feel on
 [4] what they were doing as a piece of intelligence, did you
 [5] not?

[6] **A:** We had a meeting with them. I cannot remember why or
 [7] what we discussed there, except that they were
 [8] talking - they were far more excited about this new
 [9] touchscreen technology, to the extent that they almost
 [10] seemed as if they had forgotten the stuff we were
 [11] talking about previously. They were certainly not
 [12] actively trying to promote it to us, suggesting that
 [13] they were talking actively to all sorts of other
 [14] retailers, as if the thing was going to take off
 [15] imminently.

[16] **Q:** By this time, if you will look at 35 in your witness
 [17] statement, you did not:

[18] "... feel that Powerpoints were going to provide a
 [19] scheme which met our requirements. By this time, we
 [20] felt sufficiently confident in our understanding of our
 [21] own market, the other loyalty programmes in the market
 [22] and the potential use of technology that with the help
 [23] of Option One, we could produce a scheme specifically
 [24] designed for our requirements."

[25] Do you see that?

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[1] ahead of our competitors.

[2] **Q:** It was not just a question of that, it was a question of
 [3] the promotional framework, was it not? You wanted to be
 [4] in control of the consortium or of the group - Shell,
 [5] I mean, not you personally. Shell wanted to be in
 [6] control, or you thought Shell wanted to be in control,
 [7] of its own group or consortium?

[8] **A:** As I have explained, that was the natural way that Shell
 [9] operated in many things that it did, certainly in
 [10] downstream operations, so that would be a natural thing
 [11] to do. We had just spent a year, or certainly I had
 [12] spent half a year working on this, when we had seen
 [13] really not a lot more development of any of the
 [14] concepts, the projects which were put forward to us by
 [15] the technology suppliers, with any other third parties.
 [16] I think at this stage we were quite clear that we
 [17] needed to get moving on this, we needed to do something
 [18] on it, and one clear way of doing that was to take it in
 [19] our own hands, with the experience and knowledge that we
 [20] had gained, and drive it forward.

[21] **Q:** What you wanted to do, I suggest to you, Mr Lazenby, was
 [22] something different from all of the other competitive
 [23] schemes; that I think we have already agreed on.

[24] **A:** Yes.

[25] **Q:** And you perceived as different an exclusive group of

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[1] **A:** Yes.

[2] **Q:** What were the requirements or needs which made GHA
 [3] Powerpoints unsuitable for Shell's involvement?

[4] **A:** I cannot remember in general, just now speaking eight
 [5] years on, apart from the reason I have just said for
 [6] them becoming less interesting. So far as I can recall,
 [7] there was no indication at all that they were going to
 [8] bring in any third parties; the technology that they
 [9] were talking about - I am sorry, this is what I am
 [10] remembering.

[11] There was no indication at all that they had even
 [12] talked to other third parties, so there was a big
 [13] question mark over whether there was anyone else
 [14] interested with them other than ourselves, which was
 [15] a major problem for us. The technology that they were
 [16] proposing, so far as I recall, was Mag Stripe
 [17] technology, which by then we had decided was probably
 [18] not the best to meet the marketing needs that we had,
 [19] and it was certainly not going to achieve the leapfrog
 [20] step that we needed to get ahead of our competitors.
 [21] The technology side was going to be nothing more really
 [22] than matching what competitors had, so far as I recall.

[23] **Q:** You criticised GHA for lack of flexibility.

[24] **A:** That is what I am getting at, with the technology side
 [25] not being - not giving us as much as we needed to get

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[1] retailers, led by Shell, issuing and redeeming common
 [2] currency, did you not?

[3] **A:** That was part of the vision. The truly innovative part
 [4] of it, however, as I said before, was the technology.
 [5] Use of smart cards, which was why we called the
 [6] promotion Smart, really was the exciting bit, and
 [7] enabled us to do all sorts of things which had not been
 [8] possible previously.

[9] **MR COX:** Yes. My Lord, I appreciate that it is rather
 [10] early, but I know that if I am given an adjournment now,
 [11] I shall be able to be more economical on Monday morning.

[12] **MR JUSTICE LADDIE:** You will finish with this witness on
 [13] Monday morning?

[14] **MR COX:** I certainly will, my Lord, yes.

[15] **MR JUSTICE LADDIE:** Mr Lazenby, I am sorry, it goes on yet
 [16] more. You are in purdah; that means do not discuss this
 [17] case with anybody over the weekend. We will adjourn.
 [18] Have your clerks been in contact with my clerk
 [19] about Monday?

[20] **MR COX:** My Lord, not yet, but they propose to be so this
 [21] afternoon.

[22] **MR JUSTICE LADDIE:** Certainly I have checked my diary.

[23] I will not be able to be here on Monday afternoon, for
 [24] the reasons I explained. I am quite willing, if you
 [25] want to, to go through until 2.00 or 1.30. I suspect it

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[1] is not going to save enough time to make it worthwhile,
 [2] but if you want to do that, let me know on Monday.

[3] I have an application on Monday morning, so I do
 [4] not think we can start at 9.30, we may have to start at
 [5] 10.00, but if your clerks can contact my clerk?

[6] **MR COX:** My Lord, they will. My Lord, Wednesday morning,
 [7] with your Lordship's leave -

[8] **MR JUSTICE LADDIE:** Yes, sure. I am told by my clerk, for
 [9] what it is worth, Mr Cox, that I have so many
 [10] applications on next week that it is unlikely we will be
 [11] able to start before 10.00 on any day. I normally start
 [12] at 9.30, but I have applications every day except for
 [13] Friday, at the moment. Anything else, Mr Hobbs?

[14] **MR HOBBS:** No, my Lord. Your Lordship's clerk said just
 [15] before we resumed that we would start at 10.00 on
 [16] Monday. Is that your Lordship's understanding?

[17] **MR JUSTICE LADDIE:** Fine. If my clerk said it - I do what
 [18] my clerk says.

[19] (3.50 pm)

[20] (Court adjourned until 10.00 am
 [21] on Monday, 5th July 1999)

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[1] MR ANDREW LAZENBY (continued) ... 1

[2] Cross-examined by MR COX (continued) 1

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