



Protecting your Personal Brand

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General purposes only and is not intended to constitute legal advice

What is the Right of Publicity?

The right to have control over one's name, image, likeness ("NIL"), voice and signature or other "identifiable aspect of persona" in a commercial setting

E.g., Advertising, marketing materials and public relations release

Recognition varies by state

The "Personal" Right
(Real or Fictitious)



The Post-Mortem Right of Publicity

The right to one's "uniquely identifiable aspect of persona"

E.g., Property right, NIL in College Sports, holograms, digital Assets

Extent varies by state:

AZ (Military members only, active or former); FL (40 years); DE (Digital assets)



Beyond the "Personal"
Right (Name or Asset)

Trademarking your Personal Brand

- Protecting your unique brand (Public figures and influencers; Registering “successor-in-interest” of personalities)
- Developing trademark rights (Strong and protectable marks; Implementing social media policies; Licensing)

The Abercrombie Spectrum

Generic

Descriptive

Suggestive

Arbitrary

Fanciful

Staying True to your Brand

Deciding on a brand or a message to communicate to an audience takes time and investment:

- Marketing and advertising
- Freedom of Expression vs. Consumer Protection
- Federal Trade Commission (“FTC”)

**What’s your
brand’s
message?**

FTC Endorsements and the Use of People in Advertisements

Any advertising message that consumers are likely to believe as the opinions, beliefs, findings or experience of a person other than the sponsoring advertiser

E.g., Verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual, name or seal

Material connections must be disclosed "clearly and conspicuously"

Influencer Marketing

FTC rules apply to online advertising

- Truthful
- Cannot be unfair
- Not misleading
- Substantiated (Material claims must be supported by evidence)
- All required disclosures must be “clear and conspicuous”

Effective Disclosures:

- Placement must be close as possible to the claim
- Prominently displayed in size, color, graphic treatment and time (sufficient duration or necessary repetition)
- Adequate volume and visual appearance

Thank you! Questions?

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