

**IN THE HIGH COURT OF JUSTICE**

CH 1998 D No. 2149

**CHANCERY DIVISION**

**BETWEEN:**

**JOHN ALFRED DONOVAN**

**Plaintiff**

**- v -**

**SHELL UK LIMITED**

**Defendant**

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**REPORT OF PROFESSOR STEPHEN WORTHINGTON**  
**PROFESSOR OF MARKETING OF FINANCIAL SERVICES**  
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## **REPORT OF PROFESSOR WORTHINGTON**

### **1. Background**

I was consulted by Mr. John Donovan (the Plaintiff in this action) then Managing Director of Don Marketing (UK) Ltd. in the autumn of 1997 in regard to this matter and I produced at that time the report attached hereto as Appendix 1.

I understand that, due to difficulties in respect of the funding of his case, until mid-April of this year Mr. Donovan was not able to consult me subsequent to the production of my report. Unfortunately, due to my professional responsibilities and other commitments I have not in the short time since then been able to consider any documents in addition to those which I examined when producing my original report in 1997.

### **2. The terms of my instructions**

The substance of all my material instructions in this matter are as set out in the documents and cover letters referred to in this report at section 4, below. My specific terms of reference, as I understood them, are as set out in the first paragraph of my report of 1997. I have in this report been asked to confirm whether, in all the circumstances, I still stand by the conclusions reached in my original report.

### **3. My qualifications**

I am Professor of Marketing of Financial Services at the Staffordshire University Business School, Stoke on Trent. For further information about my professional qualifications, I refer to the sections of the report at Appendix 1 entitled 'Personal Background' and 'Bibliography'.

### **4. Materials upon which I relied when producing my original report**

In forming my opinions and compiling my report I relied upon the documentation and information provided to me by Mr. Donovan under cover of his letters to me of the 27th of August and the 2nd of September 1997 which are attached to this Report at Appendix 2.

### **5. My conclusions**

4.1 I confirm the conclusion in my original report that it is my opinion that because of its consortium approach to ownership and control; its use of chip technology to issue and redeem points as well as to hold data on card holders;

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and its choice of collection and redemption opportunities, the Shell Smart Consortium Loyalty Scheme was unlike any other loyalty programme.

4.2 Based upon the information provided to me (as set out in paragraph 3 above) and my detailed knowledge of the Shell Smart Scheme (derived from my professional experience) I confirm that it is my view that the foundations for the Shell Smart Card Scheme do seem to have been laid in the proposal presented by Don Marketing to Shell UK Limited on the 23rd of October 1989. That document contains a succinct description of Shell Smart.

4.3 I also confirm that all my other conclusions as stated in my original report remain unchanged.

6. **My overriding duty to the court**

I understand that it is my duty as an expert witness to help the Court on the matters within my expertise and that this duty overrides any obligations to the person from whom I received my instructions. I understand this duty and believe that I have complied with it.

7. **Statement of Truth**

I honestly believe that the facts I have stated in this Report and in the attached Appendix 1 are true and that the opinions I have expressed are correct.



Signed



Dated

Professor Stephen Worthington  
Staffordshire University Business School  
Stoke on Trent

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**APPENDIX 1**

**TO REPORT OF**

**PROFESSOR STEPHEN WORTHINGTON**

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## TO WHOM IT MAY CONCERN

### OPINION LETTER

#### Terms of Reference

To offer an opinion as to whether the Shell Smart Consortium Loyalty Scheme is uniquely different from the British Airways Air Miles Scheme and the Argos Premier Points Scheme.

#### Personal Background

I am a Professor of Marketing of Financial Services at Staffordshire University Business School, based in Stoke-on-Trent. My teaching and research interests lie in the distribution of financial services, particularly via the delivery mechanism of the plastic card. The relationship building potential of the plastic card, has lead me into research into the development of the loyalty card, particularly as such cards can be enhanced into payment cards, in what is an increasingly card centric society.

