

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

B E T W E E N:

JOHN ALFRED DONOVAN
Plaintiff

- and -

SHELL UK LIMITED
Defendant

(by Original Action)

AND B E T W E E N:

SHELL UK LIMITED
Plaintiff by Counterclaim
-and-

(1) JOHN ALFRED DONOVAN
(2) DON MARKETING UK LIMITED
(3) ALFRED ERNEST DONOVAN

Defendants to Counterclaim
(by Counterclaim)

WITNESS STATEMENT OF
ANDREW JOHN LAZENBY

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Ref: JXM/
ID: LC.31363

Solicitors for the Plaintiff

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**WITNESS STATEMENT OF
ANDREW JOHN LAZENBY**

I, ANDREW JOHN LAZENBY of Shell UK Limited, Shell-Mex House, Strand, London WC2R 0DX WILL SAY as follows:-

- 1. I joined Shell in October 1987 as a graduate. Prior to this I completed my degree in Engineering Science at Oxford University. My first appointment with Shell was as a retail representative in Glasgow. I then moved to the Commercial Division as a business analyst. I then worked in the Retail Diesel Strategy Unit before joining the Promotions Department of Shell UK Retail in February 1992 as National Promotions Manager. I was moved to the Promotions Department to**

replace Alan McNab who was moving to another position within Shell. Alan McNab had worked for David Watson, who was Advertising and Promotions Manager and in this role headed up the advertising and promotions unit. David reported to the Retail Marketing Manager. I had worked with David Watson previously in the Commercial Division. The promotions unit was made up of Paul King, Tim Hannagan and myself. Jacqui Freeman and Liz Proctor were assistants in the department. David Watson's immediate superior was Graham Sweeney, Retail Marketing Manager. Graham Sweeney was replaced by Frank Leggatt in September 1992. Frank Leggatt has since retired from Shell.

2. I was involved in what subsequently became the SMART scheme between February 1992 and my departure from the promotions department in May 1994. Project Onyx, the forerunner to Project Hercules (which eventually became the SMART scheme), was already under way when I joined the department. At that stage, before I had ever met John Donovan, Project Onyx already bore many of the features that Mr. Donovan now claims as his own.
3. In its progression from Project Onyx to the SMART consortium, many lessons were learnt from the successes and failures of other people's loyalty programmes and from our own market analysis and research; the project evolved accordingly. Along the way, the project consumed tens of thousands of hours of management and consultant time, hundreds of files of paper and over £15 million. During the whole of that time no element of the scheme was taken for granted - the whole project was under constant review. And yet Mr Donovan still appears to maintain

that the entire SMART scheme originated from the information on two pieces of paper which he sent to me in the latter half of 1992.

4. In order to refute the serious allegations made against me and other Shell UK staff by Mr. Donovan it is necessary to demonstrate exactly how the SMART scheme was developed, entirely without reference to Mr. Donovan's suggestions. I must in effect prove a negative. Unfortunately this entails a detailed analysis of large numbers of documents and of every stage of the chronological development of SMART.

The Chronological Development of SMART

5. When I started in the promotions department I had not run promotions before but I had been involved in implementing them in other departments within Shell. Before moving into the position, I had a short interview with David Watson. This was an introduction to the job rather than a selection process. My handover from Alan McNab consisted of a short period when I shadowed what he was doing, rather than a formal briefing. He had been dealing with the tail end of the Collect and Select promotion and with short term promotions. When I joined the department, I dealt with short term promotions. We had a number of such promotions 'on the go' at any one time. I was aware that Tim Hannagan was working on a report about the use of technology in promotions. I became aware that this investigation went under the name of Project Onyx. Whenever I mentioned the use of technology in promotions David Watson suggested that I speak to Tim Hannagan, as David was anxious to ensure that work was not being

duplicated where the technological ground had already been covered by previous Shell in-house projects.

6. From about March 1992 I gradually began to become involved with Project Onyx. On 16 March 1992 there was a meeting with GHA Powerpoints Limited ('Powerpoints') organised by Brian Barberton and attended by myself and David Watson. I was present at this meeting although I cannot recall in detail what was discussed. David Watson also attended this meeting. I can recall their proposal in general. GHA were a Sales Promotions Agency introduced to Shell by Brian Barberton of NCH Promotional Services at this meeting. NCH had assisted Shell with the Collect and Select promotion. NCH were a fulfilment and mailing agency and I had an ongoing business relationship with them. They had been a key supplier for our short term promotions. GHA founded Powerpoints to develop the concept of integrated customer recruitment and customer retention service to be offered to retailers, other service providers and manufacturers. The idea was to have a network which would include major retailers and other service provider groups who would constitute appropriate partners in non-competitive market sectors. The purpose of the initial meeting was for Powerpoints to present an outline of the concept to Shell. In brief the proposition from Powerpoints contained the following elements:

- Powerpoints (a separate company) would organise a network of members through the provision of hardware, software, publicity and rewards;
- only one member would be permitted per sector (e.g. supermarket, chemist, DIY, hotels, petrol forecourt);

- an electronic points system would be used by each member;
- each retailer would have its own branded card;
- each retailer would issue and redeem points on any Powerpoints card.

The Powerpoints scheme was a fully-worked up 'package' presented to Shell as a fait accompli. Shell were invited to participate, but this was always subject to Powerpoints' ultimate control.

7. Following the meeting with Powerpoints, David Watson went to discuss Powerpoints with Graham Sweeney on 26 March 1992. I was not involved in those discussions and was still playing a limited role in Project Onyx. David Watson was very interested in the Powerpoints scheme and the fact that Peter Miles of Powerpoints had indicated that Tesco might sign up if an oil company signed up.
8. During 1992, customer loyalty schemes were popular. Many of our competitors (in particular Mobil and Total) were running loyalty schemes in connection or partnership with third parties and/or using card technology. Mobil and Argos were cooperating in the Premier Points scheme and Total was offering its customers vouchers on purchases at Marks & Spencers and Boots. We received unsolicited mail from agencies and suppliers such as Sheard Thomson Harris and The Sales Machine about such long term loyalty schemes involving third parties. During April and May 1992 this unsolicited literature was normally forwarded to Tim Hannagan rather than me as Tim was still the main contact for Project Onyx

while my role required me to remain primarily involved with the continuing short-term promotions.

9. On 27 April 1992 I received a letter from John Donovan introducing himself. I had never met or even heard of Mr Donovan before receipt of this letter. The letter referred to previous promotions Mr Donovan and his company Don Marketing (UK) Limited had been involved in. Mr Donovan suggested running further promotions for Shell. My standard practice on receiving such a letter was to ask around the office to see what people thought of the agency. I did this in relation to Don Marketing and I went on to arrange a meeting with Mr Donovan for 12 May 1992. John Donovan and his colleague Roger Sotherton were present. At this meeting John Donovan produced a copy of his proposal for forthcoming promotions. I have seen a copy of this proposal with manuscript notes from Roger Sotherton on page 3 and 8 and I have referred to my notes of this meeting. The promotions we discussed at this meeting were Megamatch and a Football Pools Promotion. Megamatch was essentially an expansion of the Shell Make Money concept (involving matching halves of promotional currency) to include third parties in non-competing trades such as breweries and video outlets and newspapers.
10. I have considered the manuscript notes made by Roger Sotherton on his copy of the proposal and note the manuscript reference to a multibrand loyalty card. I have absolutely no recollection of anyone mentioning multibrand loyalty cards. It was my practice to keep comprehensive notes of meetings with agencies and suppliers. My notes of this meeting contain no reference whatsoever to any

discussion about a multibrand loyalty scheme. This was not a subject that had been considered in conversation, otherwise I would have made a note of it. If (contrary to my clear recollection) the idea of a multibrand loyalty scheme was mentioned at all, it could only have been in passing. Following the meeting, Mr Donovan sent me a copy of his proposal dated 23rd October 1989. I do not recall requesting the document or reading it at the time. My focus remained very much on short term promotions at that time and I was not overly concerned with long term promotions.

11. The only proposal of his that I was interested in was Megamatch. John Donovan suggested a preparation time of 6 weeks for this promotion. I knew this estimate was far too short and as a result I had doubts about the credibility of Don Marketing. Shell usually planned a significantly longer preparation period for a promotional launch.
12. On 14 May 1992 John Donovan informed me that he would contact potential parties for the Megamatch proposal. I have seen a letter John Donovan wrote to Boots on 19 May 1992 which confirms that he envisaged a "Megamatch" game with game pieces given out by different retailers. On 10th June 1992 John Donovan wrote updating me on his progress with third parties in relation to the Megamatch game.
13. Throughout May 1992 David Watson continued negotiations with GHA Powerpoints while Tim Hannagan was researching Tagcards and pursuing investigations into other potential suppliers for a long-term promotion. I had no

involvement in any of this. From this point onwards Nick Bradshaw (who was part of the Shell information technology team) became involved with the negotiations in relation to the Powerpoints scheme.

14. On 4 June 1992 I received a letter from Mike McMahon of Concept Systems who supplied Shell with an outline quotation for setting up and administering a smart card based loyalty system. This was in response to a telephone conversation I had with him on 26 May 1992 in which I asked him to confirm his proposal in writing. I passed his letter to Tim Hannagan to deal with, as a result of which Tim then spoke to Mr. McMahon on 11 June 1992. Mr. McMahon told Tim that he was also talking to a number of other retailers about producing similar cards.
15. Also on 11 June 1992, David Watson reported to Graham Sweeney about Project Onyx. I was involved with the preparation for this meeting. By now I was having discussions with David about the strategy for the longer term on which he and I agreed. David Watson recommended to Graham Sweeney that a decision should be made between leaving national promotions altogether or setting up a long term collection scheme. David maintained that any such scheme should be electronic and involve other retailers.
16. On 15 June 1992 Tim Hannagan had a meeting with Tony Wightman of The Sales Machine (an advertising and promotions agency). Tim introduced me to Mr. Wightman. His agency, The Sales Machine, were suggesting that we run an electronic Make Money game incorporating a "spend and save" loyalty function and the involvement of several third parties.

