Name, Image, and Likeness (NIL): A Regional Marketing Application

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ABSTRACT

This case study explores the impact of Name, Image, and Likeness (NIL) applied to college athletics on the marketing decisions of a regional business. The company's gross revenue in the study is approximately $200 million annually. The study provides NIL background information, including the historical reasons for implementing the NCAA policy. The case investigates applications of NIL in the realm of price, location, attribute differences, firm-service differentials, and differentiated subjective image in the context of marketing decisions for a regional business. The case question queries the relative options of investing directly in a college athletic program, employing individual student-athletes, contributing to a college sports collective, or avoiding college athletics as a marketing vehicle.

Keywords: college athletics, NIL, regional advertising, sports collective, sports marketing

INTRODUCTION

On an early Monday morning in April, Briley St. Claire, a mid-level marketing executive for Oasis Inc., caught a brief glimpse of the sunrise through the conference room's floor-to-ceiling windows. The sunrise and the views were impressive, but Briley quickly returned to her work. All she could think about were the marketing strategies, specifically the athletic sponsorship decision she would recommend in the coming week to corporate leadership.

Oasis Inc., a $200 million regional business in a Midwest college city, employs approximately 450 employees from the city and surrounding communities. About 310,000 residents live within a 30-minute drive of Oasis's offices, and Oasis has always looked for ways to invest and grow the business while supporting the community and hometown university.

Midwest University is a public, D-1 research university with approximately 38,000 students. In the last 20 years, the university's enrollment has increased by 72 percent, driven by economic growth in the area, university leadership, and athletic success. Those crediting the athletic success of the Midwest Buffaloes argue that media exposure has made the area and the university more attractive to faculty, staff, and students, along with highly rated student-athletes and prominent coaches.

The Buffaloes' athletic program is a charter member of a Power Five conference. In the last 20 years, the women's basketball program has won a national championship and has consistently finished in the top half of the conference. The baseball and men's basketball programs have been competitive in conference play and have earned two College World Series appearances and four NCAA Sweet Sixteen appearances, respectively. The men's and women's track teams have been consistently ranked in the top 10 in the nation and have been a springboard for Olympic hopefuls. The football program has garnered national exposure for winning big games, attracting big-name coaches, and producing pro-caliber athletes. The men's and women's tennis, golf, and soccer programs have also shown strength. Altogether, the continued success of the athletic program has allowed the university to invest in new varsity teams in softball, lacrosse, and field hockey, starting in the fall semester.

Briley and her Oasis colleagues had long recognized the impact of the university and its athletic programs on the region. They watched closely as the Name, Image, and Likeness (NIL) changes took shape across the U.S. Through NIL, student-athletes could now profit from their recognizance and on-field successes, opening the door for businesses and student-athletes to collaborate in mutually beneficial endeavors.

Briley had reached the Oasis offices before dawn on Monday to prepare for a work session with her team. They were actively contemplating how Oasis might leverage NIL with Buffalo student-athletes. While there wasn't exactly a deadline for NIL investment, they wanted to strike early and get out into the marketplace ahead of other potential sponsors. Briley and Oasis had studied the demographics of Midwest University’s nearly 300,000 alums, many of whom lived within a few hours' drive of Midwest University and the Oasis headquarters, and they were confident that a significant percentage of the Buffaloes' passionate fan base were also interested in Oasis's products.

With a greenlight and a substantial commitment of new marketing dollars from Oasis executives, Briley's team examined three sponsorship options. The first option was to fund the Buffaloes' athletic department and support all men's and women's varsity teams. The second option was to collaborate with individual student-athletes from specific programs and compensate them for selected endorsements. And the third option for Oasis was to partner with

Buffalo Resources, a NIL collective where businesses, donors, and friends would pool their resources to financially support student-athletes and encourage them to engage in charitable work and build relationships between student-athletes and the community. Buffalo Resources would also help student-athletes acquire additional NIL contracts and promote local non-profit businesses. With the morning sun bearing down on them, Briley and her team were now on the clock, ready to determine the best sponsorship approach for Oasis.

