

SportsTech: Trademarks Webinar

Representing Brand Owners in the Age of NIL

Before We Get Started...



Recording

A link to the recording and slides will be emailed to all registrants.



Questions

Type in the question box and we will answer in real time or during the Q&A.



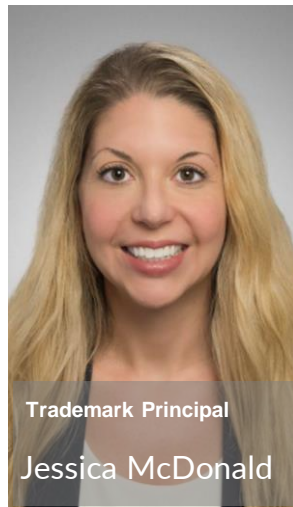
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Panel



Schwegman
Lundberg &
Woessner



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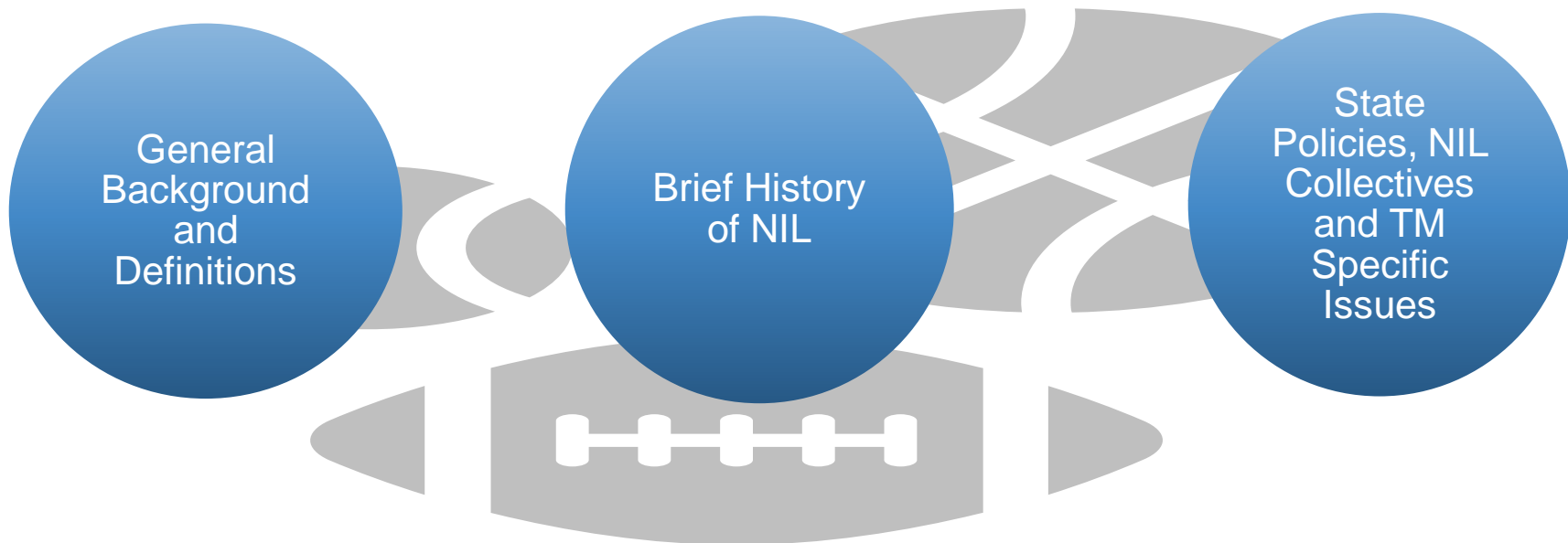


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Episode Overview



Definition of Name, Image, and Likeness ("NIL")

Name, Image, and Likeness are the three elements that make up the legal concept referring to an individual's right of publicity

Person's name or a representation of their physical appearance

"Name": the individual's name

"Image": photo or video of the individual

"Likeness": a graphic representation of an individual

NIL allows college athletes and high school athletes (in some states) to profit from their name, image, and likeness

