



# Sales Promotion Specialists

Don Marketing UK Ltd.  
St. Andrews Castle  
33, St. Andrews Street South  
Bury St. Edmunds IP33 3PH  
Tel: 01284 388816  
Fax: 01284 388308  
E-mail: [jad@don-marketing.com](mailto:jad@don-marketing.com)  
Web: [www.don-marketing.com](http://www.don-marketing.com)

JAD/A230

Mr Mark Moody-Stuart  
Chairman and Managing Director  
The "Shell" Transport And Trading Co  
Shell Centre  
London SE1 7NA

14 September 1998  
6 Pages By Fax Only To:  
0171 934 7987

Dear Mr Moody-Stuart

## THE GUARDIAN NEWSPAPER

In view of Shell's previously expressed contention that the various agreements between the parties remain in force, I was surprised to hear from the journalist investigating matters on behalf of the Guardian, that Shell had supplied to the Guardian a copy of the Defence And Counterclaim. Your lawyers must have realised that it contains extracts from the Funding Deed. The Defence And Counterclaim document is not in the public domain. For this reason the journalist had been unable to obtain a copy from the Royal Courts of Justice.

I therefore have to conclude that Shell decided that it was in its own best interest to reveal to a national newspaper the existence of the Funding Deed, perhaps because Shell UK believes that the Deed puts it into a favourable light. The release of the information confirms beyond any doubt that Shell has accepted that it did, by its own actions in releasing press statements in April 1998 which breached the agreements, repudiate all of the then existing agreements.

Out of a moral obligation to Sir John Jennings, I voluntarily continued to refrain from disclosing any information about the Deed. Primarily for this reason, I declined to supply a copy of the Defence and Counterclaim to the Guardian or comment on the Deed when I was subsequently informed that Shell had provided a copy of the Defence And Counterclaim to them. Another factor was that my solicitor, Mr Richard Woodman, was on holiday at the time, so I could not seek his advice.

The journalist, Mr Simon Rines, contacted me again on Friday, having apparently drawn the correct conclusion as to the purpose of the Deed. Shell's action in supplying details of the Funding Deed to the Guardian has therefore put me in a situation where I am forced to defend our position. If I do not provide an account of the relevant events, as seen from our perspective, readers might gain the impression that Shell had acted like a good fairy in graciously providing a form of Legal Aid to a small company suing Shell.

In reality, what may have started as a noble proposal, presumably initiated by Mr Jennings, turned into a hard-nosed and regrettably, rather sleazy business deal, negotiated under exceptionally unusual circumstances, with protesters literally at the gates of Shell Mex House and with Shell facing a costly and highly embarrassing libel action.

The Funding Deed, potentially worth at least £125,000 to DM, was of course agreed partly in consideration of my father discontinuing his libel action against Shell (and ceasing the pressure group). Shell's obstruction of the ASA investigation occurred during the period when the final terms of the Deed were still being agreed i.e. before the deal was completed.

I am sure that neither you nor Sir John would want Shell UK to continue to try to gag us in respect of the Deed, when Shell UK has already brought details of the Deed it into the public arena for their own reasons. That would clearly give Shell an unfair advantage. **I will therefore be briefing Mr Rines at 4pm today** on the circumstances which gave rise to the Funding Deed; the details of the agreement and the problems that arose in its operation. I will also give him details of Shell's subsequent decision to effectively pull the plug on the Deed in dubious circumstances and instead, propose mediation at a time when the staged payments were far from being completed. In other words, I will tell him, and if necessary provide evidence, proving that Shell did not, even at that stage, honour the terms of the funding deed.

As you are aware, I have made it a practice to inform Shell in advance of any plans so that Shell has had the opportunity to point out any possible breaches of the agreements. I have always taken into account what has been said in any replies and have often modified our actions accordingly.

