

PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

Episode 54: The realities of NIL | Sept. 8, 2021

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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 I am excited for another episode. But before we get into it, I just want to take a moment to just say thank you, because I've received a lot of encouragement from listeners, subscribers, people who have found benefit and value in these conversations that we have. And I'm so thankful for people who share that information back to me, because again, sometimes you're just looking into a microphone, and you're talking. And you're just hoping that the words that you're saying are making an impact. And so when we get that feedback, it's really, it's really helpful, and it's encouraging to continue on in this work.

I'll also say thank you so much for all of you who subscribe, who share this podcast with others, who provide ideas and thoughts around topics. I really tried to just listen to what it is that we're hearing, so that we can provide information that's valuable to others. If you know me I care deeply about education. And it's not just the academic side of education, it's being able to provide real-world, practical education and perspective to those who want it. And so to have that opportunity to get in front of the microphone, and just to share things that I'm seeing things that I'm working on to ultimately protect athletes. It's an exciting thing. So thank you so much for affording me the opportunity by listening, by sharing and by subscribing.

So all that being said, let's get into the substance of this episode. So I want to talk about name, image and likeness. And I know, I know, I talked quite a bit about name, image and likeness. And it seems like, just in my day to day, just about every day, I'm having a conversation with a student athlete with a coach and athletic administrator, a colleague's someone about name image and likeness, a parent of a student athlete. Alright. But there is so much going on right now. And I get a lot of questions about various aspects of name, image and likeness. But one of the common things that that has been presented to me lately, as a lot of times people are asking as you travel around, and you're talking to student athletes in different schools, what are you hearing? What are you seeing? And so what I thought I'd do is just really kind of give a real update on name, image and likeness. The reality of name image and likeness for many student athletes. And we're kind of at this interesting point, because school is just starting up again, and your fall sports are just getting going. And I think that's going to play a role in changing a little bit of what we're seeing when it comes to name, image and likeness.

So first one of the things that I'm seeing quite a bit is there are quite a few student athletes who are still unsure as to whether they want to participate in name, image and likeness. And we hear this pretty regularly, whenever I'm in front of a group of student athletes, I'm having a

conversation and asking them show of hands, who here is going to participate name, image and likeness, who's not going to participate and who's kind of on the fence. And it's important for me, because it helps me in sharing the education that I'm going to share with them, and being able to address the room and meet the student athletes where they are, right? Because that ultimately, that's what education is all about, right is being able to provide this information in these life skills in a way that's meaningful to them.

And it's interesting, because it's usually a mix, right? There are always people who say that they're not going to participate name, image and likeness, there are always people who say that they are going to participate in there's always a group that's just unsure. And it's interesting because some student athletes are unsure because they don't know if they're going to get opportunities in the name image and likeness space. And there are others who are unsure just because they don't know necessarily how to navigate. And that's one of the common questions that we get from student athletes, which is, my school has told me what I can and can't do. They've shared with me the policy of our institution. But I'm not exactly sure what to do. I'm not exactly sure how to move forward.

And I've had the opportunity to do presentations to student athletes, where INFLCR or Opendorse also was doing joint presentations based on whatever school platform that the school has engaged in, whether it's Opendorse, INFLCR or even others. And what they all talk about is how to grow your brand, right, how to kind of play that offense right, and move forward with your brand, develop your brand, grow your brand, so that ultimately you can commercialize and monetize your brand.

One of the things that I really focus on is the defense right? If building your brand is offense, then protecting your brand is that defense. And that's really where, where I focus on this education. And so, when we're having these conversations and student athletes are asking, like, how do I get involved and get engaged? There are a lot of different ways that go beyond just social media branding, being able to engage in the community on issues that are important to you, to show your authenticity, to engage with alumni, friends of the university, local business owners, and just being able to have conversations and share with them your interests and share with them. Kind of what your career plans are, what your future plans are building relationship networking, right? All of these are things that can help you as you grow your brand, in addition to the more traditional social media brand growth. And for that, I mean, there are some just some basic common themes, right? Be authentic on social media, be smart about what you post, post regularly, post on the platforms that are meaningful to you, engage with your audience, and listeners or followers, right?