Examples and Opportunities



Autographs and Memorabilia



Camps and Clinics



Merchandise



Podcasting



Public Speaking



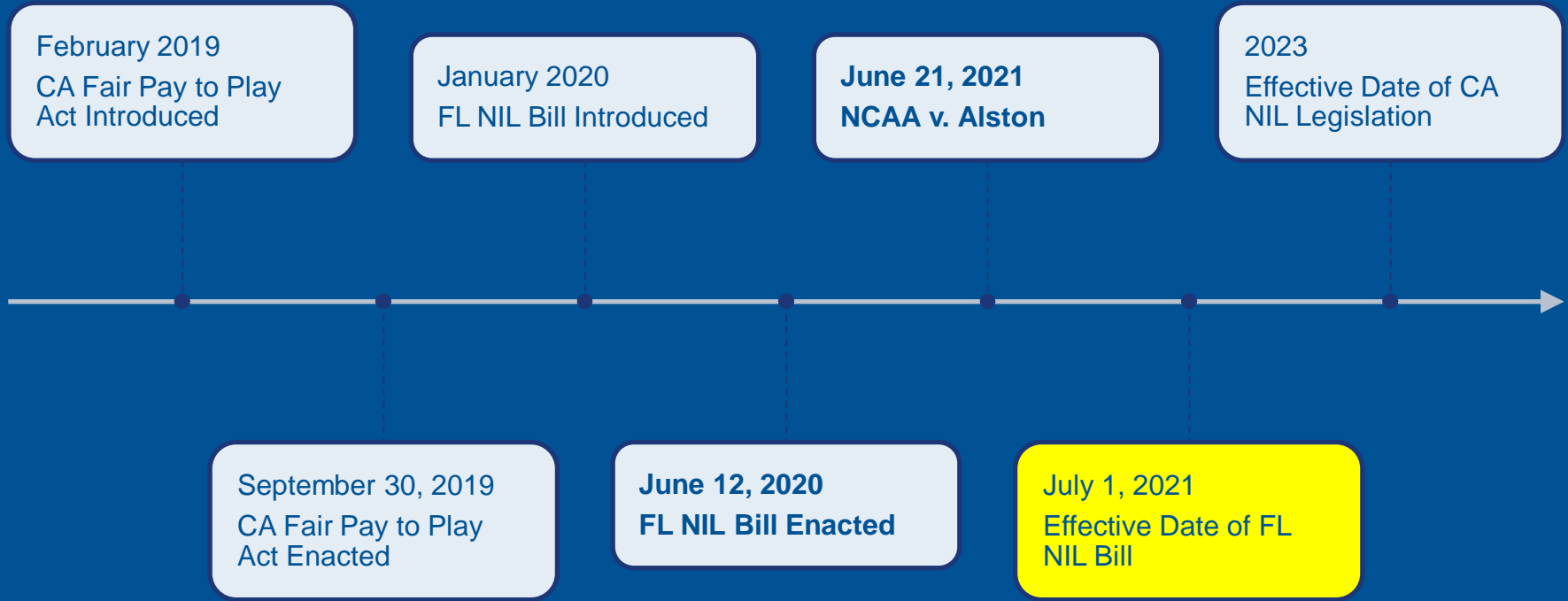
Music, Art, etc.



Social Media



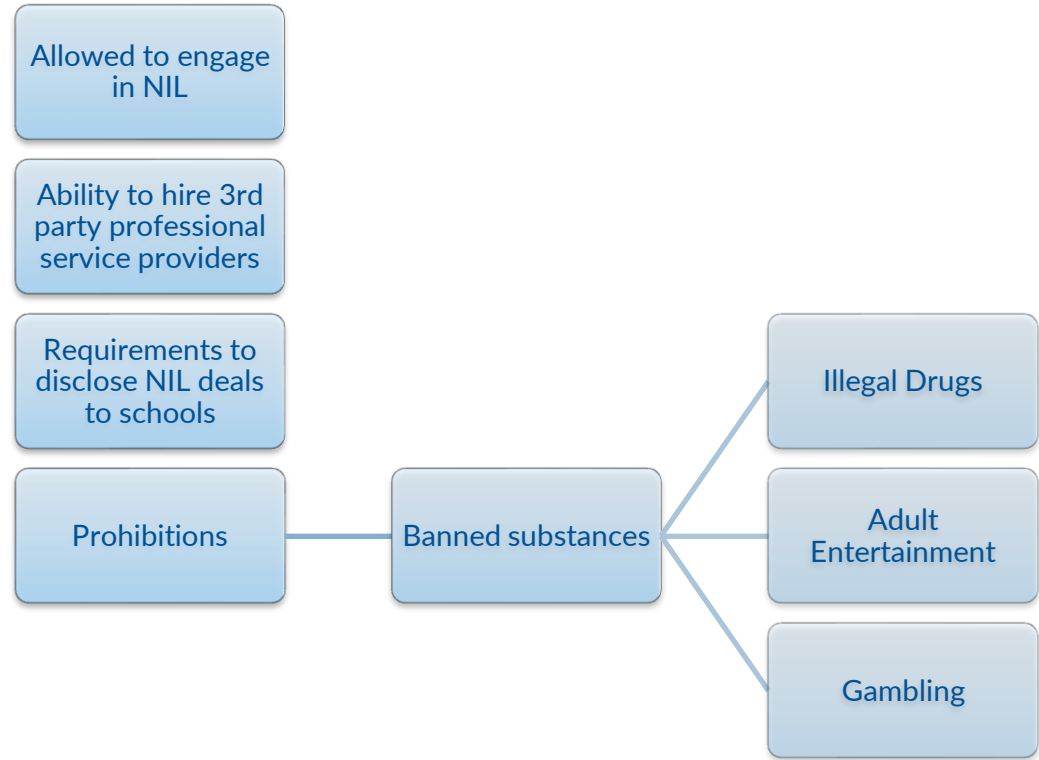
NIL Timeline & Brief History



NCAA v. Alston (June 21, 2021)