17. On 2 July 1992 I had a long conversation with Mike McMahon of Concept Systems, who were also in negotiations with Texaco about a loyalty card. I confirmed that we would be interested in a deal they were setting up and said we would endeavour to get a letter of intent to him by the end of August. On 30th July David Watson and I had a meeting with him at which he told me that he had 'joined forces with' Fortronic (a subsidiary of De La Rue) and that Fortronic were interested in supplying the technology for a long term loyalty card. This is significant in the context of Mr Donovan's claim that it was he who first suggested the involvement of Fortronic to Shell, some four months later in November 1992.
18. Even though I was now working with Tim on Project Onyx, short term promotions needed to be found for the first half of 1993. In July 1992 Shell commissioned Conquest Research and Consultancy Limited to conduct some research into potential promotions for 1993. Eight different promotions were considered including Megamatch, the proposal put forward by John Donovan. Despite John's daily telephone calls extolling the virtues of Megamatch, Megamatch only came in third after 'Comic Relief' and 'UK Travel', two promotions that had been put forward by an agency with whom we had not worked previously called Option One. By 28 July 1992 I had told John Donovan verbally that we were not going to be running Megamatch, I confirmed this in writing on 4 August 1992. In that letter I stated that I would bear Megamatch in mind for a promotion later in 1993 or 1994.
19. By the start of August 1992 Tim and I had seen and spoken to a number of potential suppliers of technology for a long term loyalty scheme. On 4th August

Tim produced a note putting forward 14 possible suppliers for running Project Onyx. I had met with some of these suppliers on previous occasions. The suppliers at the top of this list had more developed schemes or were organisations with which we had more detailed discussions. I added AT&T Istel to this list as they had recently contacted me with their plans for a ready-made points scheme along the lines of Powerpoints and they had a connection with the Air Miles scheme. Senior King and GHA were among the 14 suppliers listed. David, Tim and I considered each of the suppliers and decided upon six as potential candidates to be short listed for our long term loyalty scheme. The six were as follows:-

- Senior King
- Sheard Thomson Harris
- Geoff Howe & Associates
- Concept Systems
- McCorquodale Security Cards Limited
- AT&T Istel

20. I then drafted a marketing brief to be given to the short listed candidates. In this brief I set out the essential elements of any long term scheme Shell would run, which I saw as being:

- a scheme that could be differentiated from any other long term loyalty scheme run by the competitor oil companies.
- a multi promotional scheme with different rewards appealing to different customer groups.

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- rewards sourced from third parties.
- I thought Shell should approach third parties directly.

21. I considered various third party retailers at this stage. All the large supermarkets were thought to be developing electronic loyalty schemes of their own. I knew that Graham Sweeney was also against link ups with supermarkets as we did not know which of them would be competing with us as petrol retailers. In particular we would not want a partnership with Tesco as they were already an oil retailer in their own right to a significant extent. A third party scheme where points were issued may have also been difficult for supermarkets themselves due to the requirement for points to be issued at every till. Tesco had previously had bad experiences with Green Shield Stamps.

22. On 4th September I wrote to each of the six short listed suppliers indicating that they had been identified as potential suppliers. These six were supplied with the briefing note that I had drafted, which set out the basic promotional and marketing requirements of the Project Onyx system and the six were asked to prepare a response to discuss the way forward to implementation. This was not intended to be a technical specification. The promotional requirements were as follows:-

- multiple promotions - the scheme needed to be able to run several different promotional activities at the same time.
- redemptions - either for merchandise at Shell stations or by mail order or from participating third parties.
- customer recognition - individual customers needed to be recognisable.

- time rewards - the ability to encourage customers to shop at different times of the day and week.
- promotion endings - any system must be able to manage promotion closure.
- volume/value - the system needed to work in both units.

The marketing requirement was for a long term loyalty card which was better than our competitors and was highly flexible. A link up with third parties was to be considered and also needed to be flexible.

23. During September I organised meetings with each of the six potential suppliers. After each of these briefings I made notes. There was a list of things I was particularly interested in. These were as follows:-

- costs
- timescale
- in which areas the supplier was better than their competitors
- in which areas the supplier was perceived different from what was in the market at the time
- would this scheme leapfrog schemes run by our competitors
- lock out - how easy would the scheme for our competitors to copy
- technology
- promotion

24. Both Tim Hannagan and I were present at each of the meetings with the six suppliers. We analyzed each of the suppliers against the categories above.

AT&T had the advantage of already being connected with Air Miles, but this aside the two suppliers who fared best were Senior King and GHA. McCorquodale fell out of the running at this stage, as they were primarily hardware suppliers and had nothing like a worked up product and no real grasp of the marketing aspect.

25. I also did an analysis of the paths Shell could take. At this stage Shell had no set plans. We were very flexible and considering many options and the possible market conditions. I set out the advantages and disadvantages of the following options:-

- (1) the whole oil industry coming out of promotions
- (2) Shell stopping all promotions
- (3) Shell taking part in short term promotions
- (4) Shell taking part in long term promotions:-
 - hi tech (i.e. using Smartcards)
 - lo tech (i.e. using magstripe cards or similar)
 - no tech (not using technology i.e. paper vouchers)

I also set out the position as far as I could in relation to our competitors. This was used as a briefing note for David Watson.

26. Senior King wrote to me on 14 October 1992 summarising their presentation, but at this stage we had not reverted to any of the six potential suppliers. On 23 October I had a discussion with David Watson about the outcome of our interviews. Our decision was to press ahead with Senior King and GHA but to

keep our options open in relation to the other suppliers. I wrote letters to the six agencies on 27 October 1992. Only Senior King and GHA were told that they had been selected for further involvement in Project Onyx.

27. On 28 October I sent two notes to David Watson. The first one dealt with the rationale for the rejection of the four unsuccessful candidates from the short list selection. This was for internal use within Shell. My second note related to Sainsburys as a potential promotional partner. The idea for Sainsburys as promotional partner came from a meeting I had at Air Miles when Sainsburys were present. David Watson then telephoned his contact at Sainsburys, David Noble. This was followed up with a letter dated 30 October 1992 in which David Watson confirmed that Shell would be interested in co-operating with Sainsburys in a joint promotion. A number of different ideas were put forward. The two promotions Shell were most interested in were an Air Miles link up or a joint "points promotion". It was left so that Sainsburys would come back to us if they were interested. As far as I can recall Sainsburys never came back to us.

28. Throughout November, firms like AT&T which had been put on hold as potential suppliers were still corresponding with Shell. On Tuesday 10 November Tim Hannagan and I had a meeting with Michael Pettit at Fortronic. Michael McMahon of Concept Systems had also been present at the meeting. These suppliers were trying to collate the extra information we had requested in our letter of 27th October.

29. I continued to speak to and see John Donovan because Shell were still looking for short term promotions. Shell still needed such promotions during the run up to any long term scheme.
30. On 24 November 1992 I had a meeting with John Donovan. At this meeting we discussed two new promotions that he put forward, Hollywood Collection and Make Merry. As usual, I made a note of this meeting. I understand from Mr Donovan's Statement of Claim that he alleges that he left me a copy of a July 1990 letter that he had written to Sainsburys at this meeting. I have no recollection of ever requesting, discussing or seeing that letter and there is simply no reason why he would have brought it along to the meeting, let alone handing it to me in the context of this meeting. My meeting note makes no reference to any discussions on this subject. Moreover, the letter would have added nothing to our already existing thinking on loyalty schemes as at November 1992. This meeting was followed up with a letter from John Donovan on 3 December 1992 in which he refers to the November meeting, mentions Make Merry and Hollywood Collection, but makes no mention whatsoever of any multibrand loyalty programme or the letter to Sainsburys.
31. I have seen Mr. Donovan's copy of the Sainsbury's letter as disclosed in these proceedings. At some point before this version of the document was disclosed to Shell's lawyers in about 1997, manuscript notes have been added to it. These handwritten notes (e.g. "Meeting with A.L. 24/11/92", "Copy of this letter left with A.L.") are self-serving and do not tally with the notes I made at the meeting.

32. On 16 December 1992 David Watson made a note of our options for Project Onyx. I then expanded this and produced a note for Frank Leggatt and David Watson dated 24 December. We had in mind a potential launch date of 1 October 1993 for a long term scheme. My note developed all the options available to us and set out our competitors' position. I was asking in quite strong terms for a mandate to continue with our plans for a long term loyalty scheme. Although there was no formal response to that note, we did get approval in principle to continue the development of such a scheme.
33. On 11 January 1993 I had a meeting with David Watson, at which we discussed the four tracks we were going to follow in relation to Project Onyx. David and I were going to keep Frank Leggatt (the then Head of Retail Marketing) informed. Frank Leggatt was not a detail person but now wanted to be informed on what was happening in the project. David Watson and I arranged to see Powerpoints and Senior King to decide which of these electronic schemes was the one to recommend to Shell. David and I decided to undertake a major research project, testing customer reactions to electronic or paper tokens for a loyalty scheme. We also decided to consider different types of electronic promotions, including rewards through catalogues and third party retailers offering "money off" vouchers; and to explore options for the marketing of such a scheme and begin talking to possible third party retailers directly. One idea that was discussed during the meeting was to involve Option One, who had designed a number of short-term promotions for us and who had also raised in discussion the options for long term promotions. At this stage Comic Relief was currently in operation and UK Travel was in

development and I was impressed with Option One's original ideas, strategic vision and implementation performance.

34. On 15 January 1993, David and I had a further meeting. We had considered Powerpoints' and Senior King's proposals further and while we were still interested in pursuing those ideas, we were not wholly convinced about either of them. Powerpoints' proposal was a ready-made package and could not be flexible about Shell's needs. Senior King were no longer working with Hughes Electronics and we were concerned that they were too small to deal with such a large project. We again thought about using Option One who were a substantial marketing agency with a proven track record. We thought that Option One would be able to assist with promotional advice, as well as PR and design, but we did not want them to start acting as general strategic consultants. The downside of Option One was that they were not cheap. However, we did already know Jeremy Taylor and Tim Bonnet and enjoyed working with them. Option One also had a far greater number of contacts than Senior King and would be a good intermediary to approach third parties as promotional partners. We therefore decided to brief them to produce a strategic plan, an implementation plan of the marketing offer and means to present that offer. This offer could be electronic or could be paper. The idea was to have several third parties who at least expressed serious interest in principle in becoming promotional partners within the coming months. The launch should take place on 1 October 1993 even if the promotion had some way still to evolve. We proposed a budget for Option One of between £20-30,000 for the three month project of producing the plans we required.

