

PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

Episode 47: Two tips for student-athletes to prepare for name, image and likeness agreements | June 30, 2021

The following is a transcription of the audio podcast recording. It is largely accurate but in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors.

Luke: I'm sports attorney Luke Fedlam, and welcome to the Protecting Your Possibilities podcast. Each conversation we focus on sharing information and having conversations around how athletes can best educate and protect themselves or their life outside of their sports.

Thank you so much for tuning in to the protecting your possibilities podcast. I'm your host, Luke Fedlam. And before we get today's episode started, I just want to say thank you, to all of our listeners, to all of those who share this podcast with others. Thank you so much. We hit over 2600 downloads a couple weeks ago, which is really exciting. And people are just really finding value in this podcast. So thank you so very much. If you are a listener, I'm going to ask that you go to whatever platform you listen to podcasts on and make sure that you subscribe. And when you subscribe, that will automatically make sure that every Wednesday you're getting these episodes, you know right away so you can check them out, listen to them on your drive, listen to them on your commute, when you have a few minutes working out. Try to keep them relatively short so we can just provide good information in a short period of time.

So with that, let's get into this week's episode which, as you know, if you've been listening to my podcasts, I've spoken quite a bit recently about name, image and likeness. And today is one of those days where I have, I just don't have a choice, right? I've got to speak about name, image and likeness, because this podcast releases on Wednesday mornings. And tomorrow, Thursday, July 1, name, image and likeness is finally here.

Now we've been talking about name, image and likeness - I've been having conversations about name image and likeness for the past two years now. And I say that because when California first was considering Senate bill at the time, their Senate Bill 206, which was signed into law, I knew then that if California passed it, it would automatically have a ripple effect across other states, the NCAA would have to deal with it, etc. And wow, here we are two years later, and, and name, image and likeness is here. And so I wanted to take this episode, and just to spend a few minutes on - now that name image and likeness is about to be here. If you're a student athlete, or if you're a parent of a student athlete, or someone who works with student athletes, what are some tips, what are some thoughts as name, image and likeness becomes a reality. So that's what we're getting into today. And I'm going to say now, usually, you know, wait till the end to say this, but I gotta say this on the front end, if you're the parent of a student athlete, if you have student athletes who are interning with you, or if you know some student athletes or your neighbor, whomever, be sure to share this episode with them, because hopefully, it'll provide some solid thoughts on how to prepare and protect themselves.

So the first thing that I want to get into and as a lawyer, this is one of those things that just like, I just can't say it enough times. Do not sign anything, until you know exactly what it is that you're

signing. Do not sign anything until you know exactly what it is that you're signing. And here's why. Contracts can be complex, they can be confusing. Term sheets can be complex, they can be confusing, you don't always know what it is that you're signing and what you're engaging in. And so being able to have a full understanding, that's what's most important. If someone is giving you an offer, and I know I've talked to student athletes at this point, who have different companies and brands and different people in their DMS, private messaging them with offers and opportunities for them, so I know that when the clock strikes midnight, that there are some student athletes who are going to want to sign agreements with people. And it's just critically important - I mean, so incredibly important that student athletes understand what it is that they're signing before they do.

And in the name image and likeness space, there really are kind of two categories of documents that will be presented to student athletes to be signed. Right. And that is, you know, on the one hand, you've got advisor agreements, then on the other hand, you've got other types of "opportunity agreements," let's call them, right.

So on the adviser side, on the advisor agreements, you really want to have a solid understanding of all of the different provisions within that contract. And key for student athletes to think about and to understand and to know, are things like, what services if we're talking about advisor contracts, what services is that particular advisor providing, right? How are they charging me? What does that look like? What is the fee structure look like? What is it that I'm being charged for the services that they're providing? Also want to know what's the term of the agreement, how long does it last, right? And then ultimately, termination like how can I get out of this agreement if I, if I want to or if I need to.