NAME, IMAGE, AND LIKENESS (NIL): BACKGROUND INFORMATION

In 2018, University of Alabama head football coach Nick Saban negotiated an eight-year contract extension worth $74 million (Dosh, 2018). One year later, Collins (2019) reported that Clemson University head football coach Dabo Swinney agreed to a ten-year, $92 million contract. Fast forward three years, and data from USA Today (2022) showed that these coaches' annual salaries had increased to over $10 million. Still, the combined value of Saban and Swinney's contracts represents only a fraction of the more than $4 billion in annual revenue from college football (Law, S. A. A., 2019).

Saban's and Swinney's contracts are not unique among college coaches; evidenced by the fact that in 28 states, a college head football coach is the highest-paid state employee; while in twelve states, the highest-paid employee is a college basketball coach (Gibson, 2019). Also, Mikesell (2022) reported that in 2020, every head college football coach at a Power Five school had an annual salary of more than $2 million. These extravagant coaching salaries are possible, in large part, because of revenues generated by the talent and efforts of student-athletes. While the policies used by the National Collegiate Athletic Association (NCAA) to govern student-athlete compensation have been debated for years, the massive increase in coaching salaries has intensified this debate.

Interestingly, the primary catalyst for changing NCAA policies regarding student-athlete compensation involved a company outside of college athletics. In 2009, Ed O'Bannon, a former basketball player for the University of California, Los Angeles (UCLA), filed suit against EA Sports for using his image to create a digital avatar in EA's NCAA Basketball 2009 video game. The district court held that the NCAA's ban on student-athletes accepting compensation beyond the cost of attendance restricted their right to profit from their name, image, and likeness (NIL) being used by EA Sports (Silahian, 2023). O'Bannon provided a landmark precedent for student-athlete compensation as it challenged the NCAA's restrictions on an athlete's fundamental right to publicity, allowing individuals to control the commercial use of their NIL.

In 2014, the NCAA's policies on player compensation met further opposition when a group of former Division I student-athletes, known as Alston, filed a class-action lawsuit against the NCAA. In their filing, Alston alleged that the NCAA's restrictions on student-athlete compensation violated the Sherman Antitrust Act. A 2019 district court ruled in favor of Alston, forcing the NCAA to revise its compensation rules for student-athletes. On June 21, 2021, the Supreme Court unanimously upheld the district court ruling. This unanimous decision shook the world of college athletics by warning the NCAA that restricting athletes' NIL activities could be declared a violation of federal antitrust law. The warning was heeded as the NCAA changed its compensation rules for athletes nine days after the Supreme Court's ruling.

On June 30, 2021, the NCAA implemented a new NIL Policy. This new policy gave athletes marketing control over their NIL, control which universities previously held. Specifically, the NIL policy allowed student-athletes a chance to earn compensation for activities such as signing autographs, modeling clothing apparel, promoting products or services, and making personal appearances. Conversely, the policy was not a pay-for-play plan, meaning players could not be paid for athletic performance. This specific restriction allowed the NCAA to maintain its amateur sports status. The new policy also prohibited recruits from signing any NIL agreement contingent upon attending a particular university. Lastly, the NCAA benefitted from the NIL policy as it ended the long-standing scrutiny the NCAA had faced for profiting from the NIL of student-athletes while not allowing athletes to do the same.

CURRENT STATE OF NIL

Implementing NIL has achieved the desired effect of providing many high-profile collegiate athletes with income. The evolution of NIL has also become controversial, leading to the emergence of state and federal legislation on the horizon. State legislatures in Texas, Oklahoma, Colorado, Missouri, Arkansas, New York, and others have been aggressive in limiting the authority of the NCAA to investigate and penalize state colleges for NIL rule violations. The creation of college NIL collectives is an emerging focus of the NCAA. Collectives pool donor and alums funds to compensate student-athletes, independent of the college. Collectives are essential for collegiate programs to recruit athletes, especially given the current flexibility in transfer rules. Today, the open transfer portal combined with NIL collectives increasingly leads to a pay-for-play collegiate system that compromises the NCAA's desirable amateur status. Critics point out that college coaches and programs work closely with NIL collectives. As a result, college athletics is highly correlated with professional efforts as students seek compensation over academic opportunities.

