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DON MARKETING LIMITED - V - SHELL UK LIMITED

During the past few months Mr John Donovan, the Managing Director of Don Marketing Limited, and his father, Mr Alfred Donovan, have conducted a publicity campaign connected with legal actions which Don Marketing has initiated against Shell U.K. Limited. Shell believes the courts are the proper forum for a commercial dispute of this kind, and wishes to see matters resolved there. However, due to the growing number of untrue and often offensive allegations being made about Shell in the campaign, the company feels it appropriate to comment more fully.

Shell U.K. Limited is defending legal actions which allege that Shell UK wrongfully used two forecourt promotions - 'Nintendo' and 'Now Showing' - developed by Don Marketing without its consent. The allegation is untrue. Don Marketing has no case and the legal actions are being strenuously defended. Shell is always anxious to resolve disputes amicably where possible but in this case sees no alternative but to allow the litigation to take its course.

Mr Donovan appears to have little faith in his company's claims. Since initiating legal proceedings he and his father have adopted the unusual course of mounting a publicity campaign to ventilate allegations against Shell and members of its staff. Mr Donovan's father has recently founded what he calls a 'Shell Corporate Conscience Pressure Group' to promote this campaign.

Mr Donovan and his father have written to the directors of Shell UK and its parent companies stating that they plan to outline the allegations against Shell and its staff to the company's shareholders, the President of the Board of Trade, a number of publications and to 'Internet' users. They have also claimed that they intend to write to media and shareholders calling for the resignation of senior Shell managers, allege that they plan to write a book, have sent publicity material to several Shell locations in the UK and have attempted to assemble negative views of Shell from some retailers. Shell believes these actions are an attempt to sully Shell's reputation with sensationalist allegations, in the hope that the company may be coerced into settling false claims.

Don Marketing and the so called pressure group have repeatedly attempted to goad Shell into issuing proceedings against them for what they are doing. Shell has to date declined to do so. Shell believes that the invitation to take libel action has been made merely to generate publicity and to substantiate Mr Donovan's false assertion that Shell is a large company oppressing a small trader. Shell believes that any libel proceedings it brought would be likely to succeed. However, it doubts that Don Marketing and the so called pressure group would have the funds to pay Shell's costs and the compensation it would be awarded.

Shell would be in breach of its obligations to shareholders if it initiated legal actions, failed to defend itself, or participated in actions in which it would lose money even if successful. Shell will therefore be applying to the court for Security for Costs in the existing legal actions brought by Don Marketing, in order to ensure that Don Marketing can pay Shell's legal expenses in the event - which Shell believes likely - that Don Marketing's claims will fail in court.



Letter to Shell/Marketing staff
April 1998

Note Re: MR JOHN DONOVAN AND SMART

Shell UK received a writ on April 14 from Mr John Donovan, Don Marketing UK Limited suggesting he has some kind of propriety claim to the SMART Card Consortium concept.

Shell is quite clear that Mr Donovan has no claim in relation to the SMART Card Consortium concept therefore we believe we have a good defence to claim of Mr Donovan's and plan to defend our position robustly.

- (1) The SMART Card Consortium concept was first considered by Shell at the beginning of 1992;
- (2) Although Don Marketing presented a paper in October 1989 which made passing reference to the consortium idea, the paper was not seen by those at Shell responsible for developing the idea in early 1992;
- (3) When Don Marketing presented the idea again to Shell in May 1992, the SMART Card Consortium concept had already been considered and approved by Shell and was under development;
- (4) The basic concept which led to the SMART Card Consortium was already in the public domain by the time Don Marketing came to present it to Shell.

We have a good defence to any claim brought by Don Marketing.

In the course of earlier proceedings, Mr Donovan and Don Marketing UK Limited took the opportunity to mount a trade press campaign against Shell and a letter writing campaign to its directors and shareholders. It is very likely that Mr Donovan will try to use the same tactics when it becomes clear that Shell intends to defend the claim he has brought against it.