Having worked with professional athletes for a number of years and having seen many different types of marketing agreements or marketing agent agreements, marketing representation agreements, it is so important to be able to have maximum flexibility when it comes to the term and termination. Alright, without getting too far into the weeds, thinking about that term, you really want to have that term as a student athlete, you want to have that term as short as possible, right, and then you want to be able to terminate for any reason that you see fit in the shortest amount of time possible, right. That's what gives you as a student athlete, the most flexibility and the most protection from an agreement with an advisor. Because if, let's say, after three months of working with that advisor, you're just not connecting, you know, you realize it's not the person that you want to work with, that you want to have representing you, then you want to have the ability and the freedom to be able to terminate that agreement, as soon as you want to.

So I have seen agreements, I have reviewed agreements, where it will say things like the term is, you know, let's say two years, and the initial term will be one year, and termination can only occur within 15 days of the end of the initial term. So basically, what that means is that if you have a desire to change, let's say, marketing agents after working with them for three months, then you're stuck in that agreement, until you can terminate at the end of that initial term, the end of the one year. That is not giving you maximum flexibility, or freedom.

So really, what you want to have is that ability to be able to terminate the agreement with something like 15 days' notice, you know, maybe at the max at 30 days' notice. And so that way, you have the ability to get out of a contract or get out of an agreement with someone should you so need to. Now for them to have a term that's let's say, a year, that's okay to have a year term, if you have the flexibility to get out of that agreement through the termination provision, right. So you kind of understand how that works. Like if the term is a year, but you can

terminate for any reason upon 15 days' notice, then, hey, that's great that it's a year, but you have that ability, you have the upper hand, if you will, to be able to terminate when you want to terminate. So these are just some of the kind of basics that I have conversations and obviously go much deeper into when we're talking with athletes, professional athletes, as well as student athletes, to understand this aspect of managing, right, these advisors who want to work with you, and managing starts with understanding what you've signed up for, and understanding the agreement that you have entered into.

The other thing to think about, are those agreements that have to deal with opportunities, right. So you very well may be a student athlete, and you very well may have someone who has sent you an opportunity to do an appearance or to sign autographs, or to speak at a particular event, or to do some social media influencing where you are promoting a particular brand on social media. These agreements are different in that, it's an agreement between two parties, one of which is typically a company or a brand, and then you as the student athlete. And you are providing the services to the company, and/or the brand and that brand, or that company is paying you for the services that you're providing. And in this instance, you really want to be able to understand what is that you have to do. You know, how much do you get paid? How do you get paid? And then as well, what rights are you giving up? Potentially? So when you think about it, you want to understand what services am I providing? Am I providing social media influencing? Am I providing a speech or prepared remarks somewhere? Am I just doing an appearance where I'm, you know, showing up and waving and speaking to people? What services are you actually providing?

And then you obviously want to know, well, what are you going to get paid for providing those services, because this will all fit into your decision making process around whether it's worth your time to take on that opportunity. I will share with you as we've seen just already in various athlete instances, that when you've looked at the services that you're being asked to provide, especially when it has to deal with social media influencing or providing some form of, you know, social media based services, who has editorial rights, to what, you know, what you create, to the content that you provide. So are you creating the content? And then as long as you tag that brand, you're getting paid? Or do you have to create the content and that brand then has to sign off on it, or it has editorial rights and then they tell you, okay, we actually need you to reshoot this and do this or add that. That is a much different experience for you. And it takes more time and because it takes more time, your time is valuable, and therefore you have to use that to help you make a decision as to whether or not you're going to engage in that opportunity, or whether you're going to pass or whether you even want to maybe ask for more money because of that, right? So understanding what services you have to provide.

But then you also want to understand like, how are you getting paid? Right? Are you getting paid via cash or wire transfer, if you will? Or are you getting paid by merchandise? Are they providing you, you know, you promote a particular apparel store in your neighborhood or in your, in the neighborhood of the school that you compete at? Are they paying for you and your services in merchandise, where they say, hey, you get \$1,000, you know, credit towards the things you want to purchase from the store, or they actually paying you in cash, or they you know, as some you know, as a cryptocurrency which has become, you know, more and more popular these days. So understanding how you get paid is important understanding when you get paid is important as well, because that's how you also hold these brands. And these companies accountable, that if they're supposed to pay you, within 30 days of you providing the service, or on the day in which you provide the service, then you need to make sure that they've done that. And if they haven't, they very well may be in breach of that contract. And they should

be obviously reminded, and you want to make sure that you're staying on top of things that you can track them down as well. So these are some of the things to think about.