I therefore feel compelled to say that Shell's actions in April repudiating the agreements, when it released press statements commenting on the past litigation, and its decision to supply details of the Funding Deed to a national paper, displays incredible arrogance. Particularly given the nature of the correspondence we have received from Shell warning us not to take the actions that Shell has now taken i.e. not to comment on the past litigation or release information about the Funding Deed.

In a letter dated 11<sup>th</sup> April 1997, DJ Freeman warned us against issuing a press release on the basis that any comments on the past litigation would be in breach of the various agreements, including the Funding Deed. We heeded what they had said. On or around 21<sup>st</sup> April 1998, without our knowledge or consent (and despite the fact that the terms were also binding on Shell) Shell issued a press release commenting on the previous litigation. A few days later, they issued a second.

In a letter dated 6<sup>th</sup> April 1998, Miss Jyoti Munsiff warned that: "However, having reviewed with Richard Wiseman your letter and the earlier agreements Shell U.K. Limited entered into with you, we believe that publication to the shareholders or Shell Transport directors of the material covered by the July 1995 Deed is a breach of the confidentiality provisions of the 1995 Deed."

This was shortly followed by a letter from DJ Freeman dated 17<sup>th</sup> April 1998 warning us not to supply information to a national newspaper. The letter mentioned the confidentiality attached to the Funding Deed. It used the term "flagrant breach". They also pointed out in regard to our plans to distribute copies of the SMART Writ/Statement of Claim at Shell-Mex House that although the document was in the public domain, it did not relieve us of our then obligations under the agreements. We again heeded the warnings. In this case, the legal document at issue is NOT even in the public domain, yet Shell gave details of the Funding Deed to a national newspaper, even though the relevant terms of the Funding Deed were also binding on Shell.

Under the circumstances, we have to conclude that Shell believes it is so all powerful that while it is prepared to use its financial muscle to pressure small companies and individuals into obeying the terms of agreements, it has no compunction whatsoever about disregarding binding terms whenever it so chooses. In other words, that there is one rule for David and another for Goliath.

The following is attached for your information: -

1. Copies of the whole page and quarter page notices publicising the results of our recent survey. They will be appearing in a selection of magazines commencing later this week. The good news is that the results are much better than those received some three years ago. The bad news is that the majority of respondents are still of the opinion that Shell UK operates on an unethical basis. Next month, we will publicise the result of the question asked about Shell's Statement of General Business Principles. I can tell you that half of the respondents gave a negative answer.
2. A copy of an article published in the September edition of "Incentive Today" magazine entitled: **"Shell smacked over libel action"**.

Under the new circumstances, where the question of compliance is no longer an issue, I will supply to the media and the ASA copies of the correspondence proving that Shell did deliberately obstruct the ASA investigation into the flawed Make Money game. We will also publish on our website a copy of the Writ/Statement of Claim for each action and the Opinion provided by Mary Vitoria QC. Full details of the various matters, including the Funding Deed and the survey results, will also be supplied to the media, every MP, Shell Stations, and major Shell shareholders.

I would advise you that my father is absolutely incensed at Shell's double standards and its opportunist action in respect of the Funding Deed. He is now making his own plans on how to deal with the new situation. He had already, in any event, resigned as a director of Don Marketing. I understand that he has also decided to represent himself legally.

It is unfortunate that the atmosphere has become so heated and is likely to become even worse. I have, as always, bent over backwards to try to be fair to Shell. For example, we kept our SMART claim secret for over a year when we were under no obligation whatsoever to do so.

I will refrain from giving any information about the Funding Deed to Mr Rines until 4pm today so that your lawyers have an opportunity to give us their comments on the matter.

