

### Sheppard Mullin Secures Sweeping Victory for Online Education Leader Stride, Inc.

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A team of Sheppard Mullin litigators secured a major victory on behalf of Stride, Inc., a private online education platform for users of all ages, from K-12 to career development programs, following three years of litigation and a one-week bench trial in October 2023. On January 2, the U.S. District Court for the Middle District of Florida ruled that plaintiff Florida Virtual School (“FLVS”), a sub-agency of the Florida Department of Education, failed to prove its claims that Stride’s “Florida Online School” (FLOS) infringed FLVS’s trademark and that Stride, Inc.’s mark differed significantly, and Florida Virtual School failed to offer a confusion survey or credible evidence of actual confusion. Therefore, FLVS was entitled to no disgorgement or other damage remedy on its claims originally seeking a multi-billion-dollar recovery.

Labeling FLVS a “trademark bully,” the federal Court ultimately concluded that FLVS’s incontestable federal trademark registrations were merely descriptive and relatively weak from both a conceptual and a commercial standpoint, and that in view of these factors and the lack of actual confusion evidence, judgment for Stride was “the only reasonable outcome given the dearth of evidence supporting Plaintiff’s claims.” The Court also specifically noted “the dubious circumstances under which they were registered,” which established that FLVS lied to the Trademark Office about claimed use in the pre-K market and about its claims of acquired distinctiveness, all of which compounded the conceptual weakness of the mark.

Additionally, the Court agreed with Stride that FLVS had made numerous changes to the mark and had rebranded outside of Florida, and that FLVS’s internal documents proved that existing FLVS customers had little unaided recognition of FLVS’s marks. Further, Stride proved to the Court that many county school districts in Florida used a variant of FLVS’s mark to denote services provided in partnership with both FLVS and Stride.

The Court noted testimony from FLVS witnesses acknowledging the existence of significant “noise” confusion – unrelated to branding – in the marketplace. “Against this backdrop,” the Court observed, it is unsurprising that Plaintiff has not presented any credible evidence of actual confusion in this case.” The live evidence that FLVS did present “readily disintegrated under live cross examination[,]” the Court found. “[A]fter hearing live testimony, it became clear that the source of confusion was not Defendants’ name.” In view of the weakness of the confusion evidence, the court found “inexplicable” FLVS’s failure to present survey evidence showing the likelihood that Defendants’ Florida Online School mark would cause consumer confusion.

Among other factors as noted in the opinion, the Court concluded: “Plaintiff’s mark is among the most generic, descriptive – and therefore *weak* – marks the Court has seen. Moreover, Plaintiff has presented no credible evidence of actual confusion occasioned by the similarity of these marks. And, the intent evidence supports a strong inference against *Plaintiff*, not Defendants. Finally, while one of the similarity factors may weigh slightly in Plaintiff’s favor, it is grossly insufficient to overcome the dominant factors that undercut its feeble claim for

trademark infringement.”

The Sheppard Mullin team previously prevailed on summary judgment on FLVS’s other claims for false advertising and breach of contract.

The Sheppard Mullin trial team that represented Stride was led by partner Steve Hollman and associates Abraham Shanedling, Charles Spencer-Davis and Anne-Marie Dao.

[Click here to read the opinion.](#)

## Attorneys

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