35. At the same time, David Watson and I also arranged to go and see Powerpoints for an update on what they were doing. That meeting eventually took place on 25 January 1993 when David Watson and I attended. Although we were introduced at that meeting to Peter Bell, who claimed to have devised the first electronic loyalty scheme in the UK for the Co-op in the Midlands, we did not feel that Powerpoints were going to provide a scheme which met our requirements. By this time, we felt sufficiently confident in our understanding of our own market, the other loyalty programmes in the market and the potential use of technology that with the help of Option One we could produce a scheme specifically designed for our requirements.
36. I drafted a project briefing for Option One on 19 January 1993. This explained that we had been involved in short-term promotions since the closure of Collect and Select in March 1991. There had also been discrete, longer promotions, each lasting for a fixed term, targeted specifically at truckers. The Air Miles promotion was being targeted at high mileage, predominantly car drivers in the higher socio-economic groups. There were a number of problems with running these different types of promotions including the amount of strain put on Shell staff.
37. The brief went on to say that competitive moves in the market place indicated that all our competitors were staying in promotions for the foreseeable future and that there was a general trend towards higher technology. There was also a movement towards strategic alliances with third party retailers. I pointed out that Air Miles at this stage was the only multi-retailer loyalty scheme with a variety of participating companies, all issuing mutual points. The strategy was a marketing

opportunity for reconsidering our promotional activity with a view to significantly improving the Shell promotions, possibly capitalising on technology and taking a lead in the market. I explained that for the last two years we had been keeping a watching brief on the market place with a view to technological developments and I set out the background to our previous discussions with possible technology suppliers.

38. I also set out our vision for the next generation of strategic loyalty promotions. We briefed Option One to act as our promotions agency to review this vision, to participate in our market research exercise, to achieve contact with promotional partners with a view to the joint promotion and to select the correct mechanical and technical supplier, using the experience which Shell had already. At this stage we still did not have a definite blueprint for Project Hercules. Quite fundamental questions such as whether the project should be electronic or paper still remained unresolved.

39. On 20 January I had a meeting with Frank Leggatt to bring him up to speed on the state of play. I explained the nature of the market research that we needed to do and the brief that we had given Option One. Frank Leggatt had some ideas about the potential launch of the scheme and in particular suggested cashing Esso points as a possible launch promotion. Our main objective throughout the whole scheme was that Shell should do something different. Our long-term plan was to involve third parties, but we prepared initially to go ahead on our own with a long-term loyalty scheme on the basis that the product could be sold to third parties at a later

date. The project would therefore have to be set up so that third parties might join at any stage.

40. On 22 January, we had our first meeting with Option One to present our brief to them. It was agreed at that meeting that I should further brief them on all I had learned about electronic technology from our work on Project Onyx. I also explained to them the history of Collect and Select, which highlighted some of the problems that can arise on long-term schemes.

41. By the beginning of February Option One had started producing schedules of the work to be carried out. One of the early decisions we took was that, now we had moved into the implementation phase, the codename for the project should be changed. The name I chose was Project Hercules. The works schedules therefore came to be entitled "The Labours of Hercules". The first envisaged a full strategy agreement by 22 March 1993. We also envisaged that by 26 April 1993 all orders would be placed for a technical supplier, a final target list of third parties would be agreed, the reward structure would be finalised and the strategy and implementation would be signed off. Unfortunately, it proved wholly impossible to keep to anything like this timetable. Meanwhile, Option One produced a list of various points to be included in our market research brief.

42. On 1 February 1993 I briefed Option One, as arranged, on what we had learned about the technological side of the proposed project. I mentioned our discussions with other manufacturers and explained that these had ultimately come to nothing. However, Shell had learnt about the present state of technology and its

applications. We discussed the question of whether any potential participants would like to join a system owned by Shell. The key action was to identify the correct hardware technology, because the technology dictated when and how we could involve third party participants.

43. By 3 February 1993, our own marketing team had produced a first draft of the research brief, including such issues as whether we should have third party participants at all and, if we should, who these participants should be and how the system should work, e.g. should participants just redeem points, as in the Mobil Premier Points Scheme or should they be able to issue them as well, as in the Air Miles Scheme. This research brief was finalised by 11 February 1993 and a company called The Qualitative Consultancy were asked to carry out the research.
44. On 10 February 1993, David Watson and I had a meeting with Option One. We gave Option One all of our previous in house research work from Project Onyx and supplied them with a list of Shell retailers to whom Option One were to talk in order to determine the sort of promotions that were popular at a 'grass roots' level. At this stage, I was leading the project under David Watson's overall supervision and was liaising with Option One on a daily basis.
45. Senior King wrote to me on 26 February 1993. It was apparent from their letter that they were disappointed to learn that Option One had been asked to help to develop a Smart Card system, but they were particularly concerned that in their researches Option One had contacted Schlumberger, whom Senior King obviously regarded as "their" supplier. This led to some correspondence with David Watson

but in their further letter of 1 March 1993 Senior King confirmed that they and Schlumberger were prepared to work with Shell and any other agency.

46. On 2nd March 1993 Option One supplied their first major paper entitled "The Shell Vision - Outline Response". No strategy statement had yet been agreed upon, but the ideas put forward by Option One were intended to provoke discussion. It had not yet been decided how to use third parties in this project and it was acknowledged that a fully integrated plan would be difficult to achieve from the beginning. Other retailers would be likely to want to watch Shell's experience for a while before joining. Indeed, Option One stressed the significant risk involved in entering into negotiations with third parties, which were likely to be extremely protracted and littered with unforeseen problems. They also highlighted the increasingly prevalent risk for negotiations to proceed excellently to final contract stage only to be turned down by the Chairman, sometimes on a whim.

47. The three main objectives set out by Option One were seen as being to strengthen loyalty, to encourage customers to switch from other brands and to achieve the first two objectives within a controlled cost, free of long term liability risk. Paper tokens and magnetic stripe cards were still being considered although the data collection advantages of the smart card were recognised. The pros and cons of each medium were set out. The section on the potential rewards programme identified various rewards including a long term catalogue, short term tactical promotions, charities, games and gambling, as well as third party offers.

48. While Option One advised caution in relation to third parties, they appreciated that Smart card technology would potentially permit an unprecedented degree of involvement between Shell and the participants in the scheme. On my copy of the Option One paper, I wrote alongside that comment a note about Air Miles in Canada, of which Shell is a member and which was organised on the basis of a true partnership along the lines Option One were discussing. In fact, the SMART scheme even to the present day has never been organised on those lines, and nor has it managed to attract the "three or more retail giants" that Option One considered necessary to build a partnership of this nature.
49. On 5th March 1993 at a meeting David Watson and I had with Option One to discuss their paper, we considered whether it would be possible to have a dual launch with card and paper. It was agreed that Option One would produce two refined shortlists of third parties, one for "low key tie up" (i.e. probably smaller redeemer-only retailers) and the second for potential "full" partners. A particular third party to target was Argos, because of their involvement in Premier Points and their catalogue interests. Option One agreed to approach the third parties with whom they had relationships. The timing of the project was tight and I asked Option One to recommend a promotion to run for the last quarter of 1993 in case this was required.
50. On 9th March 1993 Jeremy Taylor and Tim Bonnet of Option One and I visited Fortronic at their factory near Edinburgh. Our contact there was Mike Pettit. At this time he was running a pilot smart card loyalty scheme for the Index group (another catalogue retailer) and was very knowledgeable about smartcards and their

use in loyalty schemes. Jeremy and Tim agreed to revert to Fortronic to do a more detailed feasibility study, working towards a timescale of July for a pilot project and 1 October 1993 for launch. I was then planning to work up a detailed technical specification which could be put out to other suppliers. My view was that Fortronic was a very strong candidate.

51. A list of primary, secondary and reserve targets for possible retail participants was drawn up by Option One and while I was on holiday for the week commencing 14 March 1993 Tim Bonnet and Jeremy Taylor started to make contact with some of them. On my return Option One reported on progress with Woolworths, Boots and W H Smith with whom they were trying to set up meetings. They also informed me that they had been in contact with David Noble at Sainsburys and he had been extremely lukewarm.
52. On 23rd March 1993 David Watson and I had a meeting with Nick Mercer, Nicola Talfourd-Cook and June Carter of Air Miles. No mention was made of our proposed scheme. I did mention that Shell were about to embark on a retailer survey to ascertain what Shell should run as their next tactical promotion. We were nervous as to how Air Miles would respond to what they might well regard as a competitor to their own scheme and I wanted to get our own ideas into a clearer form before I discussed the matter with them.
53. On 24th March 1993 I wrote a note to Frank Leggatt summarising where we were vis a vis third parties. Safeway seemed to be the most promising supermarket at this stage as we believed that they were convinced of the need for a loyalty

programme. I explained in my note that we were arranging to speak to our primary targets at meetings hosted by Shell, accompanied by Option One personnel. This gave us the opportunity to outline in principle the basis of Hercules as a long term loyalty programme, probably technology-based and including third parties either as reward providers or giving out reward points or both. I emphasized that all this was subject to approval by the Shell board. I then reported on the main target companies and sectors.

54. On 25th March 1993 I received the results of the market research. This showed that while different sectors of the market had different priorities, the ideal promotion would be a flexible one, which offered a good choice of rewards, including instant gifts on site and longer term higher value items, including discounts from third party retailers. The Premier Points/Argos scheme had broken new ground but now the choice of retailers was very important for any scheme involving third parties. There was a recommendation for the use of a plastic card system.

55. On 29th March 1993 Option One and I had outline discussions with Nick Wells of Woolworths. He said they were not willing to become part of a scheme involving use of a smart card due to the cost. However, there was a possibility they would be interested if Shell considered using a magnetic stripe card. We met with Steve Austen of Boots on 1st April 1993. Boots were interested in being an issuer rather than a redeemer. Mr. Austen's experience of promotions was that the rewards generally cost more than the increased business received. On 2nd April we had a meeting with Querida Williams, National Account Manager at

Forte. She told me that Forte were interested in both issuing and redeeming. However at these initial meetings it was rapidly becoming apparent that the length of time necessary to conclude any deals with third parties would be extremely long.

56. Product Plus, a promotions consultancy specialising in providing merchandise for promotions, gave an unsolicited presentation on 31st March 1993. This was a timely approach by Product Plus as we were beginning to consider sourcing of rewards for the scheme. Ultimately, they became involved as part of the mail order side of the rewards package.

57. On 6th April 1993 I updated Frank Leggatt with a summary of the current position as to technology. I explained that no firm commitment had been given to any technology supplier at this stage, but that a lot of work had been done with Fortronic. I also reported on the discussions with third parties. I told him that positive responses had been received from Boots (as potential issuers of points) and Index as third party participants. On 13th April 1993 I had a meeting with Tim Osler of Safeway. He told me Safeway were committed to loyalty programmes on a tactical basis, but were conscious of the cost. He said Safeway were considering magnetic stripe cards but were not keen to get into a technologically complex promotion.

58. On 15th April 1993 Jeremy Taylor and Tim Bonnet of Option One produced a discussion document on the reward structure. They highlighted three broad types of reward structure, a system of offering points against a conventional reward

scheme (a "Collection") supported by short term tactical offers, travel offers (the "Holiday Mile"), and the possibility that third parties could provide rewards, subject to them coming on board. At our meeting on that day, we discussed the importance of being innovative but also that we should not keep reinventing the wheel. The innovation would be primarily in the card and the mechanics of the promotion. Meanwhile, meetings continued with potential third parties such as Beefeater and Threshers.

