

**NAVIGATING NIL AND ANTITRUST CONCERNS: THE PERFECT
GAME AND FANATICS DEAL**

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ABSTRACT

This legal note aims to raise awareness about the recent partnership between Perfect Game and Fanatics, highlighting the implications for amateur athletes' Name, Image, and Likeness (NIL) rights and potential antitrust issues. The collaboration, which allows Fanatics to produce and sell memorabilia featuring Perfect Game athletes, has sparked concerns about possible exploitation and market fairness. Key developments include the historical and revised NIL agreements by Perfect Game, which grant broad rights over athletes' NIL, and the ethical and legal considerations of such terms. This note explores the legal and ethical challenges associated with these agreements, aiming to inform the general public and participants about their potential long-term impacts. By addressing these issues, this analysis seeks to promote a more equitable and transparent system for NIL agreements, supporting the rights of amateur athletes and encouraging informed decision-making without advocating for legal action.

I. INTRODUCTION

The recent partnership between Perfect Game and Fanatics has raised important questions about the treatment of amateur athletes' Name, Image, and Likeness (NIL) rights and potential antitrust issues. This collaboration, which allows Fanatics to produce and sell memorabilia featuring Perfect Game athletes, has sparked concerns about possible exploitation and market fairness. This note aims to raise awareness about these concerns and the implications for amateur athletes.

II. KEY DEVELOPMENTS

Perfect Game has signed a multi-year deal with Fanatics to create memorabilia, including trading cards, of amateur athletes. Fanatics, having acquired Topps, now holds a significant position in the trading card market, connecting amateur and professional baseball markets. This partnership is seen as a major step in providing exposure and opportunities for young athletes.

Historically, Perfect Game required participants to sign away their NIL rights, including signatures for trading cards, without any compensation. The waiver forms on Perfect Game's website state that participants grant the organization "the absolute and irrevocable right" to use their name, likeness, image, voice, and appearance in any media without compensation. The 2024 revision

of these agreements removed specific mentions of “signature” and “baseball cards” but kept broad rights over athletes’ NIL, trying to balance commercial interests with athletes’ rights.

III. LEGAL AND ETHICAL CONCERNS

Contracts signed by minors can often be voidable due to a lack of legal capacity¹. Perfect Game’s agreements are intended to support athletes’ development and provide valuable opportunities. Parents, who sign these agreements on behalf of their children, may not always be fully aware of the long-term implications. However, Perfect Game aims to operate transparently and ethically, ensuring that parents and athletes understand the agreements they enter into.

The terms of these agreements have been criticized for potentially being excessively unfair. However, it is important to note that Perfect Game’s primary goal is to offer a platform that promotes young athletes’ talents and provides them with exposure to scouts and professional opportunities. While some agreements may grant broad rights to Perfect Game, these measures are often necessary to

¹ Agreements that minors can choose to invalidate or enforce because they lack the legal capacity to enter contracts.

sustain the organization's operations and continue offering these opportunities at scale.

The right of publicity², which protects individuals from unauthorized commercial use of their identity, is a critical consideration. Perfect Game's agreements have been structured to ensure that the organization can use athletes' NIL for promotional purposes, which in turn can significantly enhance the athletes' visibility and future prospects. The lack of an expiration date on these rights has been viewed critically, but it also ensures that athletes' achievements and contributions to the sport are recognized and remembered.

The partnership between Perfect Game and Fanatics has raised potential antitrust concerns under the Sherman Act³, particularly regarding market consolidation and competition. However, it is crucial to recognize that the primary objective of this collaboration is to provide a comprehensive platform that bridges amateur and

² A legal concept that protects individuals from unauthorized commercial use of their identity, such as their name or likeness.

³ A landmark federal statute in the field of competition law in the United States that prohibits monopolistic practices and unfair business practices.

professional baseball, offering benefits to athletes at all levels. MLB's exemption from antitrust laws⁴ further complicates legal challenges but does not completely shield all related activities.

IV. POTENTIAL LEGAL AND ETHICAL CHALLENGES

Several potential legal and ethical challenges could arise from this situation. Antitrust concerns⁵ could argue that the arrangement restricts competition and harms future professional athletes by securing their NIL rights prematurely and unfairly. The MLB Players Association (MLBPA) could advocate on behalf of these future union members, highlighting how this undermines collective bargaining power and impacts their future earnings and marketability.

There is also a need for legislative advocacy, pushing for laws that specifically protect the NIL rights of amateur athletes, ensuring they cannot be signed away without proper compensation and

⁴ A special legal status granted to Major League Baseball, exempting it from certain antitrust regulations that apply to other industries.

⁵ Issues related to anti-competitive practices and ensuring fair competition in the marketplace.

representation. This would involve lobbying for federal and state legislation that places restrictions on such agreements.

Parents and guardians should be aware of the ethical considerations, such as the potential for exploitation and the importance of transparency and fairness in these agreements. Agents and advisors must continue to warn athletes and their families about the implications of these agreements, advocating for more transparent and fair practices. They should encourage seeking independent legal advice before signing any agreements.

V. REVISED 2024 PERFECT GAME AGREEMENT

The revised 2024 Perfect Game agreement shows some improvement but still poses significant challenges. The removal of specific rights to use signatures and create baseball cards is a positive step, limiting immediate exploitation of these valuable aspects of NIL. However, the agreements still grant broad rights over athletes' NIL, which may still be subject to misuse and commercial exploitation without proper compensation. The addition of biographical information is less concerning, typically used for standard promotional activities and not high-value commercial exploitation.

While the agreement now allows athletes to license their NIL elsewhere, the perpetual nature of the agreement still reduces their control over long-term use. This can impact their ability to negotiate future endorsements and sponsorships. The indefinite duration of media rights usage remains a significant concern, impacting athletes' future marketability and control over their likeness as media evolves. This may limit their ability to capitalize on their NIL in future professional endeavors.

VI. RECOMMENDATIONS

To protect the rights of amateur athletes and ensure fair treatment, several steps are recommended. Athletes and their families should be advised to seek independent legal counsel before signing any NIL agreements with Perfect Game or other similar organizations. All agreements should clearly disclose the rights being signed away and the potential long-term impacts on the athlete's NIL rights and earning potential. Legislators should be lobbied to create laws that protect amateur athletes from signing away their NIL rights without proper compensation and representation. This could involve setting age limits, requiring parental consent, and mandating independent legal advice. Lastly, parents and guardians should be encouraged to participate in class action lawsuits that challenge the legality of NIL agreements on grounds of unconscionability and lack of informed consent.

By taking these steps, we can help ensure that the rights of amateur athletes are protected and that they receive fair treatment in the growing commercialization of NIL. This will not only benefit the athletes themselves but also promote a more ethical and just system in the sports industry.

VII. CONCLUSION

The Perfect Game and Fanatics deal highlights critical issues in the commercialization of amateur athletes' NIL rights. The revised 2024 agreement shows some improvement but still poses significant challenges. By raising awareness about these issues and promoting informed decision-making, we can support the rights of amateur athletes and encourage a more equitable and transparent system for NIL agreements.