

July 2013 MPT

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MPT-2: *Palindrome Recording Contract*

MORRIS & WESTMAN, LLP
2932 Sheffield Court
Franklin City, Franklin 33026

TO: Examinee
FROM: Levi Morris
DATE: July 30, 2013
RE: Palindrome Recording Contract

We have been retained to represent the members of the rock band Palindrome. The band has had considerable success in the tri-state area of Franklin, Columbia, and Olympia and has received an offer from Polyphon, an independent record label, which wants to sign the band to a long-term recording contract.

The contract submitted by Polyphon is complex and voluminous (it runs over 50 pages of single-spaced type). The band has asked us to negotiate the contract with the record label. There are some key provisions that we must redraft to meet the band's contractual desires. We can then present the redrafted contract to Polyphon, as a step in negotiating with the label. I am attaching the provisions from the contract Polyphon submitted that I would like you to look at. I have also attached other material to give you some background and from which you may glean the band's wishes and the applicable law. For your purposes, assume that the agreement among the various band members is a binding contract and that they have formed a valid partnership.

Please draft a memorandum in which you identify those contract provisions that need to be redrafted to meet the band's wishes and to comply with the law. For each provision that you identify,

1. redraft the provision, indicating your changes from the original text, and
2. explain the reasons for your redraft, including the legal reasons (if any) for changing the provision, to guide me in conducting the negotiations over these points.

Transcript of Interview between Levi Morris and Otto Smyth (July 12, 2013)

Levi Morris: Otto, it's good to see you. How are things going?

Otto Smyth: Great, really great. As I told you over the phone, we've got a mega-offer from Polyphon to sign with them, and the band asked me to take the lead in negotiating.

Morris: Excellent. What's Polyphon's offer?

Smyth: We've had a few offers in the past, but from labels that wanted to take everything we had. We really want to sign with an independent label, because they treat artists like us better, and Polyphon has a reputation for treating artists reasonably and being willing to negotiate terms. They sent our manager this huge contract—here's a copy. We'll need your help to deal with them.

Morris: That's what we're here for. Bring me up-to-date on what's happening with the band.

Smyth: Well, as you may know, about nine months ago, Al, our bass player, was injured by a drunk driver. He's okay now, thank goodness. Abby, our lead guitarist, and Coco, our drummer, are still going strong, and, as leader of the group, I'm still playing rhythm guitar, singing lead vocals, and doing all the songwriting. Our fan base really has grown here in the tri-state area, and that must've gotten the attention of the label, because they really came after us hard.

Morris: How do the members of the band get on as far as business arrangements go?

Smyth: We're fine together—when we first formed 10 years ago or so, we made an agreement among ourselves which I cobbled up out of a music book I read. Here's a copy. We do business as a partnership under the name Palindrome Partners, and everything we make has to go through the partnership into a partnership bank account. We then divide up the money in accordance with our partnership agreement.

Morris: Thanks. We'll look the agreement over. Let's turn to the label's offer, and—first things first—how's the money?

[Discussion of financial terms of advance and royalties offered by label omitted.]

Morris: Now, what else do you want us to negotiate with them?

Smyth: Well, I'm not really sure what's in there—I really don't understand this legal stuff. But we're all pretty much in agreement over some things that are important to us. First, we

don't want to be tied up with the label for too long unless they really do a good job for us—maybe for three albums at most, and only for four years.

Second, our artistic integrity is really important—we've got to make all the artistic decisions about the songs that go into our albums, and the recordings, and the producer we want, and what gets released.

Third, since Al nearly died because of that drunk driver, we've become fanatic about drugs and booze—we've sworn off, and we owe it to him to get the message out. We'd hate it if our music didn't get that message across, or worse, if people thought we were the stereotypical drink-and-dope rockers, or if our songs were used in, like, a beer commercial. I never want to see a picture of me in some magazine holding a bottle.

Morris: Understood—we'll try to make sure that you have the right to approve of marketing and promotional efforts. You know, my daughter loves your band and wears a Palindrome T-shirt she got at one of your concerts.

Smyth: Yeah, we make a nice amount from our merchandise sales. At every show we do, and on our website, we sell T-shirts, baseball caps, tank tops, stuff like that.

Morris: Who makes them for you?

Smyth: Our manager found the various manufacturers. We're really careful to treat our fans well and give them good value for their money, using top-quality materials, making sure the merchandise is high quality—like the T-shirts, we could use some cheap cotton blends and make a few bucks more, but instead we always use those thicker Ts, with high-quality fabric. We think that if we treat our fans well, they'll stay loyal to us.