59. On 16 April 1993 I had a discussion with Ian Sutcliffe, at that time the Fuels Manager and later to succeed David Watson as Promotions and Advertising Manager. His view was that we should consider the relative importance of different categories of customers. High Mileage customers were the most important, followed by mid range drivers and then the low mileage drivers. This line of thinking supported Option One's suggestion that we should consider a smart card for high mileage, and a magnetic stripe card for mid mileage and any low mileage drivers who were interested.

60. Tim Bonnet and Jeremy Taylor of Option One were producing a number of discussion documents. Some of these arose from queries that I had raised while others were produced at their own initiative. On 19 April 1993, they wrote a paper targeting the offer, which considered a multi-layered promotion with smart cards being restricted to high mileage customers and possibly using paper tokens for low mileage customers. I was against this proposal. I thought we would have the problems of running two promotions and in effect would end up concentrating on our high value customers. In Collect and Select we had experienced problems

with management of paper vouchers and I did not want to risk repeating this. I suggested that we should continue to follow the universal smart card option with a fallback scheme in case the first option did not work.

61. On 20th April 1993 I had a meeting with the Ken Liversidge, managing director of Premier Incentives, who was ultimately in control of the Premier Points scheme. He told me that Mobil's exclusivity within the scheme applied only to England and Wales and Premier Points were looking for a petrol retailer outside England and Wales. I raised this possibility in a note that day to Frank Leggatt and David Watson.

62. By 21 April 1993 I wrote to Frank Leggatt a note dealing with proposed rewards. I also sent a copy to David Watson and circulated it to the promotions team, asking for comments. At that stage, my aims in relation to available rewards were fairly modest. In the long term, I was recommending a reward structure encompassing encashment of points at a limited range of third party retailers (I gave Dixons, Threshers and Marks and Spencer as possible examples), together with a full travel offer, lower value on-site rewards and possibly gambling and charity donation opportunities. However, on the basis of a 1 October 1993 launch date, it was impractical to expect all this to be in place and we would possibly have encashment at one or two third party retailers (more likely by way of vouchers than directly) alongside a travel offer with an on-site reward structure in place for Christmas 1993. The Promotions Department was working on many projects at this stage: we were running Air Miles, short term promotions and dealing with the day to day management of the department.

63. Also on 21 April 1993, we received from Option One the paper setting out their recommendations. This partly consisted of putting into one document the views which they had previously put to us in a series of discussion documents. It was intended to set out the basis of the proposed scheme in full so that we could then seek the necessary approvals from senior management. Option One recommended that smart cards were the preferred way forward. The possibility of a "multi-layered" promotion (i.e. one with more than one level of operation, depending on level of mileage) was still being suggested. The paper proposed that Shell should launch the project without third parties but make it adaptable enough so that third parties could join at a later date. The paper also recommended that Shell should consider a separate company to run the scheme to avoid Data Protection Act complications and to make the scheme more attractive to third parties.
64. On 23rd April 1993 I had a meeting with Frank Leggatt. We agreed to work towards a final presentation to David Pirret, the head of retail, on 7th May. Frank's main concerns were that we exploited any information obtained about customer spending habits, what rewards were to be offered, whether we could handle the technology, and how we would launch. I was asked to consider the possibility of a non-electronic launch for 1st October, using paper tokens.
65. On 26th April 1993 I produced a file note summarising the lessons to be learnt from the customer interface of the Collect and Select scheme in the preparation and development of Project Hercules. I was concerned with stock levels, the handling of retailer queries and complaints, security problems and bad debts. I

was determined to ensure that these mistakes were not repeated and was looking for ways to achieve this.

66. On the same day I faxed an action list to Jeremy Taylor at Option One setting out tasks that they needed to do. These included a note on the rationale for using smart cards as well as a summary of how they saw the rewards structure at launch. I put together a full costs spreadsheet comparing the use of paper tokens with electronic points and trying to define the launch costs.
67. On 27 April 1993, Tim Bonnet and I went to Milton Keynes for a meeting with 23 of Shell's own retailers to hear their own views on what promotions worked best from their point of view. They confirmed our thinking that we should be going for a long-term scheme based on secure electronic technology with instant on-site rewards as well as gifts by mail order or Argos type discounts. They also stressed that Air Miles was a strong reward incentive and we should not lose it.
68. On 30th April 1993 I had a further meeting with Frank Leggatt. Frank was impressing on me the need to justify the extra expenditure of £5-10m which we thought the scheme would cost to implement. Frank and I considered whether Shell could share the initial set up costs, asking customers to pay to enter the scheme or going back to using paper tokens. We also considered the launch date for the promotion. At a meeting later that day with Jeremy Taylor and Tim Bonnet of Option One, they expressed the view that a launch at the beginning of 1994 would avoid the Christmas rush and would give us cheaper media time. I wrote a note to Frank Leggatt on 4th May 1993 recommending a 1 February 1994

launch date and explaining that we needed to have a pilot scheme to test the working system.

69. On 5th May 1993 I wrote three memos to Frank Leggatt copied to David Watson and Ian Sutcliffe, one was about interim rewards (i.e. for the period immediately after launch) and another was about points conversion, i.e. the possibility of starting the project with paper tokens and converting to electronic points. I advised against the use of any such tokens and did not recommend conversion. My third memo was about the launch date; I suggested 1 February 1994.
70. I produced a short agenda for the 7th May 1993 meeting with David Pirret. I was going to present our objective, a summary of the history, our strategy for the scheme and cost estimation. In fact, the meeting was postponed and did not take place until 10 May 1993. Apart from David Pirret and myself, David Watson and Frank Leggatt were also present. We decided to proceed with the project with a launch date of 1 December 1993 to aim for. David Pirret agreed to attempt to obtain the agreement of David Varney (the managing director of Shell UK) and John Collins (the chairman of Shell UK).
71. The meeting on 10 May 1993 did not however conclude whether we might initially launch with paper tokens or with electronic media. I drafted a flow chart to show the various options and comparing the pros and cons of each. During the run up to the final decision being made about whether we should use paper or electronic

means, Frank Leggatt acted as the "man on the street" to consider what the layman's view on technology would be.

72. On 12th May 1993 I had a discussion with Tim Hannagan about design for the project. As a result, he approached two design companies (Storyboard and Greenwich Design) to design the card for use with Project Hercules. Greenwich Design were ultimately selected to do the necessary design work.

73. On 14 May 1993 I left for a brief holiday. During my absence David Watson continued to progress matters on Hercules. On 21 May 1993 Option One produced an IT brief setting out proposals for how Hercules would work on launch at 1 December 1993. I read the brief when I returned to the office at the end of May.

74. I had a meeting with Option One on 1 June 1993 to review where matters stood. That meeting focused primarily on immediate practical issues, such as the question of the name and the related design issues, the position on technology on rewards and in relation to database and marketing. The question of third parties was not really in the forefront of our minds at that point as we had implicitly recognised that there would be only a limited role for third parties at launch and there were other very much more substantial practical issues that needed to be dealt with if a 1 December launch was to be achieved. For example, in relation to the issue of the name, we decided to embark on yet another research project to try and assess possible reactions to different names. At our meeting we discussed the timetable

for doing this and producing a short list of names from which a decision could be made.

75. On my return from holiday I also saw a note dated 28 May 1993 from Ogilvy & Mather who had recently been appointed the main advertising agency for Shell. They were asked to give a view on Project Hercules from that perspective. They saw the key question as being whether Project Hercules was seen as a Shell promotion, building loyalty to Shell service stations, or whether it would become a separate promotional brand along the lines of Green Shield Stamps with multiple retail suppliers. Their view was that once launched as a Shell promotion it would be highly unlikely that any other retailer would be willing to co-operate. While this view did not affect Shell's thinking on the proposed structure of the scheme at launch, it was obviously something which we took into account so far as the branding of the scheme was concerned.

76. On 7 June 1993 we issued invitations to tender to a number of prospective technology suppliers. The following day I had a meeting with Air Miles, the first which had taken place since David Pirret had given his approval in principle to proceeding with the scheme. I therefore gave Air Miles for the first time a fairly full account of what we were proposing. I indicated that we proposed to give customers the choice of collecting either ordinary scheme points or Air Miles and we had some discussion as to the methodology of how we might do that. Generally I felt that Air Miles received the news of our plans positively, although they obviously remained cautious as to how their relationship with Shell might be affected.

77. During this period I was engaged on a number of different aspects of Hercules. I was involved in various meetings with technology suppliers responding to the invitation to tender. I was putting together a note summarising the thinking behind the scheme, which could be shown to senior management with a view to getting the approvals that David Pirret had told me were necessary. I was involved in reviewing the research which took place into the prospective names for the card.
78. The data capacity of Smart cards meant that there was a tremendous potential for accumulating information about customers. However, from a technical and legal point of view we still had a long way to go. On Shell's behalf, Option One sought advice from O&M Data Consult, a subsidiary of Ogilvy & Mather. However, we had heard that they might have some linkage with AT&T who were still trying to put together a multiple retailer loyalty scheme. We therefore secured an assurance from Ogilvy & Mather that any connection they might have had in that programme had been terminated before we instructed them. They duly gave that assurance. They were therefore engaged on 15th June 1993.
79. On the same day I received from Option One their evaluation of the various candidates for supplying mail-order rewards. They had seen and reported on a considerable number of companies. We then selected a short-list who, on 21 June, received a brief to prepare a proposal to meet our requirements for mail-order rewards. The companies short-listed were Argos, Freemans and Product Plus, the last named being linked to Granby Marketing Services Limited (a direct marketing company).

80. On 22 June 1993 Option One produced some proposals on advertising and promotional activity that we might undertake prior to the launch to try and maximise the number of customers enrolling in the scheme at the outset. This was an issue to which I gave continuing attention over subsequent months. By this stage David Watson and I were becoming concerned as to whether the necessary authority to proceed would be obtained in sufficient time to enable us to achieve a launch date of 1 December 1993. David Watson wrote a note to Frank Leggatt on this subject on 23 June 1993. The possibility still existed that if a launch did have to take place on that day it might be on the basis of paper vouchers but on the same day David Watson wrote another note to Frank, the thrust of which was that "it is possible to do this but it is messy".
81. By 2 July 1993 I was able to finalise a note to David Pirret summarising our proposals for him to use as a briefing paper for other senior management. I explained that a 1 December launch was still possible but that this required immediate approval of funds and carried with it significant risks. I then summarised the rationale for the scheme, how it worked, the risks and a possible contingency plan if we could not launch by 1 December. One of the risks that I identified was that Shell might not be able to get any third parties to participate, bearing in mind that the plan at launch was simply to have instant gifts on site and mail order catalogue, as well as Air Miles.
82. By early July we were also receiving responses to our design brief, responses to our brief for sourcing of mail order rewards and were beginning to evaluate the tenders for technology supply. In relation to the last of these issues, we took a

decision to proceed with Fortronic, although we then had to deal with an increasingly irate response from one of the other contenders, Bull, who believed that their own cards offered better security. This was true but their cards were in fact more sophisticated than we needed for the purposes of our scheme. Nevertheless quite a bit of time was wasted on this aspect as they sought to raise the issue at higher levels in the organisation, having initially failed to convince David Watson and myself. They wrote to David Pirret on 19 July but they did not divert us from our intention to go with Fortronic, with whom a preliminary contract was signed on 5 August 1993.