I mean, all of these are things that that can be done. But it's, it's important to just recognize the value of the question itself, which is how do I get started? Or how do I engage in name, image and likeness. Obviously, there are elite athletes who have people reaching out to them directly on a regular basis. But if you're not an elite athlete, or if you don't have a significant following, then you have to be proactive if you want to engage in the name image and likeness space. So again, that's one of the things that we're hearing pretty regularly out there, which is student athletes trying to figure out how they're going to navigate name, image and likeness.

Another question that we get consistently from student athletes is on taxes, not understanding kind of how taxes will work in a name image and likeness environment, mostly because they don't understand how taxes will work generally, right? Most student athletes are still claimed by their parents and on their taxes or, kind of fall under their parents as a dependent. But when it comes to name, image and likeness, and the potential for making money – and potentially

making significant money, it's important to understand taxes. And important to understand how to set money aside, and the amounts of money that you should set aside. But I had an interesting conversation recently with a student athlete, a basketball player of a Power 5 school. And he along with his teammates had some questions about taxes and the timing of things. And it's interesting when you think about basketball players or any other spring sport, right, because if you're making money through name, image and likeness, one of the most important times for independent contractors is when they get their 1099, right, which would come January/February timeframe. Then you start planning for your taxes, and then ultimately, you have to file your taxes and pay your tax debt by April 15. And when you think about that, that is in the heart of spring sports.

So if you're a basketball player, right January, you're getting into your conference schedule, and you know, then you've got your conference tournament, and then you go into March Madness. And if you happen to be one of those teams that makes it all the way to the Final Four, you're playing into April. And taxes are due on April 15. So what I share with them is the importance of having a plan and understanding what their plan is for how they're going to track the opportunities that are that they're engaging in, set money aside to save so that they can pay their taxes. And then ultimately having a plan for how they're going to keep on top of things. Even if they're in the middle of their season. Because the IRS doesn't really care if you're in the middle of a sports season. If April 15 is a game day for you doesn't matter to the IRS right? Because your taxes are due by April 15. So again, taxes, definitely a significant conversation that comes up on a regular basis.

Another thing that comes up is the idea of working with a third party, right. And it's these third party agreements and oftentimes the conversations that I'm having with student athletes are around marketing agents, right. So marketing representatives. That's something that comes up pretty regularly. But if you think about these third party agreements, it could also be with somebody who is maybe designing a website, or someone who is taking over managing social media or providing business management services or what have you, right? Maybe it's somebody that is putting together a camp or a clinic, that you can ultimately lend your name to, and get paid for, for doing that.

So when you think about these third party agreements, a lot of times student athletes don't understand what they're looking at, and what to look for. And so one of the things that we really get into is just understanding some of the basic things to look for, right? You want to think about what is the service? Or what are the services that someone is providing for you? You want to think about, what are you paying them? Right? What are the fees? Are you paying them out of pocket? Are you paying a percentage of whatever they make for you? You really want to understand how that works, because the compensation is directly related to the services being provided. So if you feel like the services being provided, don't warrant the amount that they're asking for, then you need to negotiate you the services, or the fees themselves.

Then you also want to understand the term. How long is this contract with this third party? And then ultimately, termination? Can I terminate this for any reason at any time? Or what are the requirements or restrictions on my termination? And so just going through some of those basics, right, some of those basic contractual areas are helpful when a student athlete is thinking about that third party, and thinking about the agreement that that third party presents to them. But the other piece is just the due diligence piece, right, which is just understanding who that person is that wants to work with you, and how do they align with what you're trying to do? Right. All of these are important things to consider when thinking about third parties who want to work with

you, again, just something that we that we see pretty regularly, in our conversations now across the country.

Another piece that comes up pretty regularly is as it relates to international student athletes. Now, this is a tough one, right? Because international student athletes who are in the United States going to college and they're on a particular type of visa, aren't allowed to make money outside of certain very limited parameters, which usually have to do with a student athlete, working on campus and being able to get paid by the university or the institution. But beyond that, and outside of that they're not able to earn compensation here in the United States. So I constantly get a question and it may come from student athletes or may come from compliance around student athletes who are international student athletes being able to earn compensation. And, and really kind of the only thing that we have been able to come up with that could work for a student athlete is if they're getting paid by a company that's in their home country. And if they have a bank account established in that home country that kind of keeps all of their compensation out of the United States and in their home country. And so that could be an option.