Yours sincerely

John Donovan  
Managing Director

- cc. Dr Fay, Chairman and Chief Executive, Shell UK Ltd (Fax: 0171 257 3939)  
Mr Richard Wiseman, Legal Director, Shell UK Limited (Fax: 0171 257 3303)  
Mr Colin Joseph, D J Freeman Solicitors (Fax: 0171 556 4590)  
Mr Richard Woodman, Royds Treadwell Solicitors (Fax: 0171 583 2034)



**DJ FREEMAN**

SOLICITORS

43 Fetter Lane  
London EC4A 1JU  
Tel +44(0)171 583 4055  
Fax +44(0)171 353 7377  
DX103 London

Direct line 0171 556 4411  
Direct fax 0171 583 4425  
Internet szh@djfreeman.co.uk

Colin Joseph  
Tony Leifer  
Stephen Koehne  
Toby Greenbury  
Edward Totman  
Jonathan Lewis  
Marcus Rutherford  
Paul Clark  
Richard Spiller  
Vivien Tyrell  
Alan Magnus  
Susan Hall  
Anthony Edwards  
David Coupe  
Timothy Daniel  
Christopher Comyn  
David Kendall  
James Innes  
Alan Perry  
Barbara Naftalin  
David Johnson  
Peter Taylor  
Andrew Sanders  
Maira Fraser  
Christine Derrett  
Sally Hine  
Susan Aslan  
Dorothy Cory-Wright  
Clive Davies  
Simon Corke  
David Tiplady  
Jane Moorman  
Richard Hopley  
Henry Clinton-Davis  
Laurence Harris  
Alexander Carter-Silk  
Lesley-Anne Avis  
Monica Blake  
Caroline Janzen  
Ashwani Kochhar  
Richard Max  
Susan Charles  
Graham Chase  
Mark Everiss  
Elizabeth Goss  
James Pilgrim-Morris  
Ann Robson  
Jonathan Martin

**By fax and post**

**J Donovan Esq  
Don Marketing UK Ltd  
St Andrews Castle  
33 St Andrews Street South  
Bury St Edmunds  
Suffolk  
IP33 3PH**

Your Ref **JAD**

Our Ref **SZH/CSJ/01105457/kys**

**14 September 1998**

*P483*

Dear Sir

**Shell UK Limited**

We refer to your letter of today's date addressed to Mr Moody-Stuart.

Although expressed to be copied to Colin Joseph of this firm, the fax was not in fact received by us and we received a copy from our clients approximately 1 hour ago.

We confirm that Mr Simon Rines was shown a copy of the Defence and Counterclaim. This document comprises Shell's claim against the three Defendants to Counterclaim and in that regard should be viewed in the same light as a Writ and Statement of Claim.

Neither we nor Shell accept that the mere showing to Mr Rines of the Defence and Counterclaim constitutes a breach of the Funding Agreement.

Unless the parties to the Funding Agreement choose to purport to accept Shell's showing of the Defence and Counterclaim to Mr Rines as a repudiatory breach of the Funding Agreement, they remain bound by its terms. Please let us know whether the parties to that Agreement do now purport to regard the Funding Agreement as discharged.

We have noted your comments in relation to the survey. We would be grateful to know how many people actually replied to the survey.

Associate  
John Skrimshire\*

Consultants  
David Freeman  
Christopher Hancock  
Mahir Jalili

\* Non-solicitor  
US Attorney

The Partnership is regulated in the conduct of its investment business by the Law Society

J Donovan Esq  
Don Marketing UK Ltd

14 September 1998

Finally, we would be grateful if you could please ensure that all future communication takes place between solicitors. Accordingly, please ensure that all future correspondence is directed to us.

Yours faithfully

*DJ Freeman*

cc: Royds Treadwell



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JAD/A232

Mr Mark Moody-Stuart  
Chairman and Managing Director  
The "Shell" Transport And Trading Co  
Shell Centre  
London SE1 7NA

16 September 1998  
7 Pages By Fax Only To:  
0171 934 7987

Dear Mr Moody-Stuart

## THE GUARDIAN NEWSPAPER

I acknowledge receipt of the letter from DJ Freeman in response to the letter I faxed to you on 14<sup>th</sup> September 1998. I received their faxed reply at approximately 4.40pm.