This letter is to explain Shell's position, and to request that if you receive any correspondence from Mr Donovan or Don Marketing UK Limited that you would not reply to it, but pass it to Keith Ruddock, in Shell's Legal Department, Shell UK Limited, Shell-Mex House, Strand London, WC2R 0DX. Fax # 0171 257 3441

Any media enquiries should be directed to Sarah James in Shell's press office on 0171 257 3100

Can you please pass this statement to other staff in your company who may receive media enquiries.

14 April 1998
Shell UK Limited

B447

MR JOHN DONOVAN

Over the last four years, Mr John Donovan, who has a company called Don Marketing UK Limited, has made various claims that he or his company own rights in respect of several Shell UK forecourt promotions. His most recent allegations have been that his company invented the SMART loyalty programme and that he or his company should be compensated for its use.

The claim has been most carefully investigated and discussed in correspondence with Mr Donovan and his solicitors, and Shell UK is satisfied that it is entirely without substance.

Mr Donovan has now issued a writ against Shell UK in respect of SMART. We intend to defend his claims vigorously in court.

Shell UK Media Relations
April 1998

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MR JOHN DONOVAN

Over the last four years, Mr John Donovan, who has a company called Don Marketing UK Limited, has made various claims that he or his company own rights in respect of several Shell UK service station forecourt promotions. His most recent allegations have been that his company invented the SMART loyalty programme and that he or his company should be compensated for its use.

The claim has been most carefully investigated and discussed in correspondence with Mr Donovan and his solicitors, and Shell UK is satisfied that it is entirely without substance.

In April 1994 Shell UK paid Mr Donovan for a contribution to one forecourt promotion (called 'Make Money'), after it was established that he had some rights in respect of the development of the concept. However he then proceeded to claim rights to two further promotions (called 'Now Showing' and 'Nintendo').

Mr Donovan's claims were settled on terms which remain confidential. However, Shell UK can confirm that the reasons for the settlement were not related to the merits of Mr Donovan's case. Rather the settlement took place because Shell UK viewed it as a waste of resources to continue with an expensive legal dispute.

Mr Donovan has recently issued a writ against Shell UK in respect of SMART. We intend to fight his claims vigorously in court.

Shell UK Media Relations

21 April 1998



27 April 1998

Dear Retailer,

As some of you may be aware, a Mr John Donovan of a company called Don Marketing has issued a writ against Shell UK claiming that his company invented the SMART loyalty programme.

We have very thoroughly investigated Mr Donovan's allegations and discussed them in detail with Mr Donovan and his solicitors. We are entirely satisfied that his claims are wholly without substance, and we now intend to defend them vigorously and comprehensively in the courts.

SMART was both developed as a concept and taken from concept to reality by Shell UK in conjunction with a promotions agency and several companies specialising in smart cards, databases and electronic point of sale systems. Their expertise was key to our delivering a scheme that many retailers had for years envisaged, but could not put in place.

Mr Donovan says he plans a survey amongst Shell service station operators, to support an allegation that Shell does not abide by its Statement of General Business Principles.

If you receive such a survey from Mr Donovan, any response you may choose to make is of course entirely up to you. However we feel you should know that its purpose is connected with this particular, and strongly contested, piece of commercial litigation. You may also wish to know that Mr Donovan has made offensive allegations about particular Shell UK employees. We reject these absolutely, and are wholly confident that the Shell people named by Mr Donovan have acted at all times in good faith, and in line with our long-standing Business Principles.

Sincerely

Harley Bernard
Retail Operations Manager, Shell UK Limited

Shell U.K. Limited

Name
Position
Company
Address
Address
Address
Postcode

Shell-Mex House
Strand
London WC2R 0DX

Telephone 0171 257 3794

Facsimile 0171 257 1353

Switchboard 0171 257 3000

25 April 1998

Dear

DON MARKETING AND THE SMART CARD CONSORTIUM

Shell UK has recently received a letter from Don Marketing UK Limited suggesting that the company has some kind of propriety claim to the SMART Card Consortium concept and therefore threatening to issue proceedings against Shell.