#### Bibliography

Author of "The Loyalty Report" published in November 1996, which reported on the state of the loyalty card market in the United Kingdom, compared the programmes on offer and provided an insight into the future of such loyalty schemes. Subsequent versions of the Loyalty Table which compares the schemes and their rewards have been released in April and July 1997. A frequently quoted source of comment on loyalty cards and a regular participant in radio and television programmes on this subject.

#### My Opinion

The United Kingdom is an increasingly card centric society. There are now over 35 million credit cards in issue; 34 million debit cards; 15 million pre-paid telephone cards and an estimated 55 million non-payment loyalty cards. Of these some 27 million have been issued by the three supermarket chains of Safeway, Sainsbury and Tesco and over 20 million by the major petrol retailers. During the third quarter of 1997, high street retailers such as W H Smith and Boots have launched imaginative loyalty card schemes, which will add to the number of plastic cards that consumers are encouraged to hold and use.

Loyalty Card schemes have two key objectives. Firstly, to build loyalty to a supplier of particular goods and services, and secondly, to build up knowledge about the customers who use that particular supplier. In broad terms we can categorise the plastic loyalty cards currently on offer in the United Kingdom, into two types, anonymous and personalised. Anonymous loyalty cards are offered to customers without any exchange of application information and any subsequent development of a customer data base, depends on the capture of card holder information during the

process of redeeming the reward value held on the card. The Argos Premier Points scheme is an example of this type of scheme.

Personalised loyalty cards on the other hand require the capture of customer information before the loyalty card is issued; the personalisation of the card by the embossing of a number or name onto the card and the ongoing enhancement of customer information by subsequent use of the card. The British Airways Air Miles and Shell Smart schemes are examples of this type of scheme. The Air Miles scheme holds personalised data on the magnetic stripe to be found on the reverse of the card, whilst the Shell Smart card holds this data on a computer chip embedded into the card.

The three loyalty schemes being considered and their unique features are now described below:

### Argos Premier Points

Owned by Argos Distributors Ltd, and operated by Argos Business Solutions, the Premier Points scheme is a single currency loyalty scheme, using the magnetic stripe technology to load 'points' onto the plastic card. As an anonymous scheme, Argos holds no data on the card holders who are collectors, but can build its own data base on card holders who use the only redemption opportunity, a purchase in an Argos store. The scheme offers multi-collection opportunities, currently through BP/Mobil petrol stations, Somerfield supermarkets and Toby Hotels, all non-competing suppliers of goods and services. BP/Mobil and Somerfield do offer their own personalised cards, differentiated from the generic Premier Points card, by the prominent display of the BP/Mobil or Somerfield brand.

Argos Business Solutions issued all the Premier Points cards and operate the scheme, plus invest in the development of the scheme. The collection participants offer their distribution networks as collection points and pay Argos as and when the points that they have issued are redeemed at Argos. Premier Points can be issued at different rates, depending on the economics of the collection participants, but uniquely the collection participants do not offer redemption opportunities, nor does the only redemption opportunity offer collection.

### British Airways Air Miles

Now 100% owned by British Airways, Air Miles is a single currency loyalty scheme, using magnetic stripe technology and paper vouchers. Air Miles is a multi-collection and multi-redemption scheme, although as the scheme operator, Air Miles holds data on each Air Miles collector and their collection and redemption behaviour. Air Miles collectors can, for example, have different accounts held within the Air Miles data base [i.e. BA Executive Club and Air Miles] and indeed have different loyalty cards on those accounts. Both collection and redemption opportunities are offered by competing suppliers e.g. in collection Shell and Sainsbury's for fuel, Diners Club and Nat West for payment cards, P & O and Irish Ferries for travel and Hilton and Marriott hotels for accommodation.

Air Miles as the scheme operator controls the choice of suppliers who wish to participate as either collection or redemption opportunities [or both] and these participants buy the miles they wish to issue from Air Miles, as they issue them to their customers. Suppliers can vary the Air Miles that they offer [e.g. Nat West reduced their rate from 10 to 5 Air Miles per £100 spent on their credit card] and they can withdraw from the Air Miles scheme at the end of their contract.