Attached is the printed record from our fax machine confirming that our 6 page copy fax was sent to DJ Freeman at 11.56 on 14<sup>th</sup> Sept to 0171 556 4590 and was received on their fax line, id 0171 3537377. No doubt it will turn up in due course if it has not already done so. I did confirm with Mr Wiseman's Secretary at noon on 14<sup>th</sup> September that his office had received the 6 page fax. I was informed that it would be handed to him immediately after he had completed a telephone call.

I also attach for your information a copy of the DJ Freeman response, confirming that a copy of the Defence and Counterclaim was supplied to the Guardian Newspaper. You will see that they contend that it should be viewed in the same light as "a Writ and Statement of Claim".

Both of the relevant documents in this instance contain references to information formally covered by one or more of the various agreements between the parties. The important distinction between them is that the Writ and Statement of Claim is a document that can be inspected by the public at the Royal Courts of Justice and copies obtained on payment of a fee. The document is in the public domain. The same does not apply to the Defence and Counterclaim. It is not available for inspection and copies cannot be purchased. The document is not in the public domain. Miss Munsiff would confirm this fact.

Since Mr Wiseman and DJ Freeman were aware of this fact, only one conclusion can be drawn. A decision was made to release the document because it was thought that the apparent nature of the "Funding Deed" would put Shell in a good light. This may turn out to be another monumental miscalculation.

I have already pointed out that we received a letter from Mr Joseph dated 17<sup>th</sup> April 1998 (copy attached) warning us not to distribute the Writ and Statement of Claim, even though that document WAS in the public domain. Mr Joseph pointed out in the strongest terms that we would be in breach of the terms of the July 1995 agreement – the Funding Deed, if we released the document because it contained information covered by the Deed. He said: *“The statement of claim plainly includes material which you have duty to keep confidential pursuant to the 1995 agreement and you are not at liberty freely to disclose that to members of the general public”*. We heeded his warning. If we had not, 200 copies would have been circulated to Shell employees. In stark contrast, DJ Freeman supplied a copy of the Defence and Counterclaim (not in the public domain) to a national newspaper, whereby the information may be read by millions of people. **Mr Joseph is hoist by his own petard.**

As to the fifth paragraph of their letter dated 14<sup>th</sup> September, my position and that of Don Marketing UK Limited, is as set out in paragraphs 19 to 22 of the Reply and Defence to Counterclaim. My contention is that by handing the Defence and Counterclaim to the Guardian, Shell has unequivocally accepted that this is the case.

With regards to the survey, we will happily let Shell have a copy of the Affidavit supplied by the independent solicitor who opened all of the survey responses provided Shell is willing to make a reasonable contribution towards the survey costs. No confidential information would be supplied i.e. respondent details. Our instructions to the solicitor were that he should represent Shell's interest to ensure the authenticity and validity of the responses. A copy of the Affidavit will be offered to the Guardian.

Yours sincerely

John Donovan  
Managing Director

cc. Dr Fay, Chairman and Chief Executive, Shell UK Ltd (Fax: 0171 257 3939)  
Mr Richard Wiseman, Legal Director, Shell UK Limited (Fax: 0171 257 3303)  
Mr Colin Joseph, D J Freeman Solicitors (Fax: 0171 556 4590)  
Mr Richard Woodman, Royds Treadwell Solicitors (Fax: 0171 583 2034)



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Fax: 01284 388308  
E-mail: [jad@don-marketing.com](mailto:jad@don-marketing.com)  
Web: [www.don-marketing.com](http://www.don-marketing.com)

JAD/A234

Mr Mark Moody-Stuart  
Chairman and Managing Director  
The "Shell" Transport And Trading Co  
Shell Centre  
London SE1 7NA

16 September 1998  
Second Fax  
2 Pages By Fax Only To:  
0171 934 7987

Dear Mr Moody-Stuart

## THE GUARDIAN NEWSPAPER

I wish to make a correction in respect of my earlier letter. DJ Freeman did not admit supplying to the Guardian a copy of the Defence and Counterclaim. They said: "***We confirm that Mr Simon Rines was shown a copy of the Defence and Counterclaim***". They followed this by saying: "***Neither we nor Shell accept that the mere showing to Mr Rines of the Defence and Counterclaim constitutes a breach of the Funding Agreement***".