83. On the question of the name of the scheme, no clear favourite emerged but a consensus developed in favour of the use of the name "SMART". This, however, in turn raised issues as to how the name should be used, which were addressed by a paper from Option One on 30 July 1993. In relation to the mail order side of the operation, we evaluated the short-listed contenders and decided in favour of Product Plus/Granby, with whom I had a meeting on 26 July 1993 to inform them that we proposed to place the contract with them pending final authorisation. We were therefore now in a position of getting our main suppliers into place but we still did not have the requisite approval of the scheme within Shell.

84. Meanwhile, various additional queries and problems continued to arise, which delayed matters without any resultant alteration to the scheme. One such query was whether we should increase the functionality of the smart card to include a facility for use as a payment card. I did a lot of work on this, leading to my submitting a note to David Pirret and Frank Leggatt on 23 August 1993. My view

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was that to include this possibility would radically change the scheme, increase the costs very significantly and put us back by about 12 months without any significant benefit. In the event Shell did not proceed along these lines.

85. The process of gaining approval for such a large marketing project within Shell was unclear and rather cumbersome. On 4 August David Watson set out in a note to Frank Leggatt his understanding of the rules for getting authority. Meanwhile in the absence of authority there could be no certainty about any aspect of the scheme. On 4 August 1993 I also had a meeting with David Watson at which the whole question of whether we should have a smart card scheme or a paper scheme was discussed. Ian Sutcliffe (the then fuels marketing manager) had never been wholly convinced of the merits of a technologically-based scheme. It was agreed that a paper should be produced on the subject and that Ian, David, Frank Leggatt and myself should get together to try and agree (again) on where we were going. I eventually wrote my note to the other three on 17 August 1993. Although this was tedious it was obviously important as we needed to get maximum backing for our ideas if they were to win approval at higher levels of the organisation. By this time the launch date had already been put off to 1 February 1994 but Fortronic were emphasising that even that date could not be achieved unless we could make a firm commitment to them in respect of the main contract in the very near future. The preliminary contract with them had not committed either party to proceed to the main contract for the supply of terminals and cards. In order to achieve our objective there needed to be a continual process of education within Shell itself and on 18 August Option One produced a document entitled "Hercules, A Generic Description", intended to assist in this task. Until approvals were obtained there

was no alternative but to continue to work in the expectation that the scheme would come into operation. Also on 18 August Option One produced a discussion document on how scheme points might be used to benefit schools and local community or charity projects. On 20 August Ian Sutcliffe circulated the note reiterating his concerns about the mechanics of the promotion and setting out his preference for "a reward-driven paper-based promotion". There was then a meeting on 23 August with Ian, David Watson and David Pirret, at which I believe Ian's concerns were satisfied. Certainly David Pirret remained in favour of proceeding with the scheme.

86. On 6 September I had a meeting with Charlie Fox and Amanda Nicholson. I was preparing a note updating the team on where we had got to. I asked Charlie and Amanda to assist me with the preparation for this note. We discussed all the usual issues, such as the advantages of long-term and short-term promotions and of electronic points over paper vouchers. We also discussed the possible timetable for launch, bearing in mind the slippage of time. We were thinking about a possible target launch date of 1 April 1994 and to cover that the further gap after the previous planned launch date of 1 February 1994 there was discussion about the possible reintroduction of Make Money, one of our most successful promotions of the past. This was thought to be a profitable way of helping to boost the number of customers in the immediate run-up to launch. There were a number of issues that I knew senior management might be concerned about. For example, there was the problem that had existed with Collect and Select about the substantial and unknown contingent liability for unclaimed rewards. We needed to be able to explain how the Smart scheme was different from Collect and Select because

of the central control which enabled us to monitor how many points at any one time remained unclaimed. There was also the question of whether the scheme would be open to fraud, as the Argos/Premier Points scheme had received some adverse publicity in that respect. At around this time one of the ideas that came up was that we should have a discussion with Alan Davis who had previously been with Esso and was well known to some of our senior management. It was felt by David Pirret that if he were able to review what we were proposing and give it his approval, this might carry some weight with Shell management. After this I briefed Alan Davis on the project, and Alan was brought in to check the robustness and workability of the plans.

87. On 7 September I had a meeting with Frank Leggatt to review matters. We discussed steps that might be taken to help gain the approval of John Collins. He suggested that it might be helpful if Mr Collins can see how a terminal might work in practice, presumably to convince him that the process of using a card would not be too slow or difficult and thereby run the risk of alienating customers. It was also suggested at the meeting that Mr Collins might be more likely to be excited about the scheme if there were a substantial retailer, such as Sainsbury's, involved but I recognised at that point that this was not a realistic proposition.

88. On 9 September I instructed our internal lawyers in the various legal agreements that needed to be concluded. I gave them the generic description document that Option One had prepared, together with a summary of the terms included in the various agreements. In relation to third parties, the position at that time was that we were hoping to have contracts with various third parties to accept points in

payment for their goods. I indicated that we were seriously talking to UCI Cinemas, Block Buster Video, Dillons Bookshops and Burger King. There was also the possibility of retailers issuing points but the only party with whom this was even a possibility at that stage was UCI Cinemas.

89. On 13 September I produced my note summarising the reasons in favour of the proposals we were putting forward. I set out the pros and cons of electronic against paper vouchers, the smart card instant magnetic swipe card and a long-term against a short-term promotion. I also dealt with the risks, including the risk of not getting a large retail participant and dealt with issues such as the difference from Collect and Select. I did an additional note summarising the various pieces of market research that we had already carried out on the scheme and the ones still in the pipeline.

90. On 17 September 1993 I received Frank Leggatt's first draft of the note he was proposing to submit to gain necessary financial approval. It now appeared that this would need to be done by way of inclusion in the retail department's budget request (or 502 as it was known) for 1994. This was worked on by David Watson and myself and David produced a further draft on 21 September. He was still hoping at that point that approval might be received by the end of that month but this was becoming an unrealistic prospect. The delay remained a matter of concern to those of us most closely involved in the scheme and on 23 September I circulated a note considering the option of launching with paper vouchers and then moving to an electronic basis. Although this was something that I had always set my face against, I felt that the continuing delay made it something that we had

to reconsider, although I still saw, and listed in my note, considerable problems about going down that route.

91. Also at this time I met with Alan Davis and outlined the scheme to him. I left the generic description document with him. His conclusion was that the concept of the long-term promotion was a very good one and met a perceived weakness that Shell had in the promotions field, but that there were a number of points to be resolved with which he felt he could help. He offered us his services in this regard.

92. Meanwhile, discussions continued with all our preferred suppliers trying to get as much detail as possible agreed in the expectation that we would eventually receive approval of the scheme within Shell. On 27 September I had a meeting with Option One and UCI Cinemas to talk about their proposed involvement in the scheme. They appeared to remain keen to be in at the launch, at least as a redeemer of points, with the possibility of having a pilot scheme as an issuer with a view to full national roll-out at some later stage. UCI were keen to know who the other participating retailers were as there were some with whom they would have difficulty associating for image reasons, eg. those linked with alcohol. Negotiations in fact continued with UCI over a considerable period and they did indeed join the scheme at launch as redeemers of points, although they never became a points issuer. Other parties with whom we were talking seriously at that stage were Blockbuster Video and Thresher who we met on 8 October 1993. Neither of these however joined the scheme at launch.

93. In fact, in the Promotions Department in early October 1993 we were still finalising our thinking as to the basis upon which we should reach financial arrangements with proposed retail partners. I wrote a note on 11 October to Tim Bonnet and Les Jackson of Option One, setting out the various issues that needed to be considered, depending on the level which the third party retailer decided to enter the scheme, eg. as redeemer only, redeemer and issuer but without issuing their own cards, or a redeemer and issuer who also issued cards. One of the issues that very much concerned us was how we could recover some part of our set-up costs from retailers who subsequently might wish to join the scheme.
94. We were proposing to engage Ogilvy & Mather Data Consult with a view to advising on the logistics of various aspects of implementation of the project. On 12 October 1993 they wrote to Phil Crane, Shell's applications manager, with a copy to me (among others) setting out details of what was proposed in relation to their involvement. Meanwhile we were having problems with Fortronic. I spoke to them on 13 October at which time they were very concerned because they had had a development team of up to 15 people working on the project for three months and although we had been paying them sufficient to cover their costs, it was still unclear as to whether the project would go ahead and, if it did, whether they would get the main contract. They were finding it difficult to continue to commit that level of resource without some certainty as to the outcome. At the same time we were trying to deal with points that were being raised on our 502 submission. To some extent this involved going over ground that we had extensively investigated previously. For example, the question of why a smart card should be used at all and whether we could utilise existing terminals or cards

accounting software to try and cut down on cost. It was a difficult process to try and educate people coming to the scheme for the first time in matters with which we had been living for many months.

95. Additionally, no one at Shell had fully appreciated the foreign exchange implications of what was being proposed. We were purchasing an enormous number of cards which were priced in French francs. We were having to order merchandise, much of which would be in American or Hong Kong dollars, but which would be denominated in pounds when offered to the public. The sums involved were such as to make the foreign exchange implications of these arrangements very significant and it was necessary to consider how to hedge the foreign exchange risks. I therefore raised this with our finance department and spent a lot of time working on the necessary cover needed to protect Shell.

96. Discussions were continuing with Alan Davis as to the basis upon which he might assist us. I wrote him a briefing note on 15 October setting out the areas on which I thought it would be helpful for him to concentrate. At the same time, David Pirret was pressing to know whether terms of reference had been set up with Alan Davis and I reported the position to him. Alan Davis was well known to Steve Miller. Mr. Miller was in charge of budgetary decisions at Shell International and was part of the group that would ultimately have to approve the 502. I had mentioned to Alan the frustration that we were feeling about the approval process in the hope that he might take the opportunity of mentioning this to Mr Miller.