You know, we've been together for almost 10 years now, and we've always been careful of the Palindrome name and what it means to our fans. We've worked really hard to build it up to where it is now, and it means a lot to us. We put our name on every piece of merchandise we have. Our manager even got a registered trademark for us in our name, and she tells us that all of our merchandise deals are nonexclusive, which means we can license our name to more than one manufacturer. And we want to keep it that way. It's really important to us to keep control of everything that has to do with our merchandise, and the money it brings in, because it's a real source of income for us.

We understand that Polyphon is offering us a higher royalty rate for our records in exchange for a piece of our merchandise action, and that's OK with us—we'd be willing to give them a quarter of the revenue for the stuff they produce and sell—but we've got to keep that trademark, and we've got to be able to use it ourselves without cutting Polyphon in on money from products it doesn't make or sell.

Morris: So you wouldn't mind licensing your trademark to Polyphon?

Smyth: Not as long as we own it, can still do our own thing with it, and can control what they do with it.

Morris: We'll see to that. We don't have to itemize the things they can produce; we just have to be sure that you can approve of what they make and the quality of it as well.

[Discussion of other points omitted.]

AGREEMENT AMONG MEMBERS OF PALINDROME

AGREEMENT, by and between Otto Smyth, Abby Thornton, Coco Hart, and Al Laurence (collectively, “the Band”), all citizens of the United States of America and the State of Franklin, as follows:

WHEREAS, the individual members of the Band have formed a musical group known professionally as Palindrome; and

WHEREAS, the individual members of the Band wish to set forth the terms of their affiliation;

NOW, THEREFORE, the individual members of the Band agree as follows:

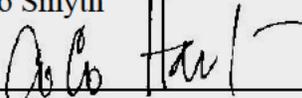
1. All property created by the Band as a collective entity (including both intellectual and material property) shall be jointly owned by all members of the Band. All income earned by the Band as a collective entity for its collective efforts or from that collective property (e.g., from recordings made as a musical group) will be divided equally among the individual members of the Band. Should any individual member of the Band voluntarily or involuntarily withdraw from the Band, that member will receive his or her proportionate share of income earned by the Band as a collective entity from undertakings made before that member’s withdrawal from the Band.

2. All actions taken for the Band as an entity will require the unanimous approval of all the individual members of the Band.

3. The Band shall form a partnership and do business under the name Palindrome Partners.

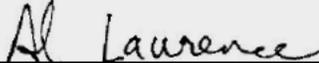
Signed this 15th day of March, 2003.



Otto Smyth


Coco Hart



Abby Thornton


Al Laurence

Excerpts from Contract Presented by Polyphon

1. DEFINITIONS

“Album” shall mean a sufficient number of Masters embodying Artist’s performances to comprise one (1) or more compact discs, or the equivalent, of not less than forty-five (45) minutes of playing time and containing at least ten (10) different Masters.

“Artist” or “you” shall mean each member of the band Palindrome, individually, and the band collectively.

“Contract Period” shall mean the term set forth in Paragraph 3.03.

“Master” shall mean any sound recording of a single musical composition, irrespective of length, that is intended to be embodied on or in an Album.

* * *

3. TERM AND DELIVERY OBLIGATIONS

3.01 During each Contract Period, you will deliver to Polyphon commercially satisfactory Masters. Such Masters will embody the featured vocal performances of Artist of contemporary selections that have not been previously recorded by Artist, and each Master will contain the performances of all members of Artist.

3.02 During each Contract Period, you will perform for the recording of Masters and you will deliver to Polyphon those Masters (the “Recording Commitment”) necessary to meet the following schedule:

<u>Contract Period</u>	<u>Recording Commitment</u>
Initial Contract Period	one (1) Album
Each Option Period	one (1) Album

3.03 The initial Contract Period will begin on the date of this Agreement and will run for one year. You hereby grant Polyphon eight (8) separate options, each to extend the term of this Agreement for one additional Contract Period of one year per option (“Option Period”). In the event that you do not fulfill your Recording Commitment for the initial Contract Period or any Option Period, that period will continue to run and the next Option Period will not begin until the Recording Commitment in question has been fulfilled.

4. APPROVALS

4.01 Polyphon shall, in its sole discretion, make the final determination of the Masters to be included in each Album, and shall have the sole authority to assign one or more producers who shall collaborate with you on the production of each Master and each Album.

* * *

8. MERCHANDISE, MARKETING, AND OTHER RIGHTS

8.01 Artist warrants that it owns the federally registered trademark PALINDROME (Reg. No. 5,423,888) and hereby transfers all right, title, and interest in that trademark to Polyphon. Polyphon may use the trademark on such products as, in its sole discretion, it sees fit to produce or license, and all income from such use shall be Polyphon's alone.

8.02 Artist hereby authorizes Polyphon, in its sole discretion, to use Artist's, and each member of Artist's, name, image, and likeness in connection with any marketing or promotional efforts and to use the Masters in conjunction with the advertising, promotion, or sale of any goods or services.