

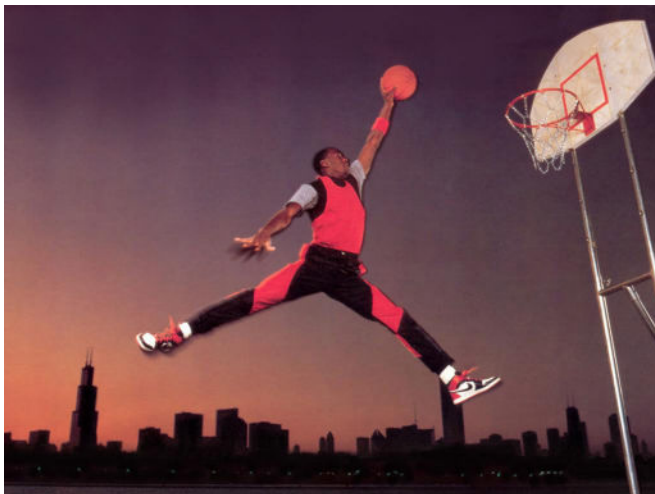
NIL basics: What every student-athlete should know

What is NIL and how is it used?

A person's name, image, and likeness (NIL) are attributes that identify that specific person. NIL can include an individual's name, image, voice, signature, and other personal identifiers.

Individuals can use their NIL for commercial purposes. When used commercially, NIL is often included in advertisements or promotions for products and services. Words (think a signature), pictures, videos, voice recordings, and other mediums can be used to portray a person's NIL.

For example, this promotional poster for Nike's athletic shoes uses Michael Jordan's image:



Can student-athletes commercialize their NIL?

Yes, the NCAA recently lifted its longstanding ban on student-athletes commercializing and mone-

tizing their NIL. Student-athletes in most states can now grant permission for interested companies to use their NIL in exchange for financial compensation.

For example, a student-athlete may authorize a company to use their image in advertisements for breakfast foods, sports equipment, or even hotel services.

Real-world examples include:

- University of Alabama wide receiver Isaiah Bond, who recently completed an NIL deal with Foot Locker.
- Louisiana State University guard Flau'jae Johnson, who recently made NIL deals with Experian and Powerade.

Are there laws that protect student-athletes' NIL?

NIL rights are generally protected under state law and the level of NIL protection varies from state to state. Generally, these laws do not allow others to use a person's NIL commercially without permission. Many states have enacted personality rights statutes to protect student-athletes' ability to control their own NIL. Many universities also have NIL guidelines that apply to their student-athletes.

How do student-athletes commercialize their NIL?

Typically, student-athletes exercise their NIL rights by entering into written agreements (contracts)

with interested companies. These contracts define specific allowable NIL uses, responsibilities of each party, compensation arrangements, and other terms and conditions.

For example, contracts can define:

- a geographic area in which the student-athlete's NIL can be used (global or U.S. only);
- the period of time in which the student-athlete grants permission to use their NIL; and
- the specific ways in which the athlete's NIL can be used (only in digital ads, only on social media, only in radio ads, only on t-shirts, etc.).

Important note: Contracts involve a variety of complex rights and responsibilities and legally bind the parties who sign them. Student-athletes interested in commercializing their NIL should consider seeking the help of an attorney with experience in contract and NIL laws.

What's the difference between NIL rights and trademarks?

Trademarks are words, signs, slogans, or logos that **identify** the source of particular products or services and **distinguish** one party's products or services from those of others. Any person or company can own and use trademarks.

You may recognize the following examples of trademarks:



While trademarks identify the source of and distinguish particular products or services, NIL is typically used for a different purpose, such as to **promote** or **endorse** a company's products or services.

However, NIL can also be registered as a trademark when it is used to identify and distinguish the owner's products or services.

No company or other person can register a student-athlete's NIL as a trademark without the student-athlete's written consent.

Key takeaways

Student-athletes have the power to control their own NIL. Most states protect student-athletes' rights to commercialize and monetize their NIL. Student-athletes can exercise their NIL rights by entering into contracts with companies and, in appropriate circumstances, by registering their NIL as trademarks. Student-athletes interested in commercializing their NIL rights should consider consulting an attorney with experience in contract and NIL laws.

NIL resources

Trademark basics:

www.uspto.gov/TrademarkBasics

Hiring a U.S.-licensed attorney:

www.uspto.gov/trademarks/basics/why-hire-private-trademark-attorney

IP Identifier Tool:

<https://ipidentifier.uspto.gov/>