Current proposed federal legislation addresses several issues by granting the NCAA greater authority to manage NIL (Wohlwend, 2023). The federal proposal has four key components. First, college athletes cannot sign NIL deals until they are enrolled and have completed at least one semester of coursework. This policy decreases the efficacy of athletes transferring to the highest bidder ad hoc, as they must have completed a critical mass of minimal academic work before achieving NIL eligibility status. Second, the proposed federal legislation requires athletes to be transparent with NIL arrangements by reporting their contracts to schools within 30 days of entering an agreement. In this case, the NCAA and college will not stop NIL agreements but can track and review the status. Third, the federal proposal creates a trust funded via revenue-generation sports (e.g., football and basketball) that would cover family members' travel expenses and up to eight years of medical costs tied to collegiate sports injuries. The goal of the provision is to mitigate the need for families to focus only on compensation considerations when deciding to join, stay, or depart a college athletic program. Fourth, federal proposals authorize the NCAA to investigate, audit, and penalize collegiate programs for NIL violations under the authority of unfair and deceptive acts under the Federal Trade Commission Act. The penalty revokes its tax-exempt status if the NCAA does not fulfill its obligation to manage NIL.

THEORETICAL FOUNDATION

Firms can compete with one another in a variety of different ways. For this case, the focus is on the impact of a firm's involvement with name, image, and likeness in the world of college athletics on the firm's ability to compete based on price, physical attributes, firm-service differentials, and subjective imaging as it relates to branding.

Pricing reflects what a firm will charge for a good or service and what a consumer will have to give up to purchase that good or service. A firm that is looking to compete based on price will emphasize matching or beating the competitor's pricing. So, a firm involved in the landscape of NIL is taking on an increase in marketing-related costs that the firm could then pass on to the consumers by raising the price of their product(s). For a firm whose product(s) are more price elastic (responsive to price changes), an increase in product(s) pricing will be more impactful, especially among price-sensitive consumers. Thus, negatively affecting a firm's ability to compete based on price. If marketing efforts via NIL helps a company achieve a relatively unique identity, demand will become more inelastic, and consumers absorb a disproportionate amount of the price increase.

Place refers to where a firm sells its product(s). From a competitive perspective, a superior location can help a firm develop a competitive advantage. A location-based competitive advantage stems from the firm being more easily accessible and convenient for the consumer. This proximity to consumers benefits a firm not only financially (i.e., sales) but also provides the firm with the opportunity to build and establish a relationship with the community. Therefore, a firm with ties to a college athletics program via NIL will endear itself to the local community and, as a result, experience a competitive advantage.

Products comprise a bundle of hedonic attributes that benefit consumers and influence consumer attitudes and preferences. Product hedonic compoeenents include the physical attributes of a product, such as size (e.g., Toyota Tundra vs. Tacoma), shape (e.g., round vs. square kitchen table), and color (e.g., red vs. blue tennis racket). Factors including a firm's resources and objectives may influence its ability to compete based on the physical attributes of their product(s). However, taking part in NIL with regard to college athletics is unlikely to impact a firm's ability to compete based on the phsyical attributes of that firm's products.

Firm-service differentials can impact the customer experience along with customer satisfaction and sales. Some firms place an emphasis on providing excellent customer service that leads to a lasting relationship between the firm and the customer. Other firms take a service approach focusing on efficiency, speed, and convenience. A firm's effort to differentiate its service approach can help it compete from a non-price perspective. Factors such as a firm's target market and pricing strategy can influence the service approach that a firm adopts, thereby impacting the firm's ability to differentiate and compete. However, a firm's involvement with a college's athletic department via NIL is unlikely to influence a firm's ability to compete based on firm-service differentials beyond perfunctory customer engagement with athletes at in-person events.

Branding is the process of creating an identity that distinguishes the firm from its competitors in the mind of the consumers, along with building a positive perception. Branding can be beneficial to both the firm and the consumer. From the firm perspective, branding can help to facilitate promotional efforts and the introduction of a new product. As for the consumer, branding can help with product recognition and identification and serve as a form of self-expression. Therefore, a firm that is involved in a college's athletics via NIL has the ability to collaborate with student-athletes which can help develop the identity and positive perception that the firm is aiming for. Additionally, these collaborations can further product recognition. Thus, positively impact a firm's ability to compete. Initial corporate NIL agreements with collegiate athletes often focus on social media outlets, which is prime space for a company to achieve recognition in the young adult demographic.