97. Meanwhile, I was still trying to ensure that we took advantage of all the information that we had collectively within Shell. Also on 15 October I had a meeting with Simon Hathrell who told me that he had been involved in a very similar Shell in-house project, called Project Nova, five years previously. Mr. Hathrell explained how Project Nova had envisaged the use of a Smart card. One of the results of this is that smart card functional Dassault terminals had been in Shell forecourts in the late 1980s. His view of Project Hercules was that we should definitely have a pilot scheme so as to flush out any technical problems. We discussed security issues and the current state of the market in relation to card suppliers and card accounting systems.
98. Also on 15 October 1993 I had a further discussion with Mike Pettit of Fortronic in an attempt to resolve their concerns. I had been given authority to agree that we would pay them for all work done up to a maximum of £600,000, even if approval for the scheme did not come through. I put this proposal to them in our conversation.
99. On 20 October 1993 I had a further meeting with Alan Davis to discuss what action could be taken to persuade SM (the supply and marketing function within Shell International, which ultimately approved the 502) to give its approval to our proposals. From the discussion that Alan had had it appeared that there was concern as to the pay-back in the short term from the investment we were proposing to make and concern as to whether we had made an adequate risk assessment and analysed the sensitivities of the project to changes in the assumptions we were making. The big question was whether the increases in

market share would cover the investment that we were proposing to make. Alan felt that there were areas on which further reassurance could be given. At the same time we continued to get enquiries directly from SM which we endeavoured to deal with. What I agreed with Alan Davis was that he should write a letter to Tony Brierley of SM, broadly supporting our proposals. On 26 October he sent me a draft of the letter that he proposed to send. I had a few comments on it which were incorporated into the draft and the final version was sent by Alan Davis on 29 October.

100. I continued to have discussions with Mike Pettit of Fortronic about their concerns. Eventually the agreement we reached was that we would pay them a sum of £300,000 simply to keep them on board until the end of 1993. Our reasoning was that by that time we would surely know whether our 502 was going to be approved or not. That sum would in any event be deducted from the value of the main contract as and when that was finalised. The arrangement was confirmed by a letter to me from Michael Pettit of Fortronic dated 29 October 1993. The conclusion of this agreement at least enabled me to have some confidence that notwithstanding the delays we could keep our key suppliers on board long enough to make the scheme viable.
101. While the delays caused difficulties with our suppliers, they did at least give an additional opportunity to try and recruit further third parties to the scheme. We pursued discussions with Welcome Break with whom we had a meeting on 3 November. On the previous day I had written to Air Miles concerning the question of the relative branding of the SMART logo and the Air Miles logo.

Although Air Miles readily agreed to integrate with the SMART scheme, issues of this sort were continually arising. The schemes were inherently competitive in nature and there were a number of potential problems. For example, Air Miles wished to be assured that we would work with, say, a major supermarket that came into their scheme even if we were to have a rival supermarket as part of our scheme. We wanted exclusivity on petrol in addition to the flexibility to negotiate with any supermarkets on the SMART programme. The position was complicated by the fact that we were at that time negotiating a new agreement with Air Miles which caused even more focus to be directed to these issues than would otherwise have been the case.

102. Another consequence of the delay was that the market in loyalty schemes was growing and we were in danger of falling behind our competitors. I have already mentioned AT&T's efforts to get a multiple retailer scheme set up, which received a fair amount of publicity in the press. So did Texaco's plan to launch the first electronic scheme by a major oil retailer. Also in November 1993 we learnt of a pilot scheme that Tesco were running in Kent for what became their Club Card scheme. Bearing in mind that Tesco were themselves becoming an important player in the petrol retailing field, this was a development that we could not ignore. At the same time, Simon Hathrell, who had become very interested in the scheme after my discussion with him and was at that time based in The Hague, was urging me to extend the scope of the SMART scheme to cover other countries in Europe. My reaction at that point was that I would simply like to see the scheme up and running in the United Kingdom before we decided whether, and, if so, how, to develop it into other countries.

103. The implications of the delays on the prospective launch date needed to be considered. On 17 November 1993 I wrote to Frank Leggatt saying that a launch date of 16 May 1994 was possible, including a three month live pilot of the customer interface and a one month live pilot of the full operating system. However, to achieve that date some interim work needed to continue to be done, even though full approvals had not yet been received. I estimated that a sum of £130,000 would be needed to cover the work. Alternatively, we could delay the launch still further, which would give us more time to arrive at a full agreement with Air Miles and to pull together deals with prospective retail participants. However, it would also carry with it the risk that our competitors (who by now we suspected all had a pretty good idea of what we were planning) would jump in ahead of us. As a result of this memo I got authority to spend the interim monies on the basis that no other or longer commitments were entered into. I was also thinking ahead to the tendering process that would be necessary following full approval of Hercules. On 19 November I wrote a note setting out my analysis of all the contracts that would be necessary to enter into, together with a summary of where we stood in relation to the tender process. This proved to be a very considerable list showing contracts in relation to start-up costs, having an estimated value of close to £11m, and contracts in relation to operational costs, having a value in excess of £21m.

104. I had a further meeting with Alan Davis on 22 November 1993. We discussed various aspects of the scheme and he expressed the view that sign-off of the project by Steve Miller should mean that the go-ahead for the plan was approved. There was unlikely to be anything else that would hold it up. I mentioned to him

that we had a few days earlier received a note from Jane Frost of Shell International raising yet further queries on the marketing plan and suggesting that there should be a round table meeting to review this and provide a good deal of further information. As a result of our discussion, Alan Davis wrote a note to Jane Frost indicating that he had seen a detailed financial justification for the promotion and was satisfied that the risk assessment had been carefully calculated and checked. He also explained what was proposed in relation to the timetable and database management. In relation to brand positioning, he expressed the view that Shell would be doing well if it stopped losing market share and that if it actually gained any share it would be a double benefit. Our meeting with Jane Frost took place the following day against the background of that note and I believe that her concerns were laid to rest. There was some discussion about our brand strategy, which we agreed to think about further. Following the meeting, David Watson and I had a discussion on this subject to try and work out how a promotion can best sustain a brand image. Our conclusion remained that the Hercules-style promotion gave us the best chance of doing so.

105. On 26 November 1993 we held what we described as a devil's advocate day. This had been suggested by Frank Leggatt and was intended to flush out any concerns that people had about the scheme and to identify what competitors might do to stall our plans, adversely affect the launch, produce rival schemes. We were also to look at potential flaws in the system and how we would deal with them. The meeting was attended by Frank Leggatt, David Watson, Andrew Blazye (our advertising manager) and myself, as well as a number of representatives from

Option One. While I believe that it was a useful exercise, I did not think that it threw up any new problems of significance.

106. Our discussions with Air Miles about the new contract continued. However, towards the end of November we received an addition to a re-drafted contract, a further document described as an "understanding" between Shell and Air Miles, which was apparently not intended to have binding, legal effect but nevertheless seemed it in its wording to have potentially significant implications. It struck us that it was an attempt by Air Miles to keep us strongly committed to promoting the Air Miles partnership and to prevent our doing anything in relation to SMART which would enable it to be a full competitor. While we remained very committed to Air Miles and recognised that if they wanted an "understanding" of this sort, we would have to agree something and we felt that the document was very much drafted from an Air Miles perspective and I said so at a meeting I had with them on 30 November. I undertook to re-draft the document in a more acceptable form.

107. In addition to other types of reward, the possibility of using points by way of donation to charity had always featured as one of the scheme options. Discussions had been held with a number of charities but by December the front-runners that were emerging were Save the Children Fund, The British Heart Foundation and The National Trust. I was sent a presentation document from Save the Children on 1 December 1993 and had a meeting with The National Trust on 6 December. Despite occasional attempts by senior management to get us to reconsider their own particular favourite charities, those three remained the charities involved with the scheme at launch.

108. The mechanics of launch were still under consideration. There had been a suggestion that we might implement the scheme region by region. On 10 December 1993 I wrote to Frank Leggatt indicating that this was possible but setting out some of the problems that it would cause and arguing in favour of a full national roll-out once a pilot testing scheme had been put into operation. The most significant disadvantage as I saw it was that introducing the scheme in this slow manner would enable our competitors to catch up with us and allow them to implement actions to combat our full national roll-out. In particular, they might try out prospective retail participants for schemes of their own. We were not in fact at that stage making very much progress with third party retail participants although on 30 November 1993 we had had a good meeting with HMV who were very interested and keen to join the scheme at launch. Those discussions progressed well and HMV did indeed become a redeeming member of the scheme at launch.

109. Finally, on 16 December 1993, I reported to other members of the retail marketing team, which was chaired by David Pirret, that approval of the 502 had been given and that Shell could move ahead to launch Hercules as soon as possible. In order to achieve launch in mid-June we needed to place orders via letters of intent (which had already been prepared) prior to Christmas, failure to do so would mean that we would lose three weeks and revert to a July launch. These letters were sent out before Christmas. Meanwhile, David Watson was preparing to leave his position at the end of December, his functions in relation to Hercules being taken over by Ian Sutcliffe. Prior to this Ian Sutcliffe had been Fuels Manager.

110. Once approval was secured and roll out confirmed, a Launch Committee was established and I, having previously been closest to the promotion had to start disseminating information and knowledge to other team members, especially Gary Anderton who was appointed to take over implementation of Hercules. Gary eventually became the manager of the scheme when it was up and running.
111. Although a great deal of work was done in the closing days of 1993, the timetable for moving towards launch was undoubtedly going to be tight. At the first meeting of the Hercules Launch Committee in 1994, which was held on 12 January 1994, we reported that the anticipated launch date had moved to 27 June and that as a worst case scenario it would fall back to 27 July. We would need to make a positive decision by 7 February as to which third party retailers were going to be included in the scheme. We also agreed at that meeting to embark on yet a further market research project to determine how best to communicate the new scheme to the public. Meanwhile we had negotiated terms of engagement as a consultant for Alan Davis who was appointed as project planner. By 19 January we had produced a detailed document setting out in full the business requirements of the scheme and the ways in which this affected what we in turn required from each of the suppliers with whom we were dealing. On 24 January we had a meeting to discuss the status of the parties. Although there were ongoing contacts and discussions taking place with several retailers, there were plainly only three or four that we had any realistic hope of involving at launch, even on a redeemer-only basis. However, some broader long-term linkages were beginning to come under consideration, particularly with the arrival of Ian Sutcliffe. He had a meeting on 26 January with Lloyd's Bank to try to identify areas of common ground and two

days later Option One had an initial meeting with Visa UK Limited. They of course had an existing widely-used points collection system known as Profiles and we started to explore what synergy there might be between that scheme and ours. This was the start of a discussion with them that extended over many months, continuing after I left the promotions department at the end of April 1994. Had those discussions come to fruition there would no doubt have been a fundamental change in the nature of the SMART scheme.