And I oftentimes encouraged athletes to have conversations with their inner International Affairs office on campus, as well as their compliance department on campus to continue to have dialogue and understand what limitations exist on international student athletes. One question that I got here recently was someone who had asked well, what happens if their eligibility, NCAA eligibility has ended, but they're still on campus for a few more months, because they're finishing up their semester, finishing up their academic year? And so can they earn compensation if they're no longer a student athlete or don't have any eligibility remaining, but that has the eligibility and NCAA student athlete status has nothing really to do with the type of visa that they're on? Right? It all comes back to earning compensation, being here in the United States as a student athlete. And so even if you take out the athlete, part of student athlete, they're still not able to earn compensation.

So if I were to prognosticate a little bit about what I what we might see in the future, we know that at some point, Congress has to take up this issue of name, image and likeness and come up with a national standard. And I think that that it would be likely or at least something that will be considered to be able to figure out ways in which student athletes who are from outside of the United States and are here in the in the US as a student athlete, as an international student athlete, then I do think that that's something from a federal legislation perspective that could be discussed and come up with a way to authorize an international student athletes to be able to earn compensation. So we'll see how that plays out. And if that's something that that does happen when we, when we get a national standard set forth by federal legislation.

And then finally, I think one of the common themes that I'm hearing and this is more so from coaches, and from athletic administrators, and also from some student athletes, and that is just the concern, right, the concern of people who want to be close to a student athlete. All right, and, and this really was, there's really kind of two parts to this right. One is the people who want to get close to the student athlete for business purposes, because they want to be able to work with that student athlete, right. So they're going to do what it takes to try to position themselves, especially for the elite of the elite student athletes who have opportunities to play professionally, there will be people who want to get close just to try to recruit, if you will, that student athlete to whatever business that person's a part of. And so that's going to happen. And you know, it's interesting, right? Because that has happened. That's how it's been for at least two athletes who have a chance to play professionally, that there's always people around trying to get close. But now it's, it's a little bit more challenging, because it's people who want to get close to try to

create opportunities or bring opportunities to student athletes usually for their own benefit, right? So that if I bring a deal to a player, and get him involved in a deal, I'm going to get a cut, I'm going to get a percentage, and that's going to help me kind of grow my business. Well, that's something to be mindful of. That's something to watch out for. And so it's a legitimate concern. And on top of that, the next concern is the people who socially want to be close to the student athlete, because of the opportunities that may come with that. Because that student athlete is making money, right, so think about that there are going to be student athletes making significant money, who are on campus. And you can only imagine the people who are trying to get close to that student athlete, either romantically, or just from a friendship perspective to try to be close, and to try to benefit from an association with that student athlete who's making money in his own campus.

So again, these are just some of the things that we're hearing pretty regularly, no matter where we are presenting, whether we're out in the northwest or down in the south, or, or even in the Midwest, or east. These are significant questions that continue to come up from the student, athletes, coaches, and athletic administrators that we talked to on a regular basis.

So every now and then I'll continue to do these updates, because I think it's important to hear kind of what student athletes are challenged by, it's important to understand kind of what, what the reality of name, image and likeness is right now. And I think what we're going to see is that now that we're starting off in this fall semester, and sports are starting back up, college sports are starting back up, I think we're going to see a lot more activity. And hopefully, with that activity, we're not going to see the negative stories, we're just going to see the positive stories of student athletes having opportunities to set themselves up and ultimately take care of themselves, their families, their communities as they see fit.

So again, how do we get there, we get there through education, right, real world practical education that can be implemented by the student athlete. And so that's why I have the podcast.

So if you've been listening to this episode, and you found value, please do feel free to share with a colleague, a friend, a coworker, or a family member who could benefit from this information. I'm always going to give you information that I feel like is timely. And that is important for the listener to hear. So again, thank you so much for your time. Thank you for tuning in. Thank you for subscribing to this podcast if you're a subscriber. If not, don't wait, go now and subscribe. That was the best infomercial voice I could give you. So again, thank you so much for tuning in. I really appreciate you and we'll talk again soon. Have a great day.

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