### Shell Smart Consortium

A two currency scheme, where the card holder can chose to either accumulate the rewards as Air Miles or Smart points, all such information is held in a single account and operated through a single card. The chip on the card allows points to be collected and redeemed at the P.O.S. of each of the participants in the scheme whilst the central account provides a back up facility for lost cards and a central data base of card holders and their collection and redemption patterns. The consortium approach allows participants in the scheme to share some of the investment costs and to share the data held in the central account. Participants in collection and redemption are non-competing. All cards carry the Smart brand, however, different issuers could also have their brand on the card, in the same position that the Shell brand currently occupies.

Smart is being advertised as a brand in its own right, it is being managed as such and it is being seen as potentially a business which could be floated away from Shell and run as a separate business, with ownership dividend between the members of the consortium and other collection and redemption participants.

The Shell Smart Consortium approach is the first such scheme in the United Kingdom to operate as a 'Loyalty Village', where a confederation of non-competing suppliers of goods and services, join together in a loyalty scheme, to offer multiple collection and redemption opportunities. This increases the utility of the scheme to the customers of each of the suppliers, as it makes collection and redemption easier and reduces the number of loyalty cards that need to be carried in the purse or wallet. The chip technology also improves the quality of the data that can be collected from card holders and enables the redemption process to be handled at the P.O.S., through the dedicated 'Smart' terminals.

In conclusion, each of the three schemes described above is unique from each other in at least some of the criteria indicated below;

- Ownership and Control.
- Technology.
- Currencies.
- Account Maintenance.
- Collection and Redemption Opportunities.
- Data Sharing.
- Investment Sharing.

Because of its consortium approach to ownership and control; its use of chip technology to issue and redeem points as well as to hold data on card holders and its choice of collection and redemption opportunities, the Shell Smart Consortium Loyalty

Scheme can be considered to be unlike any other loyalty programme in the United Kingdom today.

Furthermore, based on the information that I have received, the presentation by Don Marketing to Shell UK on October 23<sup>rd</sup> 1989, does seem to lay the foundations for the current Shell Smart Scheme. The idea of Shell taking the lead role, in developing a universal currency for a loyalty scheme, involving several major multiples operating in complementary, but non-competitive trades, each with national representation, is a succinct description of the Shell Smart Scheme as it currently operates in Scotland.

Professor Steve Worthington  
Staffordshire University  
September 1997.



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**APPENDIX 2**

**TO REPORT OF**

**PROFESSOR STEPHEN WORTHINGTON**

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**DON**  
MARKETING**Promotional  
Games & Contests**

Don Marketing UK Ltd  
St. Andrews Castle  
33 St. Andrews Street South  
Bury St. Edmunds, Suffolk  
England IP33 3PH  
Tel: 01284 388816  
Fax: 01284 388308

SJD/JAD/N129

Professor Steve Worthington  
c/o Staffordshire University

27 August 1997  
2 Pages by fax to  
Fax No: 01782 747006

**STRICTLY CONFIDENTIAL**

Dear Professor Worthington

**RE: THE SMART CONSORTIUM SCHEME**

Reference our telephone conversation, I am pleased to supply some background information concerning the matter we discussed.

We notified Shell in March 1997 of our claim that the Smart consortium is based on a proposal which we disclosed in strictest confidence to Shell's National Promotions Manager in 1989. Don put the proposal to Shell again in 1990 and 1992.

We corresponded with Shell about the concept in 1993 and 1994. The correspondence was left to rest on the basis that they would take up the matter with us if they decided to run the proposed scheme. Their solicitors have now confirmed to us that whilst the correspondence was taking place, Shell was already developing what we consider to be an identical scheme.

Shell lawyers take the view that the Smart consortium is the same type of scheme as Air Miles and Premier Points. In other words, it is not unique. Unfortunately for Shell, before they were aware of our claim, a number of Shell managers went on record as stating that the scheme is unique. The issue of its uniqueness is important, as if other schemes of the same type were already in operation at the time when we disclosed our idea to Shell, then the concept would be in the public domain and thus not protected by confidentiality.

