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EXCLUSIVE: Killers lawsuit attorneys speak

By Joe Bosso and Michael Leonard, February 27, 2009 Guitars

Is The Killers case "based on nothing"?

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As widely reported 20 February, The Killers have filed a counter lawsuit against their former manager, Braden Merrick.

The band filed the suit against Merrick and his company, From The Future, on 20 February in federal court in their hometown of Las Vegas.

The Killers are seeking "multi-million-dollar damages in missed concerts and lost touring revenues, and via the bungling of merchandising and promotional opportunities".

The Killers' counter lawsuit also alleges that Merrick was unresponsive and ineffective as a manager, failing to obtain proper touring visas or coordinate overseas concerts and promotions. It also accuses him of working for the band's label, Island Def Jam (IDJ), as a consultant without their knowledge or consent.

In 2006, Merrick sued The Killers and their current manager, Robert Reynolds, for approximately \$16 million each, for allegedly firing him without legal justification. Merrick also claims that they failed to pay him royalties owed to him and that their current manager prevented the band from honouring their contracts with Merrick.

MusicRadar decided to directly ask the attorneys involved about the case.

MusicRadar is taking no sides, but here is what was said – unabridged and unedited.

Readers might need an interest in music management law to fully comprehend the debate. Read, and discuss!

Lawyers speak exclusively to MusicRadar

Howard E King (of King, Holmes, Paterno & Berliner LLP): representing Braden Merrick, former manager of The Killers.

"The California Talent Agencies Act is a rather unique act. This was passed 40, 50 years ago. Basically, it says you cannot procure work for an act unless you're a licensed talent agent. You can guess who got this act passed - it was the William Morris Agency.

"What's happened over the years is we've had all kinds of cases in which stars were able to terminate contracts with personal managers by claiming that the managers booked them a date.

"It's very effective if you want to get out of a contract. Let's say you manage an artist and you take a call from the Jay Leno show and they express an interest in booking your artist - in the eyes of the California Labor Commission, you've already violated the California Talent Agencies Act, because you're not a licensed talent agent. This has been used for years.

"Every artist in the world, if they want to fire their manager, they always bring this act before the Labor Commissioner.

"Last year, the California Supreme Court said, 'Wait a second. You cannot deprive a manager who may have devoted 99% of his efforts to legitimate work from 100% of his income because of one or two or a few minor transgressions.' This takes us to The Killers.

"Back in 2006, Braden Merrick sued The Killers in Nevada, as he was required to do, because they terminated their contract with him and refused to pay him. He had both a management and production contract with the band because he did work on their first album. He had a written contract for four years which would have ended in 2007 for 15% of their gross income. The contract was dated April 8, 2003 and the term of it was for four years.

"When The Killers hired Merrick as a manager, they had one overriding goal: to get a record deal. So he went about doing just that. First he started working with Brandon Flowers and taught him how to perform in front of an audience - although Flowers is a very gifted singer and songwriter, he was very stiff as a performer. Merrick taught him how to perform.

"Merrick subsequently set up showcases for the band and got American Recordings interested, and eventually got The Killers a deal with IDJ domestically - Lizard King internationally. The number one goal got accomplished.

"Merrick also got them a talent agency, The William Morris Agency.

"The band had a lawyer named Robert Reynolds whose interest in them went way beyond being their lawyer - he was hanging out with them on the road, in the studio, the whole thing. Ultimately, the band fired Merrick in May, 2005 and Reynolds took over as manager. Their reasons for firing him were so generic - 'We couldn't get you on the telephone,' stuff like that. Nothing concrete.

"At the time they fired him, they had not paid him much of what they owed him. In fact, they're holding \$2.5 million dollars, which is what they calculate he was owed to the day he was fired.

"Basically, The Killers fired Merrick and said, 'No hard feelings, but we'll pay you some money.' Merrick came to us, we started representing him, and we then told the band 'pay him what you owe him.'

"The Killers are holding that money, but they don't want to give him nearly what he's owed. So what they're saying is, 'If you don't take what we want to give you, we're going to claim you breached the California Talent Agencies Act, and then you'll get nothing.'

"There's about a dozen claims they're standing by - that Merrick booked them on The Jimmy Kimmel Show; that before they had a record deal, he booked them at Mobfest - he drove them there in a van to play for industry people; that he considered them for a radio show in Tuscon, Arizona that they didn't go to but he had talked to the radio station; and a few others in this caliber. Nothing that really paid anything.

"We had several days before the Labor Commission and they found seven instances where Merrick tried to procure employment. But by the time seven violations were found, the Supreme Court had made its ruling - and they don't define how many violations; they say you have to apply 'equitable principles.'

"To put it in context, the seven violations he's accused of account for less than one percent of his work of the efforts he spend managing the career of the band. So that's our position.

"But they're going one step further: They're saying that because he was free to work for other people that he had this horrible conflict of interest in working for the record label; that he was making decisions that favored the label at the expense of the band.

"They can't point to one instance where this did, in fact happen. Not one. We've asked, but they haven't provided us with anything. And this is a band that sold six million albums. How could he possibly have done wrong by them? They have no complaints. In fact, Brandon Flowers has testified that Merrick accomplished the number one overriding goal the band had: he got them a major record deal.

"Nobody can identify one instance where his supposed conflict of interest was to the detriment of The Killers. There's nothing there.

"In layman's terms, it's this: When The Killers were desperate to get a record deal, they entered into this agreement with Braden Merrick. He got them a record deal, they became instantly famous and with the help of Robert Reynolds, they decided that 15% was a gross overpayment for getting them a record deal; and they've done everything they could to get out of the deal.

"You have to remember, when they sold six million albums, they could get any manager they wanted. They didn't need Braden Merrick. Robert Reynolds could be managing the band for far less than 15%; he could be doing it for a flat fee for all I know.

"Well, OK, I guess there is one instance where Merrick did violate the terms of their agreement: I think he booked them on a flight in coach when they had already gotten used to flying first-class. This is the level of The Killers' gripes. It's all based on nothing."

Burt Deixler (of Proskauer Rose LLP): representing The Killers and current manager Robert Reynolds.

"The band has issued a statement in regards to this case. I feel we can leave it at that."

At the time of writing, the matter is still with involved parties' attorneys.

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