

# MARKETING YOUR BUSINESS WITH NAME, IMAGE AND LIKENESS DEALS



## WHAT IS NIL?

In June 2021, the U.S. Supreme Court unanimously ruled in *NCAA v. Alston* that the NCAA could no longer prohibit student-athletes from being compensated for their name, image or likeness. The NCAA's Board of Directors then voted to approve an interim Name, Image and Likeness (NIL) policy authorizing student-athletes to use "professional services providers" for NIL activities and payments. This policy is intended to remain in effect until federal legislation is passed or new NCAA rules are adopted.

This marked the first time in over 150 years that the NCAA permitted student-athletes to sell rights to their name, image and likeness, who can do so in many ways such as appearing in traditional ad campaigns, selling ads on their social media accounts, making paid appearances and attending autograph signings.

## WHAT ARE THE RULES AND REGULATIONS FOR DEALING WITH AMATEUR ATHLETES?

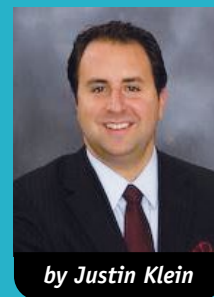
As noted, there is no current NIL federal legislation or judicial guidelines although several bills have been introduced. The interim NCAA policy does, however, require compliance with whatever state laws, school policies or conference policies are in place. Twenty-nine states have passed NIL laws, which are largely modeled after California's Fair Pay to Play Act, the first state NIL law enacted. Those state laws generally permit student-athletes to obtain professional representation from agents and enter NIL contracts for compensation so long as they are disclosed to his or her academic institution and do not conflict with any provision of contracts entered into by the amateur team he or she is on.

Even though such conflicting NIL deals may not be signed,

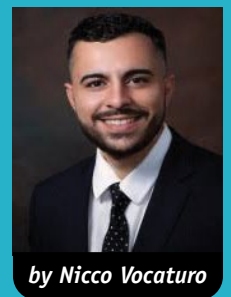
a student-athlete cannot be punished or have a scholarship revoked for doing so. Schools must identify the specific conflicting provisions. Under these laws, the schools themselves cannot provide student-athletes with NIL compensation, but also cannot issue or uphold a rule that prevents student-athletes from being compensated for their NIL. Sometimes a college team will enter various endorsements or contracts, but in doing so, it cannot include provisions that prevent individual athletes from using their own NIL for a commercial purpose when the athlete is not engaged in official team activities.

These state laws also tend to provide that in addition to prohibitions placed on institutions and their teams against the NIL compensation opportunities for athletes outside of official team or school activities, athletic associations such as the NCAA cannot prevent a student-athlete from earning NIL compensation or reprimand an institution if a student-athlete does so.

Private institutions have their own set of rules, regulations and bylaws. Whether private or public, academic institutions have athletic directors or NIL coordinators available for consultation regarding the best practices for general NIL policy compliance and to inquire about such things as the use of trademarked logos or any exclusivity deals.



by Justin Klein



by Nicco Vocaturo

## MARKETING OBLIGATIONS AND THE PF® FRANCHISE AGREEMENT

Under the PF Franchise Agreement, franchisees agree that any advertising, promotion and marketing will be (a) clear and factually accurate, (b) not misleading and (c) in compliance with the marketing policies prescribed by Planet Fitness® and applicable law. PF franchisees have obligations to contribute to the National Advertising Fund as well as perform local marketing in and around their operating locations.

To that end, PF franchisees are given some latitude in the marketing strategies they may use in connection with particular networks in their local markets as opposed to the national campaigns facilitated by or through the franchisor. Qualifying local marketing expenditures include amounts spent by franchisees for advertising media, such as television, radio, internet, newspaper, billboards, posters, direct mail, collateral and promotional items.

## ARE NIL DEALS RIGHT FOR YOU?

Student-athletes are often integrated into their local communities both in their home state, town or city as well as at a school they may be attending in another part of the country. Partnering with student-athletes may be a far less expensive but just as effective option as using professional athletes or other celebrity endorsers for local marketing.

Strategies can be as straightforward as autograph signings, and PF franchisees have employed this strategy. One example is a collaboration with current and former University of Louisville quarterbacks. In November 2021, current quarterback Malik Cunningham signed autographs at PF and was featured on a billboard advertisement. Before the onset of NIL, former Louisville

quarterback Lamar Jackson appeared at PF locations to sign autographs in exchange for charitable donations and helped raise tens of thousands of dollars for a local organization.

For PF locations with college-town demographics and powerhouse athletic programs, working with an entire team could be a more valuable investment. Last July, a Florida mixed martial arts gym began offering \$500 monthly contracts to the entire University of Miami football team for advertising the American Top Team gyms on social media. PF was already familiar with team deals since, in 2020, a group of Philadelphia-area PF franchised locations entered into a multi-year partnership deal with the Philadelphia 76ers.

Campaigns such as traditional television or radio commercials featuring student-athletes can be effective. Strategies that use social media platforms such as TikTok can be especially advantageous because of the broad reach of the followers these student-athletes garner.

With a nation full of student-athletes, this could be an attractive opportunity to meet marketing obligations under your franchise agreement by attracting popular public figures at lower rates with broad local and even national reach. NIL deals are now a viable marketing strategy. As long as you are complying with all rules and regulations that apply, as well as with your franchise agreement, it may be worthwhile to consider. ⚙️

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