We have instructed external lawyers to advise us on this potential claim, but from initial research it is quite clear that:

- (1) The SMART Card Consortium concept was first considered by Shell at the beginning of 1992;
- (2) Although Don Marketing presented a paper in October 1989 which made passing reference to the consortium idea, the paper was not seen by those at Shell responsible for developing the idea in early 1992;
- (3) When Don Marketing presented the idea again to Shell in May 1992, the SMART Card Consortium concept had already been considered and approved by Shell and was under development;
- (4) The basic concept which led to the SMART Card Consortium was already in the public domain by the time Don Marketing came to present it to Shell.

Therefore, it is quite clear that Don Marketing has no claim in relation to the SMART Card Consortium concept and we have been advised by our external lawyers that on the basis of the investigations they have so far undertaken with us, we have a good defence to any claim brought by Don Marketing.

In the course of earlier proceedings, Don Marketing UK Limited took the opportunity to mount a trade press campaign against Shell and a letter writing campaign to its directors and shareholders. It is possible that they will try to use the same tactics when it becomes clear that Shell intends to defend any claim brought against it.

This letter is to explain Shell's position, and to request that if you receive any correspondence from Don Marketing UK Limited that you would not reply to it, but pass it to Ian Brown in Shell's Legal Department at the above address.

Yours sincerely

Michael Harle
Marketing Manager - Retail

NOTE

From: [REDACTED] [REDACTED] Tel: [REDACTED]
To: [REDACTED] [REDACTED] Date: 3 February 1999

MR JOHN DONOVAN, DON MARKETING AND SMART

Further to our meeting yesterday, I now attach as requested copies of the following:

1. "Don Marketing: The Facts" - this is the leaflet which we have made available in the reception areas of Shell-Mex House, Shell Centre and the Central Offices in The Hague in rebuttal of Mr Donovan's leaflets;
2. a copy of the letter dated 21 October 1996 from [REDACTED] to John Donovan which Mr Donovan has characterised as an unreserved apology; and
3. copies of the recent articles carried in January's edition of Forecourt Trader to which Mr Alfred Donovan referred in one of his recent leaflets.

If you have any queries in respect of any aspect of the attached, please do not hesitate to contact me.

[REDACTED]

Enc



DON MARKETING: THE FACTS

There has been some leafleting of staff at Shell headquarters buildings in connection with a writ issued against Shell UK by Mr John Donovan, director of a company called Don Marketing. Mr Donovan has been making a number of unpleasant allegations in his leaflets and in the press. This factsheet explains the background for staff.

Mr Donovan claims that his company invented the SMART loyalty programme and that he or his company should be compensated for its use. Shell UK is strongly defending the claim, having carefully investigated and discussed it with Mr Donovan and his solicitors.

Mr Donovan and his companies have made several claims against Shell in the past. For good economic reasons, these cases were settled before they reached court. At that time, both parties agreed that there should be no further public debate about these matters, an obligation which Shell UK has consistently honoured, but which Mr Donovan has not.

Shell UK believes however that the current case cannot be concluded satisfactorily except by allowing it to proceed to court. We are vigorously defending the writ Mr Donovan has issued about SMART, and counter claiming against him for failing to honour his previous agreement. We expect the case to go to court next year.

[REDACTED]

[REDACTED] But with Mr Donovan already alleging that we have taken numerous measures to try to keep him quiet, we are aware that this could give him an opportunity to try to present himself as a 'David' fighting a 'Goliath'.

In general, companies know that libel proceedings may attract far more publicity than the original allegations had or would be likely to have. An example is the recent "McLibel" case which tied up McDonalds for years. Any case we brought would not necessarily be the same, but it can be a major business diversion for no real gain to the company, and people don't always remember who won.

One of our colleagues who has been smeared by Mr Donovan's assertions is [REDACTED] a [REDACTED] [REDACTED] who still works for Shell UK. We are satisfied that Andrew has done nothing wrong, either in relation to this claim or any previous claims. We are confident that he has acted properly throughout.

