

PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

Episode 67: Let the madness begin | March 16, 2022

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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 know that I always say that I'm excited for our episodes together, and this episode is no different. This is perhaps one of the most exciting periods of time in sports. It's time for March Madness. And the NCAA basketball championship tournaments on the men's and women's side, always lead to exciting buzzer beaters, and fun times for everyone to see. In fact, you know, I think there's all these different studies that talk about how much productivity is lost in the United States, because people are watching on their computer screens at work or on their phones or on their televisions in bars and restaurants. And there's really kind of this sense of, of basketball euphoria across the country over these next few weeks. And so it's an exciting time to have this conversation around March Madness in particular, as it relates to the fact that this is the first college basketball championship tournament, where name, image and likeness is official.

So for the first time, in 70, plus years, we have student athletes able to earn compensation based on their name, image and likeness. But we also have this March Madness tournament that will lend itself to student athletes being involved in doing different deals with companies or brands that may be partners of the NCAA.

So first and foremost, I think it's important for us to have a conversation around student athletes making sure that you are protected as you go through this process. And here's what I mean. The NCAA is extremely protective of their marks. I think we all have seen that over the years, that they have a trademark on March Madness, on the Sweet 16, Elite Eight, Final Four. Those are all terms and phrases that the NCAA has protected through trademark protection and they will enforce the protection of their trademark. They are very adamant about making sure that if you are using those terms that you are an official partner or an official licensee of the NCAA. And they'll go after, after everyone. They'll go after companies that are counterfeit companies, that we know they're these counterfeiting companies that pop up around big sporting events, Super Bowl, NBA Finals, March Madness, so they go after them. But also, it's just the unauthorized use of those terms. So the NCAA may go after restaurants or bars that are using March Madness are those protective terms in their promotion, because they want to get people to come in and watch the games. So they are protective of that.

They're also protective of the use on social media of those phrases for commercial purposes. So that's where I think we start to see this now tie in between the NCAA and student athletes who are looking to commercialize their name, image and likeness.

So in this instance, what's important for student athlete to understand is, those phrases or those terms, March Madness, or Elite Eight, Final Four, they are protected by the NCAA. So if you are doing a social media influencing deal with a local company or brand, and you use the phrase March Madness, or Elite Eight, Final Four, then you have to have the permission of the NCAA, in order to do that.

Here's an example. Let's say a local restaurant, you have a deal with a local restaurant, maybe it's a local chain in the city where your institution is located. And you happen to be part of a team that's going into the tournament that made it into March Madness. So if you were to post something on social media that said, you know, "Be sure to follow me during March Madness, and support this restaurant, because I love their food, and it'll be great to watch me play in, you know, March Madness, you know, at this restaurant." That would be something where it's commercial use of those protected marks because you are getting paid for that post, the company or that restaurant is paying you to make that post, and you don't have the permission of the NCAA for the use of their protected marks. .

So that's going to be something that'll be very interesting to see over these coming weeks, to what extent and what length will the NCAA go from a social media perspective to protect their marks in these commercialized ways? Because if someone just you know, isn't commercializing the use where they just say, I'm so excited for March Madness on social media that's different, but if I'm getting paid by a particular brand or company to say something that includes March Madness, or you know, Final Four, then that's a commercialized use, and the NCAA absolutely has the rights to enforce their protection of their mark.

And when you think about that, you know, we know how big March Madness is, we know that the NCAA basketball tournament, the men's basketball tournament, in particular, based on the media deals that are in place, it counts for over 85% of the NCAA's annual budget. I mean, over 85%. It's over a billion dollars a year. And so from that perspective, the NCAA absolutely recognizes the value of the marks that they have, and they want to protect the rights that they have there. But also, if you don't, as a holder of a trademark, if you don't protect your rights, then ultimately you could lose your rights. So in those instances, we know that it's important for the NCAA to make sure that they are protecting their mark from other people using it from the unauthorized use of their marks, so that they can continue to maintain ownership in those marks. And clearly, as we've stated earlier, those marks have significant value to the NCAA.