FRAMING THE DECISION

The decision for Briley and Oasis Inc. is influenced by seeking the best value expenditure for the available marketing resources of the firm. Total revenue for the company in this case study is slightly less than $200 million per year, with a target marketing outreach budget of approximately $2 million per year. Given the importance of college athletics in the mid-sized city for this case study, the target expenditure for local college athletics is approximately $600,000 per year in direct or indirect sponsorship. In addition to traditional marketing efforts and college athletic sponsorship, the firm also engages a wide range of passive marketing via community events, including but not limited to, support of the local event center, regional symphony, education initiatives, food insecurity outreach, fundraising events for over a dozen regional non-profits, and related. Traditional annual expenditure outlay is approximately $800,000 in firm-specific marketing, $600,000 in college athletics support for the local Division I athletic program, and $600,000 in various forms of community sponsorships or related.

CASE QUESTIONS FOR CLASS DISCUSSION

What actions should Oasis Inc. take when deciding how to spend marketing dollars? If you could take the place of Briley within the marketing team at Oasis Inc., what is your recommendation? Historically, the firm makes a direct contribution to the university athletic department, but the emergence of NIL provides several expenditure options, including the following:

- Continue to support the university athletic department with a direct contribution consistent with the historical norm. The company has a long-run relationship with several coaches and athletic department members.
- Work with selected student-athletes as individuals, paying individual athletes to be part of the company brand across various outlets, including traditional media marketing, social media marketing, appearance at sponsored events, and related.
- Donate indirectly to student athletic recruiting by joining a NIL collective. NIL collectives are structurally independent of a school, yet increasingly play a critical role in college athletes' recruitment, employment, and financial enrichment. Oasis Inc. has been asked to contribute to Buffalo Resources, the largest NIL collective supporting the college athletic program in this case study. Buffalo Resources includes two significant alum donors that lead the effort. The current goal for Buffalo Resources is to provide at least $5 million a year in NIL support. This result would place the local college athletic NIL resources in the top 25 nationally.
- Spread athletic support resources across the three options above, providing some funding to the athletic department, targeted NIL collaboration with student-athletes, and contributing to Buffalo Resources.
- Do not make an athletic donation at this time. While NIL might be beneficial to student-athletes, it is possible fan support will decline in a play-for-pay system. The propensity for students to employ opportunities via an active transfer portal further complicates fan connection with student-athletes. To the extent there is fan and alumni apathy with the current state of college athletics, Oasis Inc. might consider alternative expenditure opportunities.

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EPILOGUE

After careful consideration, Briley and the marketing team at Oasis Inc. made the decision to recommend corporate leadership spread athletic support across three options. First, continue direct contribution to the athletic department in the form of $200,000. The amount to the athletic department is substantially less than the $600,000 of previous years but avoids the extreme transition to zero funding. In addition, the Oasis Inc. marketing team will discuss future priorities with representatives from the athletic department, given the change NIL brings to the dynamic. Second, Oasis will allocate $240,000 yearly to NIL partnerships with student-athletes. Specifically, the effort will feature 12 students a year (one per month) for a stipend of $20,000 per athlete. While high-profile sports such as football and basketball will be part of the student-athlete partnership, Oasis will employ this opportunity to highlight athletes from various college sports at the regional university. Oasis Inc. and the student-athletes will co-brand via designated social media outreach, the athletes will engage in a limited number of events as an appearance obligation (i.e., two to three per year), and traditional marketing efforts of Oasis featuring the athletes. The agreement with students includes a perfunctory code of conduct policy, providing Oasis the ability to separate co-branding from a student-athlete should the need arise. Third, Oasis Inc. will contribute $200,000 to Buffalo Resources, the NIL collective. While Briley and the marketing team did not see a lot of upsides to the NIL collective for Oasis Inc. as a company, they felt it was essential to support the effort as part of a collaborative and networking initiative with others from the regional business community, university alums, and donors. The $200,000 is large enough to be a recognized member of the NIL collective but small enough to avoid being a significant driver for the initiative. It is uncertain how NIL collectives will evolve, and Oasis is comfortable making a modest contribution at this stage. As the implications of NIL become more evident over time, Oasis Inc. will reassess its approach.