The fact of the matter is that they **did** supply a copy to the Guardian (not to Mr Rines). When I first learnt of this major development, I wondered whether the references to the Funding Deed had been deleted from the copy supplied to them. I therefore checked by telephone every paragraph relating to the agreements. It soon became apparent that the Guardian had indeed been supplied with a complete copy, with no deletions whatsoever. DJ Freeman sent a covering letter to the Guardian with the document. I reconfirmed this again today.

I am sure you will appreciate that there is a substantial difference between "the mere showing to Mr Rines of the Defence and Counterclaim" and what actually occurred. DJ Freeman evidently believes this to be the case, otherwise they would have come clean on the matter. The fact that they have attempted to cover-up the true facts speaks volumes. If Mr Rines had merely been shown the document, he might not have noticed the references to the agreements. As it is, the Guardian and Mr Rines have the entire document and, as a consequence, raised the obvious questions.

You may feel that the account provided by DJ Freeman in its letter (and presumably approved by Mr Wiseman), comes under the heading of "**being economical with the truth**". You may also consider that what they said in response to a letter addressed to you personally was **deceptive and misleading** given the serious legal ramifications. It is certainly another remarkable incident in a catalogue of deception and lies stretching back to 1993.

I trust that given the serious nature of this current matter and its potential legal ramifications, you will insist that Shell UK confirm the truth to us i.e. that DJ Freeman supplied the Guardian with a complete Defence and Counterclaim.

Finally, I would like to explain my reason for continuing to write to you. Please be assured that it is not meant as any form of disrespect. It is because I anticipated that in view of your position at the top of the Royal Dutch Shell Group, Shell lawyers would be much more likely to act with propriety at all times. That may have been a miscalculation, but I will persevere.

Yours sincerely

John Donovan  
Managing Director

cc. Dr Fay, Chairman and Chief Executive, Shell UK Ltd (Fax: 0171 257 3939)  
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JAD/A235

Mr Mark Moody-Stuart  
Chairman and Managing Director  
The "Shell" Transport And Trading Co  
The Shell Centre  
London SE1 7NA

17 September 1998  
2 Pages By Fax Only To:  
0171 934 7987

Dear Mr Moody-Stuart

## THE GUARDIAN NEWSPAPER

One further point on the letter from DJ Freeman dated 14<sup>th</sup> September. I am intensely interested in their comment that "Mr Simon Rines was shown a copy of the Defence and Counterclaim". It implies that someone from DJ Freeman and/or Shell has met with Mr Rines. I would like to know more about the meeting. Who was present? Does DJ Freeman and/or Shell have a record of the discussions? If, as appears likely, the disclosure of the Funding Deed to a national newspaper becomes a legal issue of major significance, then we would insist on any such record being supplied to us as part of the discovery process.

As I have already pointed out, I know for certain that in any event, DJ Freeman supplied a copy of the Defence and Counterclaim to the Guardian.

I attach for your information a copy of the first publication of the survey results. Its next insertion in Marketing Week will be in the form of a half page announcement. The whole page version will be published in the October edition of Forecourt Trader.

Yours sincerely

John Donovan  
Managing Director

cc. Dr Fay, Chairman and Chief Executive, Shell UK Ltd. (Fax: 0171 257 3939)  
Mr Richard Wiseman, Legal Director, Shell UK Ltd. (Fax: 0171 257 3303)  
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