

Trademark Law As A Tool To Bolster NIL Rights Against AI

By **Susan Natland** (July 7, 2026)

The meteoric rise of artificial intelligence-generated deepfakes — convincing replicas of a person's voice, image or persona created without their consent — is pushing celebrities, including A-listers such as Lionel Richie, Taylor Swift and Matthew McConaughey, to invoke federal trademark law to protect their name, image and likeness, or NIL, rights.



Susan Natland

Because traditional NIL protection, grounded in a complex patchwork of state rights of publicity laws, is often too slow, inconsistent and geographically limited to address modern misuse at scale, trademark lawyers are increasingly looking to federal trademark law as an additional tool to protect NIL.

Celebrities have long registered their names, nicknames and catchphrases as trademarks for use on apparel, consumer products and entertainment services. What is new, however, is how broadly that strategy is being executed. Recent trademark filings are targeting other aspects of identity — including voice, images and video — not just for brand expansion, but also to create enforceable rights against AI-driven impersonation.

On June 11, Richie filed four trademark applications seeking protection for his voice delivering phrases such as "Hello Is It Me You Are Looking For," "Say You, Say Me," "Easy Like Sunday Morning" and "All Night Long."

Before that, in April, Swift filed three applications seeking protection for audio clips of her voice and a photograph of her on stage, and earlier this year, McConaughey secured registrations protecting his signature "Alright, alright, alright" as a sound mark.

Together, these high-profile filings signal an accelerating push by public figures to claim federal trademark rights as a tool for protecting identity in the AI era.

Federal trademark protection offers meaningful advantages for NIL protection, including nationwide scope and potentially perpetual rights. But the strategy can't be used in all cases or to protect NIL in the abstract. Rather, it must be thoughtfully structured to satisfy requirements for trademark protection — such as source identification, use in commerce, nonornamental use and, in some cases, acquired distinctiveness.

In addition, even if trademark protection can be secured for certain NIL, to successfully use trademark rights as an enforcement tool, the owner must prove infringement. Under trademark law, this requires a showing that the defendant is using the NIL in a manner that creates a likelihood of confusion or dilution for famous marks. In addition, traditional defenses such as fair use remain in play.

Thus, securing trademark rights to cover NIL is not the end of the story, but it does provide another tool for those with personal brands — from celebrities to athletes to influencers — to keep others from exploiting their NIL.

Trademarks Versus NIL: Key Distinctions

Trademarks and NIL serve distinct, though increasingly complementary, functions.

Federal trademark law protects words, sounds, images or other identifiers that tell consumers the source of a product or service.

NIL and rights of publicity protect against unauthorized commercial exploitation of identity, but are governed by state law, with inconsistent scope and duration.

The key limitation is straightforward: Trademark law does not protect identity in the abstract. It protects identity only when consumers recognize it as signaling the origin of specific goods or services.

Why Trademark Law Is Gaining Traction

Despite that constraint, trademark law offers several advantages that make it attractive in the AI era.

Federal Scope

Federal trademark protection provides a uniform, nationwide enforcement mechanism that avoids the fragmentation of state rights of publicity laws.

Platform Enforcement Advantages

Trademark rights are often easier to deploy in takedown demands and platform

enforcement, where processes are structured around trademark and copyright claims.

Potentially Perpetual Rights

Trademark rights can last indefinitely, so long as they remain in use and are properly maintained. By contrast, rights of publicity typically expire at death or after a defined period, depending on state law. This makes trademarks particularly valuable for long-term brand and estate management.

The Emerging Strategy: Trademarking Persona

The current trend is to move beyond names and slogans and attempt to protect:

- Voice signatures or audio clips;
- Stylized images or likenesses;
- Sequences of visual frames or motion clips;
- Recurring audiovisual elements; and
- Motion- or performance-based content.

The goal is to create additional federal enforcement tools where traditional NIL theories may fall short.

The recent celebrity filings noted above illustrate how broadly this strategy is being applied. McConaughey's eight registered trademarks, beyond the "Alright, alright, alright" catchphrase, include a sound mark that captures the phrase's specific pitch modulation, a seven-second video of McConaughey standing on a porch, and a three-second clip of him seated in front of a Christmas tree. Swift's filings target two voice clips, "Hey, it's Taylor Swift" and "Hey, it's Taylor," and a photograph of her performing during her Eras tour.

The strategy in both cases is the same: By registering these elements as trademarks tied to defined goods and services, the filings create a federal enforcement basis for challenging AI-generated content that mimics voice or likeness in ways that could mislead consumers about endorsement or source.

But this is not a plug-and-play strategy. It presents real challenges and requires careful structuring to meet federal trademark requirements.

The Core Challenge: Source Identification

Trademark protection depends on whether the claimed element functions as a source identifier, not merely as expressive content.