112. Quite aside from the status of third party participants I was still unsure as to whether we could meet our new launch target or whether we should accept a further delay. On 27 January I wrote a note summarising the advantages and disadvantages of further delay. I did not, however, reach any conclusion at that time and we continued to press forward as quickly as we could. Despite the extra resources in the Launch Committee I still felt it prudent that we should have some contingency plans in case the projected launch date could not be achieved and on 10 February 1994 Option One produced some proposals for promotions which could be put in for an 8 to 12 week period should this prove necessary.

113. Another matter to which attention needed to be turned was how we would present the scheme to our own Shell Retailers, who were going to be the people on the ground who were actually going to have to operate it. It was important not only that we should educate them as to how the scheme would work but also that we should enthuse them. A great deal of thought and planning went into the presentation to be made to them, which included video material and a carefully-

scripted series of interviews with personnel involved in the scheme, including David Pirret, Ian Sutcliffe and myself.

114. On 22 February 1994, Gary Anderton wrote a note on plans for the launch. By this stage it was generally agreed that we could not simply launch an electronic scheme over the entire country in one fell swoop. The risks would be far too great even if there were some sort of small pilot testing scheme. Gary's view, as expressed in his note, was that the way forward ought to be by way of a launch with paper vouchers, followed by a regional electronic roll-out shortly afterwards. He seemed to be keen to separate the launch of the loyalty programme itself from the introduction of the electronic technology. He was suggesting that there should be a meeting with David Pirret in the following week to get agreement on how to move forward. While I agreed with the basic premise that a full national launch was unworkable, I thought that there was an alternative way forward and on 23 February 1994 I wrote a note to Frank Leggatt and David Pirret, copying it to Ian Sutcliffe and Gary Anderton, setting out my own views. These were that we should launch electronically in one region, which I recommended should be Scotland because it provided a representative sample of the United Kingdom. At the same time we should launch a long-term promotion over the rest of the country which would involve collection of paper vouchers, which could ultimately be converted into SMART points when the scheme was eventually launched nationally. My note set out extensively the advantages, disadvantages and risks of this strategy. I also set out my reasons for rejecting the idea of a region by region roll-out of the scheme. The timetable I was recommending was that a pilot launch to test the technology should commence in the middle of May 1994 (we had

identified Aberdeen, which had around 10 Shell sites, as a good prospect for such a pilot), with launch of the regional scheme in Scotland in the middle of July. By the start of October we would then have a full evaluation of the regional scheme and could go for national launch at any time from then until March, depending upon various practical considerations.

115. I met with Option One on 7 March 1994 to discuss the Project Hercules launch strategy. Following this discussion I attended the Hercules Launch Committee meeting on 9 March 1994. The Committee agreed the following matters. The Aberdeen pilot was to begin on 15 May. We would then move into a launch in Scotland on 11 July 1994, which would encompass the full reward structure that we envisaged for SMART. The national launch, also on a full basis, was targeted for 10 September 1994. Leading up to that national launch we would have a 12 to 16 week interim promotion operating in the whole of the United Kingdom other than Scotland. This would involve a reward structure which would ultimately be transferable into on-site rewards within SMART. Various options for this interim scheme were discussed, which involved a link-up with McDonald's or a similar based promotion (the launch of the Flintstones' films due shortly) or promotions offering summer merchandise or glasses. It was agreed that we should have a meeting with Option One to work out the strategy of this promotion.

116. Meanwhile, plans for the pilot scheme were getting under way. Simon Grimsell (another new addition to the Smart team) produced on 9 March a proposal for the testing arrangements in Aberdeen involving the use of smart cards and readers by Shell employees only (there were 1,500 such employees in Aberdeen).

117. At around this time I decided I wanted fresh challenges and therefore instigated discussions which eventually led to my moving to the post of euroShell project manager in The Hague in early May 1994. Until then, I remained fully involved in the preparations for launch.
118. In the middle of March 1994 Ian Sutcliffe travelled to Canada to visit Shell Canada and to learn something from the arrangements that they had there with the Air Miles scheme. The Canadian Air Miles scheme there is based on ownership of the scheme by a number of participating retail partners, including Shell Canada, a major supermarket and other organisations. Ian was enthusiastic about the potential of certain features of the Canadian scheme and set out in his Note of 22 March 1994 some of the 'key learning points' which Shell UK could make use of in the development of Project Hercules.
119. My main role over the remainder of my time as Promotions Manager was dealing with rewards for the SMART scheme. On 30 March I circulated a note on the rewards proposed for the Scotland launch, which in addition to on-site rewards, mail order and Air Miles, included the participation as third party redeeming retail participants of UCI Cinemas, Dillons Books and HMV (in fact Dillons did not eventually participate because we had doubts about their financial viability). I also envisaged Save the Children and British Heart Foundation being involved. For the national launch it was envisaged that TicketMaster would be involved but Dillons and HMV might drop out. A schools campaign was also proposed to be included in the national launch (although I believe that this did not in the event happen).

I wrote a more detailed note on the subject on 13 April 1994. This was my parting shot in relation to SMART, and I left the department on 6 May 1994.

Summary

120. Having been heavily involved in the formative stages of the SMART scheme for some two years, I can state categorically that the scheme was in no way derived from any information disclosed to me by Mr Donovan or Don Marketing UK Limited. The only occasion that he put forward any information to me about any kind of loyalty scheme involving third party retailers was in May 1992 when a copy of Mr Donovans three year old proposal was sent. By this time extensive research into and development of the concept of the sort he claims as his own was already well under way. Even now I have no recollection of his ever mentioning a long term loyalty scheme; after all, his expertise was in the field of game promotions and all the proposals he presented to me were games or competitions on one theme or another.

121. The evolution of SMART was a long and arduous process. The progress from Project Onyx through Project Hercules to SMART was a long and bumpy ride. It took many twists and turns, evolving along the way in response to pressures from senior management, market research, third party input and the successes and failures of other loyalty schemes. Even before my departure, the scheme made many trips back to the drawing board and was still under revision when I left. The final SMART scheme was specifically tailored by and for Shell with the assistance of Option One in order to reclaim and retain the business of a valuable section of

the motoring public. It is naive of Mr. Donovan to suggest that the SMART scheme was modelled entirely by me on the basis of his contributions.

Previous litigation

122. Mr Donovan is no stranger to litigation - I believe that this is around the sixth legal action brought against Shell by members of the Donovan family or their associated companies. In particular Mr Donovan has referred at paragraph 25 of his Statement of Claim to three previous actions which Don Marketing UK Limited brought against Shell UK Limited in 1995.
123. The 1995 actions involved a great deal of documentation. I thought that these matters had been laid to rest with the settlement of the previous litigation, but it appears from his Statement of Claim that Mr Donovan is determined to argue that he would have won all three of these actions. If Mr Donovan is allowed to throw all of this back into the melting pot, it leaves me with no alternative but to challenge his assertions.
124. I understand that Mr Richard Wiseman will be dealing in his evidence with the settlement negotiations in those actions, so I will confine myself to a brief discussion of my involvement with each action.

Nintendo CH 1995 D 5417

125. In 1992 handheld video games called 'Nintendo Gameboys' were very popular. Consequently, a Nintendo theme was an obvious choice for a short term promotion. Indeed, as early as February 1992 Garrie Keys (a Shell employee) suggested that Shell could run such a promotion.
126. On 4 June 1992, I attended a meeting with Mr Donovan, who was attempting to persuade me to adopt his 'MegaMatch' promotion. At this meeting Mr Donovan also put forward an idea for a 'Nintendo' themed promotional game called "Super Mario Land" involving cash prizes, playcards, holidays and gameboys.
127. Shell promotions usually required a nine month preparation time. I was therefore concerned that the gameboy craze would have long passed when the promotion came to market. I was not enthusiastic about this idea, not least because I was keener on MegaMatch which I perceived to be more appealing to a wider age range.
128. Over six months later, on 11 November 1992, I received an unsolicited fax from Business Development Partnership Limited ("BDP") suggesting another Nintendo themed gift promotion for the first quarter of 1993. I turned BDP down too, telling them that it generally takes 6 - 9 months from the presentation of the idea to the implementation of the final scheme.

129. I should mention that at this stage there had been no indication from Don Marketing or BDP that either of them had in fact obtained permission from Nintendo to use the Nintendo theming or branding, though John Donovan indicated that he had consulted Nintendo.
130. On 19 February 1993 John Donovan wrote to me pressing the claims of his Super Mario Land idea secondary to another idea which he called 'Hollywood Collection' (which I deal with below). I was very busy with Project Hercules at the time and, in keeping with my general practice of not upsetting agencies unnecessarily, I faxed the letter back to him with a note saying thank you and that I would revert when we had made any further progress. I have to admit that this was really a euphemism for 'stop bothering me'.
131. On 27 April 1993 BDP re-submitted their Nintendo proposal. In the interim they had developed their proposal considerably and by the time they presented the idea to Charlie Fox (an assistant in the Promotions Department) and myself, they told us that they had already obtained Nintendo's approval. They also explained that a Nintendo film was due to be released in July 1993, with all the usual publicity. Charlie Fox and I liked the mechanic of the promotion, its 'everyone's a winner' reward structure and the fact that it was fully-worked up and so would not require a long lead time. We agreed to run the promotion and I handled the sell in to management, gaining approval from David Pirret. The letters of 3 May 1993 and 12 May 1993 were at my instigation, I then handed the project over to Charlie Fox to deal with, as at the time I was very busy dealing with Project Hercules.

132. At no stage did Don Marketing's Super Mario Land proposal enter my mind. Aside from the general Nintendo/Gameboy theme, the BDP and Don Marketing proposals were entirely different. The main differences were as follows:

| | Business Development Partnership | Don Marketing |
|-----------------|--|---|
| Title | Gameboy | Super Mario Land |
| Mechanic | Every leaflet was a winner and every contestant did win. There was one scratch panel which revealed one of the prizes. | multiple scratch panel you had to scratch off the correct combinations of panels to win. Every leaflet had the potential to win but only a small number of contestants would win. |
| Prize | Posters Baseball caps Software Gameboy unit | Instant cash prize "a share of £250k" A separate very complicated method for winning Gameboy |
| Timing | Based on film opening in UK in July 1993 | Based on Nintendo advertising campaign |
| Proposal | Worked up and prepared for Nintendo. 6 weeks to implement | Speculative concept 10 weeks to implement |

133. The Shell Nintendo promotion ran from 18 June 1993 for four weeks. On the day of the launch, John Donovan telephoned me to complain about what he perceived to be our use of his idea and additionally to complain that our scheme was open to fraud on account of customers being able to see through the latex covering the prize panels. Having read the transcripts of the tapes supplied by Mr Donovan (but not having heard the original tapes which have not yet been produced), I am

now aware that Mr Donovan was recording this and all subsequent telephone conversations between us onto audio tape. I was not aware of this at the time.