I understand that you have a copy of the Rayner Report. It happens to include a case study of the SMART consortium scheme. Sue Rayner describes the scheme a number of times as being "unique". On page 47, she divided multi-collection schemes into two types - "Multi-collection as selling" and "Multi-collection as partnership". Air Miles and Premier Points were cited as examples of the first type and the SMART consortium as the sole example of the latter.

Cont'd/...

Background Information (additional to that already supplied)

During a meeting with DM representatives on 24 November 1992, the National Promotions Manager of Shell, Mr Andrew Lazenby, agreed that "Shell will negotiate royalty arrangements etc with us if they progress scheme at a later date. Don could work with Shell International to exploit overseas." During the same meeting, he was supplied (at his prior request) with a copy of DM's letter to Sainsbury's dated 24 July 1990, which had been approved by Shell senior management before it was sent.

Shortly thereafter, Mr Lazenby, without the knowledge or consent of DM, approached a number of potential partners for the loyalty consortium scheme, including Sainsbury's. Shell has subsequently launched "multi-collection as partnership" loyalty schemes in a number of markets around the world.

According to the information in the case studies and in the press articles, Shell has given potential partners the option to be a true partners in the scheme. The partners in the 1996 consortium (code named Project Rainbow) apparently each invested £50,000 in the concept. It appears that some are still involved, although not as active participants in the Scottish scheme.

There seems to have been three different stages in regard to the implementation of the Smart consortium. Firstly, the initial consortium in 1995, consisting of Shell and John Menzies as main partners, with a number of redemption only partners. Secondly, the Project Rainbow consortium in 1996. Thirdly, on 14 March 1997, the launch of the Scottish scheme involving ten partners, all issuing and redeeming Smart points.

Whilst we cannot be sure of the precise nature of the partnership arrangements between Shell and the other members of the consortium during the above phases, the introduction of the Smart consortium scheme certainly put Shell in a unique position.

Their role in Smart is not in any way equivalent to being a client of a middleman company such as Argos, who take a slice of the revenues generated by participating businesses and exercise ultimate control over the operation of its Premier Points scheme.

By making the Smart consortium its main promotional platform, Shell has cut out the middleman. Air Miles is merely a redemption option within the Smart scheme. Shell alone decides the partnership arrangements with each of its partners. The option to be a true partner is not on offer to businesses who participate in "multi-collection as selling" schemes.

I attempted to contact you earlier this month because our lawyers advised us to obtain an expert witness opinion on a number of matters relating to the claim. Because I was unable to make contact, I approached the Chairman of a public company which supplies loyalty card schemes (including one run by a major UK petrol company). He kindly agreed to provide his opinion and I expect to receive it within a matter of days. For obvious reasons, we would have preferred to obtain the opinion from you.

However, we would still welcome your opinion on two basic issues:-

1. Do you consider that the Smart consortium scheme is unique?
2. Do you agree or disagree with Sue Rayners definitions of the types of multi-collection scheme.

If you are able to provide a brief written opinion in respect of these fundamental issues, then it is likely that if the case has to proceed to Court, we would seek your further advice in preference to any other expert.

In the event that you can assist in providing your impartial advice on these points, we would only need to agree on your fees and when we could expect to receive the opinion. No doubt you would let me know if you required further information.

I look forward to hearing from you on Friday.

Yours sincerely



John Donovan  
Managing Director

SJD/JAD/N130

Professor Steve Worthington  
c/o Staffordshire University  
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Stoke-On-Trent  
Staffordshire  
ST4 2DF

2 September 1997

STRICTLY CONFIDENTIAL

Dear Professor Worthington

RE: THE SHELL SMART CONSORTIUM

I was pleased to learn during our telephone conversation last Friday that you are willing to supply a brief opinion letter on the issues outlined in my faxed letter of 27 August. You have estimated that your fees are likely to be from £500 to £1,000, depending on the time taken. This is acceptable.

I have enclosed a folder containing the following items:-

Section One - DM Proposals.

1. The relevant sections of DM's proposal to Shell UK Ltd dated 23 October 1989.
2. A DM letter to Sainsbury's dated 24 July 1990, copied to Shell managers.

Section Two - Selection of Press Reports in Date Order.