Mr John Donovan is one of a number of people who from time to time have approached us to suggest marketing concepts. Generic concepts in marketing are often quite common and not original in themselves. The basic concept for the SMART scheme had already been around for some time before Mr Donovan approached us.

We are satisfied that the SMART scheme was developed entirely independently of Mr Donovan. We believe this will become clear when the case goes to court.

FUEL FOR THOUGHT

DEFENDING THE COMPANY'S GOOD NAME AND REPUTATION

There has recently been some publicity surrounding a writ issued against Shell UK by Mr John Donovan, director of a company called Don Marketing, who claims that his company invented the SMART loyalty programme and that he or his company should be compensated for its use. Shell UK is strongly defending the claim, having carefully investigated and discussed it with Mr Donovan and his solicitors. Mr Donovan has been making a number of unpleasant allegations in public and in the press, and has been handing out leaflets to staff. Shell UK Legal director Richard Wiseman explains.

Mr Donovan and his companies have made several claims against Shell in the past. For good economic reasons, these cases were settled before they reached court. At that time, both parties agreed that there should be no further public debate about these matters - an obligation which Shell UK has consistently honoured, but which Mr Donovan has not.

However, we feel that the current case cannot be concluded satisfactorily except by allowing it to go all the way to court. We are vigorously defending the writ Mr Donovan has issued about SMART, and counterclaiming against him for failing to honour his previous agreement. We expect the case to go to court next year.

[REDACTED]

Shell UK could ask the courts for an injunction to prevent Mr Donovan and his father from making any further unpleasant allegations.

But with Mr Donovan already alleging that we have taken all sorts of measures to try to keep him quiet, we

"WE ARE VIGOROUSLY DEFENDING THE WRIT MR DONOVAN HAS ISSUED ABOUT SMART, AND COUNTERCLAIMING AGAINST HIM FOR FAILING TO HONOUR HIS PREVIOUS AGREEMENT. WE EXPECT THE CASE TO GO TO COURT NEXT YEAR."

nity to try to present himself as a 'David' fighting a 'Goliath'.

In general, most companies like ours can see only too well that libel proceedings may attract far more publicity than the original allegations ever had or would be likely to have. An example is the recent "McLibel" case which tied up McDonald's for years. Any case we brought would not necessarily be the same, but it can be a major business diversion for no real gain to the company. And people don't always

remember who won.

One of our colleagues who has been smeared by Mr Donovan's assertions is [REDACTED], a [REDACTED]

[REDACTED] who has since moved on to another job with Shell. The hurtful allegations being made against Andrew in public leave him in a difficult position. Shell UK is satisfied that he has done nothing wrong, either in relation to this claim or any previous claims. We are confident that he has acted properly throughout.

Mr John Donovan is one of a number of people who from time to time have approached us to suggest marketing concepts. Generic concepts in marketing are often quite common and not original in themselves. The basic concept for the SMART scheme had already been around for some time before Mr Donovan approached us. Where a scheme actually developed may seem to have some resemblance to unsolicited material from third parties, allegations of this sort can be complicated to refute.

However, I am satisfied that the SMART scheme was developed entirely independently of Mr Donovan, and we believe this will become clear when the case goes to



Holding Statement. For reactive use only.

Donovan

John Donovan and his father, Alfred, ran a business, Don Marketing, which specialised in the creation of promotions. Mr Donovan brought the "Make Money" promotion to the UK and Shell UK Limited (Shell) paid him for its use. Shell also paid for the rights to use several other Don Marketing promotions.

In the early '90s when Shell wanted to use Make Money again Mr Donovan claimed that he still owned the concept. Shell paid Donovan for the transfer of the concept.

Mr Donovan then launched legal action against Shell in connection with two other promotions. While Shell was confident of defeating the claim, in the interest of saving costs for both sides, it was agreed that the matter would be settled.

Following this settlement, Mr Donovan sued Shell again. He claimed that he had invented the Smart promotion and that Shell had "stolen" it from him. The case went to court but Donovan eventually abandoned his claim.

Despite the settlement of the legal actions Alfred Donovan has continued to campaign against Shell from time to time.