134. He explained that he had suggested a Super Mario Land idea at our MegaMatch meeting in the previous year and that he had referred to it again in February. I explained that I genuinely had no recollection of such a proposal and that the Nintendo promotion had been developed entirely by BDP. He reminded me of his proposals, and I realised that in fact it was completely different to the BDP promotion anyway. He acknowledged that Shell had not used the exact idea he put to us and that BDP's promotion was very different in terms of mechanics, execution, creative elements and prize structure.

135. After the telephone call I managed to find a copy of Don Marketing's original Super Mario Land proposal. When I compared it with BDP's Nintendo promotion it was clear to me that apart from the fact that in both promotions the customer stood a chance of winning a Nintendo Gameboy, there was no similarity between the two. I was content that there was no basis for Mr Donovan's claim that Shell or BDP had used his confidential information.

Now Showing - CH 1995 D 2259

136. Films have always been a popular theme for promotional games. My colleagues and I were approached on a regular basis by agencies with promotional game ideas based on individual film and video releases, as well as more general 'movie' themes. For example Jackson Brady (one such promotional agency) on 22 July

1992 suggested a promotional tie-in with Twentieth Century Fox and other unspecified third parties. Agencies commonly made such suggestions, but my concern was always whether such agencies realistically had the ability and influence to get such third parties involved.

137. I have already mentioned Don Marketing's "Hollywood Collection" proposal. It was first put forward by Mr Donovan on 24 November 1992. Hollywood Collection was a gift collection/instant win promotional game proposed for the third quarter of 1993. I took this idea no further, despite Mr Donovan's attempts to re-pitch it to me in early February 1993.

138. In February 1994 Shell required a short term promotion to fill the gap in the UK whilst SMART was running in Scotland, so I invited five agencies (Promotional Campaigns, Tequila UK, Brownings, Option One and Powerhouse Consultancy) to pitch for the promotion. The instructions made no mention of any particular theme and no agency was steered in any particular direction. Between the five agencies they came up with 40 - 50 different variations of promotions. Two of the agencies (Tequila and Option One) suggested promotions with film themes. Tequila suggested an association with MGM and Option One suggested Blockbusters (probably because at the time they were negotiating with Blockbusters in relation to Project Hercules).

139. In March 1994 I commissioned some market research to gauge our customers' reactions to the various promotions on offer. Tequila's proposed MGM promotion proved very popular in this research due to the cinema ticket prizes on offer. On

that basis Frank Leggatt and Ian Sutcliffe agreed that Shell would run the Tequila promotion. The agreement between Tequila and Shell was signed on 16 May 1994. In the end Blockbuster were also brought into the promotion, so Option One were also credited and paid accordingly. The promotion was run under the title "Now Showing" from 11 July to 2 October 1994 in the UK except Scotland.

140. Mr Donovan's "Hollywood Collection" scheme simply did not enter my mind; neither for that matter did Jackson Brady's or anyone else's. However, in due course Mr Donovan claimed that because he had presented a promotional game with a 'film' concept, Shell was breaching his confidential information by running its "Now Showing" promotion. It is clear from the tender process and market research that Now Showing was independently derived, quite apart from the fact that it was very different from Mr Donovan's original suggestion.

Make Money - CH 1995 D 1927

141. Shell Make Money was a promotion originally run in the 1960s. It was reintroduced in the 1980s, this time with the assistance of Don Marketing, who redesigned the artwork and game pieces. On both occasions, Make Money was very popular.
142. In the course of a telephone conversation on 18 June 1993 in relation to the dispute over the Nintendo promotion (recorded, unbeknownst to me, by John Donovan) Mr Donovan claimed in passing that Shell could not run the Make Money promotion again without his permission.

143. In order to investigate whether there was any substance to Mr Donovan's allegations, Charlie Fox and Option One carried out investigations into the ownership of the rights in Make Money. It transpired that Paul King, who was in charge of Shell Promotions Department in the 1980s, had written a letter dated 3 June 1981 to Mr Donovan in which he agreed that Don Marketing would "work up" a promotional concept based on the Make Money theme but with a new slant. Mr King's letter went on to state "I agree to pay you a figure of £500 to cover your artwork costs on the understanding that this promotional idea remains the sole right of Don Marketing/Shell UK Oil until we agree mutually to differ this arrangement for a particular promotion".
144. Mr Donovan evidently believed that this letter gave him a half share in all rights in the whole Make Money concept dating back to the 1960s. On the other hand, Charlie Fox's and Option One's conclusion was that Mr Donovan only owned rights over the revamped 1980s artwork and design (his 'new slant') and that Shell could run Make Money again provided it steered clear of Donovan's artwork. The promotion was run on this basis between April and June 1994.
145. I had very little to do with the implementation or preparation of the promotion itself, as I was busy dealing with the immediate run-up to SMART until my departure from the Department in April 1994. However, in February 1994 I did pick up on the tail end of the correspondence which had passed between David Watson and Mr Donovan on this topic at the end of the previous year.

Campaigning

146. Mr Donovan and his father have campaigned against Shell and me personally in the weeks preceding the issue of the Writ and throughout this litigation. They have done this by placing advertisements in the press, setting up two websites on which extensive material is published and selected extracts of telephone conversations that John Donovan surreptitiously recorded are both played and transcribed; by writing letters to senior executives within Shell; other public figures including MP's and many government departments. His father, Alfred Donovan and others are accustomed to stand outside Shell-Mex House where Shell UK Limited's office is based handing out copies of this material, as well as outside Shell International in Waterloo and the Shell offices in The Hague. Mr Donovan's campaign against me and Shell has been persistent and vindictive and the campaign includes among the various incidents the following:

- i. On 5th March 1998 John Donovan send a letter to Mark Moody Stuart, Chairman of Shell Transport and Trading Company Plc, naming me and saying that I acted "entirely without scruples in these matters". Letters were then posted on the website and sent to Pension Fund Managers and Shell Station Operators talking about the "blatantly disreputable conduct of a former manager of Shell UK Limited, Mr Andrew Lazenby"
- ii. On 8th May 1998 an open letter was sent to Mark Moody Stuart, saying that concept of the Smartcard was disclosed by John Donovan in

confidence to me. The allegations contained in this letter were later distributed in leaflets outside Shell offices.

- iii. On 6th April 1998 a further letter was sent to Mark Moody Stuart saying that I had specific knowledge of Don Marketing's proposal and implying that I had used this proposal for the SMART scheme.
- iv. On 14th April 1998 Mr Donovan wrote a further letter to Mark Moody Stuart saying that he would send a package to a number of parties including Shell's shareholders and 2,000 Pension Fund Managers. He also stated that the shell-shareholders.org website, a website used as a further medium to campaign against Shell, and with a link to the don-marketing website, was now fully operative. In a further letter on 14th April 1998 to Mr Moody Stuart, Mr Donovan referred to me as a "bad apple at Shell UK".
- v. On 23rd April 1998 John Donovan wrote a further letter to Mr Moody Stuart saying that he had no personal animosity against me. This is obviously wrong as all his actions show that he has enormous personal animosity against me. If he did not he would not be campaigning in the way he is.
- vi. On 8th May 1998 Alfred Donovan (Mr Donovan's father) distributed a leaflet at the Shell Transport and Trading Company Plc Annual General Meeting referring to an "unscrupulous Shell UK Manager". This letter

also gave the address of the Don Marketing website where lots of further malicious material had been published about me by name.

- vii. Mr Donovan published a document entitled "The Don Marketing Saga", a copy of this was posted on his website. In the second paragraph this referred to me personally claiming that Don Marketing presented a succession of concepts to me in strictest confidence and that these ideas were adopted without giving any payment or credit to Don Marketing. This is untrue and a prime example of Mr Donovan's vindictive behaviour towards me.
- viii. Mr Donovan also placed advertisements in the press all referring to his website where I am personally attacked as indicated above. On 1st May 1998 there was an advertisement in the Evening Standard referring readers to his website. A legal notice was published in Marketing Week on 21st May 1998. A letter from John Donovan was published in Marketing Week on 21st May 1998 and further advertisements were in the 28th May 1998 edition of Marketing Week and the July issue of the Forecourt Trader.
- ix. Letters were written to public figures. On 5th May 1998 a letter was written to The Prime Minister, Tony Blair. Further letters were written to MPs on 23rd July 1998, 27th July 1998 and 30th October 1998. Letters were written to the Advertising Standards Authority and the Office of Fair

Trading on 11th May 1998, 1st June 1998, 9th July 1998 and 26th July 1998.

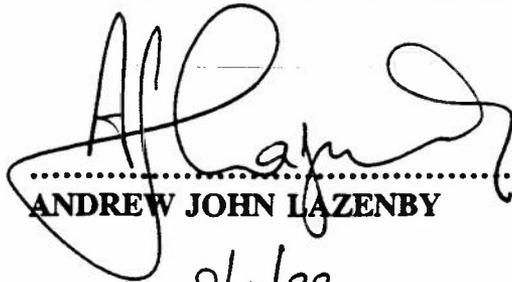
- x. During July and August documentation was sent to Shell Retailers asking them to take part in a survey about the principles of Shell and referring them to this action against Shell. The documentation referred retailers to the Don Marketing website at "don-marketing.com" where John Donovan, Alfred Donovan and Don Marketing (UK) Ltd post copies of their campaign material which includes malicious material about me.

- xi. Out of all these incidents I have found the circulation of documentation outside Shell offices and the contents of the Don Marketing website the most distressing. On the website there is an audio function entitled "The Shell Game" where my voice which was recorded without my knowledge in a telephone conversation with John Donovan is used partially and selectively. The distribution of leaflets outside Shell offices has been carried out by John Donovan's father, Alfred Donovan, and it also appears that third parties have been encouraged to distribute leaflets. (including a young man and a young woman). These leaflets have been distributed on a regular basis since August 1998 and new leaflets are available at regular intervals.

147. Such behaviour has caused me much stress and has only been tolerable because of the unreserved support I have received from Shell management to the highest levels as well as my colleagues, and because I am confident of our position. Only because of such support has the intense personal campaign he has been waging not affected my work performance, professional standing or health.

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

SIGNED


.....
ANDREW JOHN LAZENBY

DATED

8/4/99
.....