1. Marketing. 13 July 95. "Menzie's first to join Shell Smart."
2. Loyalty. Sept 95 - "Menzie's smart roll out."
3. Marketing. 25 July 96. "Shell is seeking partners."
4. Marketing Week. 30 Aug 96. "How will the loyalty card evolve now?"
5. Customer Loyalty Today. Sept 96. "Shell Seeks Partners for Smart Consortium."

6. Marketing. 12 Sept 96. "Esso victory in fuel price wars."
7. Incentive Today. Oct 96. "Unlikely partners for Shell Smart scheme."
8. Marketing Week. 1 Nov 96. Editorial plus cover story on pages 36 to 39 inclusive.
9. Marketing Week. 29 Nov 96. "Shell lists three for £60m task."
10. Loyalty. Nov/Dec 96. "GM launches loyalty report to re-establish leadership position."
11. Marketing Week. 24 Jan 97. "Sainsbury's exit jeopardises Shell Smart."
12. Marketing Online. 5 Feb 97. "Shell smart scheme signs up partners."
13. Marketing. 6 Feb 97. New alliances to help refuel Shell Smart scheme."
14. FT. 12 March 97. "Shell launches smart-card revolution."
15. Marketing Week. 14/3/97. "Smart move for loyalty schemes?"
16. Marketing Week. 14/3/97. "Shell Smart card line-up is changed."
17. Marketing Week. 12 June 97. "BAND AID".  
(the only relevant parts highlighted in yellow)

### SECTION THREE

1. SMART brochure issued in Scotland from 14 March 1997.  
(marketed under universal SMART brand name)
2. Daily Record. 14 March 97. Advert for Dixons stores.

### SECTION FOUR

1. The Customer Loyalty Report. 96/97. Pages 203 to 206 inclusive, which contain a case study of Shell Smart.
2. The "Customer Loyalty Schemes" Report. 1996. Pages 46 to 73 inclusive, which also contain a case study on Shell Smart.

DM proposals to Shell involved the following elements:-

1. Proposed that Shell would be the lead partner in organising the "ultimate loyalty building scheme."
2. Shell could give potential consortium members the option to be "partners" in the scheme (in the true sense of the term).
3. Shell could use a multipurpose smart card to store points and capture customer data.
4. Some partners to issue and redeem a common currency.
5. Some businesses to only redeem the common currency.
6. Foresaw the need for a multi-currency aspect to cater for Air Miles redemption option.
7. Scheme could be operated as a separate business venture.
8. Could be marketed under a universal brand name, but with provision for partner branding.
9. Each partner to be a leading company in its business sector, with national representation.
10. A wide range of gifts/redemption options.
11. Partners free to issue the common currency against a purchase value of their own choosing.
12. Each partner to have exclusivity within their business sector.
13. Could achieve economies-of-scale to minimise marketing and merchandise costs.
14. Founding company to issue and redeem the common currency. (Argos do not issue Premier Points at their own stores)
15. Shell could exploit the concept on a multi-national basis.
16. Benefits would be reaped by the first such consortium.

If you agree that these elements did form the basis of DM's proposals to Shell, you may wish to compare them with the features of the Smart consortium.

It is of course entirely up to you to set out your opinion letter as you wish. It may however assist you to know the main headings of the opinion already received, which are as follows:-

1. Terms of Reference.
2. Personal Background. (Head of the Business School at Staffordshire University, author of "The Loyalty Report", etc.
3. Bibliography (no need to itemise the press reports, just refer to "a selection of press reports")
4. My Opinion.

The questions on which we have sought your impartial opinion, (which at this stage only needs to be expressed in general terms) are as set out in my initial letter. If it is your view that the scheme remains unique, even though there has been an explosion in loyalty schemes in the last year or so, the question of whether it was unique in 1995 when John Menzies joined does not arise.

You will obviously need to treat all of the views which I have expressed as being potentially biased. Please give me a call if you wish to discuss any aspect.

Please retain the entire file supplied as we may well need to seek your further expert advice on related matters.

Yours sincerely

John Donovan  
Managing Director