The other piece is, when it comes to intellectual property, what are you giving up? So what is intellectual property? Intellectual property is what you own. So when we think about this, from a name, image and likeness perspective, it's typically your name, your image and your likeness. And so when you think about what is it that you're giving up? Are you doing something and I've just seen this here, you know, a few different times where, you know, an athlete is, is given an appearance agreement, where they just appear at an event, maybe wearing whatever that company is wearing their polo shirt, maybe signing autographs, maybe just talking to consumers, customers that are coming in. And yet, there's language that says that the company can take pictures, and use that media that they've taken, use those pictures that they've taken, in their marketing campaigns in perpetuity. And yet, you're only getting paid for showing up to one event. So it's this kind of understanding of what else are you giving up, that you need to understand throughout the agreement?

And I get it right, the agreements oftentimes are full of legal language, or they are, you know, sometimes I've seen, you know, agreements that have been pulled from the internet that somebody tried to convert into their own agreement to make it look like it's official. But because they didn't know what they were doing, and they're cutting and pasting and moving things and filling in what they thought they needed to, it just ends up making a very challenging contract that has a lot of holes in it, that could be pretty challenging to either party to the agreement. So I get it. Going through contracts is not always the most fun, although I will say, I love it, but I guess that's why I do what I do. But you may not love it. But you still need to understand what does this contract say? What am I agreeing to? What am I giving up? What do I get paid in order to do it? You want to know it all. And it really starts with just reading it. And then highlighting things that you don't understand. And asking that company or that brand to explain those things that you've highlighted that you don't understand.

And the other ways to go about hiring an attorney to review. Obviously, this is something that I do, there are others out there that can do this as well. But you want to make sure and again, this is really a cost benefit analysis to you, as a student athlete or to your family to say is it worth having someone who knows what they're doing, spend time reviewing this agreement to make sure that I'm protected. And I think it's important to understand that because there might be times where if it's just a minor amount, a small negligible amount, that you're getting paid for something, you may not find it worth it, to pay for an attorney to review things. But it could also be a really big deal for you financially. And in that instance, you do want to make sure that you have a good solid understanding of the contracts of the agreements that you're being asked to sign and that you're signing in any of those professional service providers should be absolutely able to explain things to you in a way that you understand. Otherwise, they really shouldn't be your advisor.

So just to kind of recap, a couple tips: do not sign anything until you understand what it says right? That's just number one. Number two: everything in a contract can be negotiated. Right, now, that's not to say that the company on the other side will negotiate it. But a contract is just that it's an agreement between two people right or more. And so you have two different parties to the agreement. And you can come up with what you want to come up with obviously, as long as what you're contracting for is legal. So you can negotiate anything. You can negotiate the number of Instagram posts or social media posts you have to put out there you can negotiate how much you're getting paid and things like that. So you can negotiate anything. And don't sign anything until you fully understand what it is.

These are just a couple quick tips, a couple quick thoughts as we get closer and closer to the start of the name, image and likeness era in college sports. But hopefully this will give you some sense of ways in which you can protect yourself and how to slow things down as you look to engage in name, image and likeness opportunities. There will be much more coming, I promise you that. I get more and more questions about name, image and likeness every single day, which is why I've done so many episodes on name, image and likeness because people want to hear unbiased, objective, qualified information on the topic, and I want to be able to provide that for you.

So thank you so much for tuning in. Please do feel free to share this podcast episode with others, especially if you have student athletes that you're connected with, make sure they're hearing this message. And if you have any questions or want to discuss further, please do feel free to reach out to me. You can find all my information on our website www.porterwright.com you can just look for Luke Fedlam.

Again, thank you so much for tuning in. Thanks for your ratings. Thanks for your comments. Thanks for just your consistency to listening to this podcast. I really appreciate it and I can't wait to talk to you again soon. Until then, have a great day.

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