- Antitrust case
 - Does not address NIL payments
 - Was it an antitrust violation for the NCAA to limit educational benefits to student-athletes?
- NCAA's long-standing position that college athletes can't be paid, as they are amateurs
- Unanimous decision in favor of the student-athletes, that NCAA restrictions on education-related benefits violate antitrust rules
- Justice Kavanaugh's concurring opinion presents a strong indication that the Supreme Court is ready to go further beyond the educational realm benefits
 - "The NCAA's remaining compensation rules also raise serious questions under the antitrust laws...the NCAA is not above the law.
- Immediately following the decision, NCAA got rid of most of their NIL restrictions because they saw the writing on the wall and the direction that the Supreme Court was heading

Common Trends Among NIL Policies



State Policies on NIL - Examples

Florida

- Another bill passed February 16, 2023 revising prior law
- Pulls back on a number of restrictions
- Requirement for certain workshops
- High School NIL not currently allowed

Texas

- Provides framework for proposed NIL contracts
 - Limitations to the terms
 - The way the compensation is provided
 - Duration of the NIL contract
- Prohibits recruiting related to NIL
- Creates a Financial Literacy and Life Skills Workshop
- Does not extend to High School Athletes

New York

- Amended June 30, 2023
- Makes it illegal for the NCAA to prohibit a NY school from facilitating NIL arrangements for its athletes
- Expanded to include high school students after their sophomore year
- Significantly limits the enforcement power of the NCAA for NIL violations

What is an NIL Collective?

Entity not associated with educational institution

Created for the benefit of student athletes at a school

Aim is to gather alumni, donors, boosters, etc. of a certain school and create NIL opportunities for student-athletes at that institution

Conduit or intermediary to:



- Create NIL opportunities
- Direct NIL deals to student athlete

Different structures

Trademarks of Pro Athletes



Trademarks of Student Athletes

MARK	OWNER	GOODS/SERVICES
	Hailey Van Lith LSU Tigers Women's Basketball	Footwear, athletic apparel, athletic uniforms
	Demani Richardson Texas A&M Aggies	Athletic apparel, athletic uniforms
	Graham Mertz Florida Gators	Wearable garments and clothing, sports caps and hats

Trademark Protections for Athletes from Squatters

- Third parties applying for trademark protection for names, nicknames and catchphrases of athletes in an attempt to profit from their celebrity status
 - Trademark Act Section 2(c) prohibits registration of marks consisting of a name, nickname, stage name identifying a particular living individual without his written consent
 - 9 trademark applications were filed by unrelated third parties for LINSANITY, a phrase referring to the craze associated with Jeremy Lin of the Knicks
 - U.S. Reg. No. 4908965 LINSANITY registered in the name of its rightful owner
- 
- Trademark Act 2(a) prohibits the registration of marks that falsely suggest a connection with individuals
 - Applications for AROD refused as falsely suggesting a connection with Yankee Alex Rodriguez
 - Application for GREEK FREAK refused as falsely suggesting a connection with Giannis Antetokounmp of the Milwaukee Bucks
 - Application for FEAR THE BROW refused as falsely suggesting a connection with Anthony Davis of the Lakers
 - Application for TEBOWING refused as falsely suggesting a connection with NFL player Tim Tebow
 - Application for TOMPA BAY GRONKANEERS refused as falsely suggesting a connection with Tom Brady and Rob Gronkowski of the Tampa Bay Buccaneers

Squatting in the Context of Student Athletes

- JOHNNY FOOTBALL
 - A 2012 application filed by unrelated third party was refused under Section 2(c) as the nickname for Texas A&M player Johnny Manziel
 - In 2013, Johnny Manziel filed for JOHNNY FOOTBALL for clothing and athletic apparel and maintains an active registration



Trademark Enforcement by Athletes



Giannis Antetokounmpo in just the past 2 years has filed over 50 lawsuits against trademark infringers

Shaquille O'Neal built a brand that lasts long after his tenure as a pro athlete due to his trademark registrations and continuous enforcement actions against infringers

Cease and desist letters and offers for settlement often effective

Additional protection afforded to famous marks: Cause of Action for Dilution



What is the Future of NIL?



Thank you for your interest.

Questions?



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