Recent [U.S. Patent and Trademark Office](#) examination practice highlights three recurring issues:

Direct Association

Applicants must demonstrate a clear nexus between the mark and the identified product or service. Without that connection, registration may be refused.

Content Versus Branding

A frequent issue arises where the claimed mark appears only as part of content itself — for example, within a video clip or performance.

The USPTO has drawn a firm line, determining that content alone is insufficient, and that the specimen, i.e., evidence of use, must show that the matter identifies the source of a product or service, not merely depicts the performance.

These issues often surface as failure-to-function refusals, where the USPTO concludes that consumers would perceive the matter as content or ornamentation, not as a trademark.

This distinction is becoming the central fault line in NIL-based trademark strategy.

Nontraditional Mark Scrutiny

Voice, motion and audiovisual marks face heightened scrutiny at the USPTO. It has signaled that such marks may be deemed nondistinctive or ornamental unless they create a clear commercial impression as source identifiers.

In some cases, applicants must establish acquired distinctiveness, a demanding evidentiary burden.

Key Limitations to Keep in Mind

Trademark protection can be a powerful supplement to NIL protection, but it has real constraints.

There is no general right in identity. A trademark registration protects marks for specific goods and services, not personas broadly.

Use in commerce is required. Defensive filings that fail to demonstrate the claimed element functions as a source identifier — rather than merely as content or personal expression — are not protectable under trademark law.

The scope of protection is often narrow. Protection is limited to specific goods and services covered under the trademark registration. It is also limited to a specific mark covered under the trademark registration, as opposed to rights of publicity, it will not cover NIL in the abstract.

There is a higher bar for nontraditional marks. Voice-, motion- and likeness-based marks face more scrutiny.

Additionally, specimen challenges are frequent. Demonstrating branding — not just content — is critical.

Legislative Developments

The growing reliance on trademark law reflects a broader gap in existing legal frameworks around NIL — one that legislators are beginning to address.

Congress is currently considering numerous proposals, such as the Nurture Originals, Foster Art, and Keep Entertainment Safe, or NO FAKES, Act, aimed at creating a federal cause of action for unauthorized digital replicas of voice and likeness. These efforts would establish a more uniform national standard and reduce reliance on fragmented state laws.

And Congress has already taken more targeted action through the Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks, or TAKE IT DOWN, Act, enacted in 2025. That law focuses on nonconsensual intimate imagery, including certain AI-generated deepfakes, and requires platforms to implement notice-and-takedown procedures for the removal of unlawful content.

Importantly, however, these laws function as remedial enforcement tools — not traditional IP rights. The Take It Down Act, for example, creates a notice-and-takedown regime enforced primarily by the [Federal Trade Commission](#), requiring platforms to remove nonconsensual intimate imagery upon request.

While individuals can initiate removal through statutory procedures, the act does not provide an express private right of action against platforms, instead relying on FTC civil enforcement alongside parallel criminal liability for bad actors.

This distinction is critical. Trademark rights can be proactively built, licensed, maintained and enforced as long-term commercial assets. By contrast, legislation like the Take It Down Act is inherently reactive and involves post hoc enforcement by, in that case, the FTC, as there is no private right of action.

Until a comprehensive federal regime emerges, trademarks will continue to play a central role in filling that gap.

Practical Takeaways

For celebrities, athletes and anyone with a personal brand, the recommended approach is to layer protections strategically.

- Use rights of publicity for broad identity misuse.
- Deploy trademark protection selectively for true source-identifying elements and consider creative approaches to structuring the mark, goods and services, and use to support registrability.
- Ensure demonstrable, clear use in commerce tied to defined goods and services.
- Structure specimens, i.e., evidence of use, to demonstrate direct association — not merely content.
- Treat trademark rights as potentially perpetual brand assets.
- Understand that securing trademark registration for NIL is not the end of the playbook. To successfully stop bad actors, the likelihood of confusion or dilution still needs to be shown.
- Evaluate international strategies, where some jurisdictions may offer more flexibility.

- Use other IP protections such as copyrights to protect expressive components in NIL.

The Bottom Line

Trademark law has long protected celebrity brands. It is now being tested as a tool to protect identity itself, not just for celebrities but also for anyone whose NIL functions as a commercial asset or is abused.

That shift is driven by necessity. AI has made persona replicable at scale, exposing the limits of existing frameworks. Trademark law offers real advantages — federal scope, enforcement utility and durability — but it is not a perfect fit.

It remains a doctrine grounded in source identification, not identity ownership. And as high-profile celebrities are already demonstrating, the most effective approach is not to rely on any single doctrine but to build a thoughtful, layered strategy for protecting persona in the digital age.

[Susan M. Natland](#) is a partner and co-leader of the global trademark and brand protection team at [BakerHostetler](#).

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