When you're thinking about this big picture, with name, image and likeness, being only about nine months old, it's going to be interesting to see how some student athletes will use name, image and likeness and engage in all that's going on with March Madness, you can imagine that it's going to happen. And I think if we have, if we talk about this in future episodes, over the coming weeks, we'll be able to look back and see that there are probably going to be some student athletes who are playing in the tournament, who end up having an NIL deals. And it could be that the company or the brand already has a relationship with the NCAA, where they're an official partner, or an official licensee of the institution of the NCAA's marks. And from that perspective, I think we're gonna see some really cool and interesting things there.

But what what we're gonna look out for to is going to be to see how and if the NCAA goes after student athletes for their potential unauthorized use of the NCAA marks and logos. Because here's, here's what's really interesting, because the question is, is how would they do that? Alright, because currently, student athletes have to disclose their deals with their institutions. So if they're going to do a social media influencing deal with a particular company or brand, whatever that contract is that they sign, ultimately, they have to upload that or provide that to

their compliance department or to the athletic department as part of their disclosure requirement. But the disclosure requirement to the school does not require them to actually share the posts that they're going to be making. Sometimes, we know that compliance or others in the athletic department may monitor their student athletes' social media, just from a safety perspective, just to make sure that there's nothing kind of happening from a social media realm that would put the student athlete in harm or danger, or even the student athlete potentially using the school's marks or logos in an unauthorized manner. But the school isn't required to track the social media posts that a student athlete makes. And if you think about it, some local companies may not really fully understand the requirements, as it relates to, you know, the use of other corporate marks. And in this instance, March Madness has become such a common phrase that many people don't realize that it's actually protected by the NCAA.

So you could imagine a local business owner that says we're going into March Madness, and you know, we have this particular student athlete that is a brand ambassador for us or that's doing endorsement deals, social media influencing for us, let's have them do some type of post around March Madness. And that's where it will be interesting to see if and how the NCAA will be monitoring the use of their marks or the unauthorized use of their marks in these commercial settings.

Now, you can imagine that's a tall order for the NCAA to try to enforce and go after because there's so many that, you know, we already know that historically, every year, they're going after counterfeiters and things along those lines from an apparel perspective. But it's also important to understand and to look at how they might be analyzing student athletes and how student athletes use or try to use their marks.

So with that, let's just have a couple tips for student athletes. Before you do a deal that has any type of relation to March Madness, you want to make sure that you don't refer to any of those protected phrases by the NCAA. That includes the NCAA, March Madness, Sweet 16, Elite Eight, Final Four. Those are the more common protected marks as it relates to march madness that the NCAA really focuses on enforcing their protections. So if you're going to be putting together a social media post, do not use those phrases, because you might end up getting a letter or a call from the NCAA.

And the next, just make sure that you run your post by the company that you are working with just to make sure that they're comfortable and, and really make sure that they understand. And you can even say, Hey, I was listening to this podcast, it's a great podcast, and they were talking about the use of the NCAA mark. And I just want to make sure that this post would not put me into a tough situation. And so whether you're checking with it through your compliance department or checking with the brand, or the company that is asking you to do that actual post, or that social media influencing, it's important to make sure that you are all clear before you post it because ultimately, if you're the one posting, that's most definitely who the NCAA or any other organization that's enforcing their marks would want to go after.

So just you know, some quick tips here as it relates to probably the most exciting time in college basketball throughout the year on the men's and women's side. And it's going to be important to make sure that you are protected in the way in which you promote any brand or company that you're working with.

So with that, thank you so much for tuning in. If you have any questions, comments, feel free to reach out on social media, feel free to send an email. Definitely feel free to share this episode with colleagues and friends and other athletes who might find value here. But it's really

important to make sure that you understand and don't use the protected marks of another organization as you're doing your own social media influencing, because that can lead and put you in a situation where you end up in a tough spot because you had the you didn't have the authorization to use that company's brand or their marks. Until the next time. Have a great day.

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