

Willkie Attys Turned An SEC 'Twist' Into A Win For A Client

By **Katryna Perera**

Law360 (April 26, 2024, 7:47 PM EDT) -- Attorneys from Willkie Farr & Gallagher LLP knew they were up against the clock after the U.S. Securities and Exchange Commission launched an investigation into their client Rumble Inc. last year. What they didn't expect, however, was the "big shocking twist" that would send their race against time into overdrive.

William Stellmach and Sean Sandoloski of Willkie stepped in to represent Rumble last November after the video platform — a self-described alternative to YouTube that's popular among conservative and right-wing audiences — received a documents request from the SEC related to its monthly active user numbers.

The SEC was following up on a report published earlier in the year by short-seller Culper Research, which alleged that Rumble had inflated its MAU numbers to make it seem like its popularity was growing. Culper Research said it was shorting Rumble stock based on alleged evidence, such as conflicting third-party traffic data, that the company's true "unique user base" was a fraction of what it was claiming.

According to Sandoloski, Culper's report had all the elements of a targeted short-seller attack, in which allegations about a company's financials are publicized in a bid to trade and profit from the subsequent drop in share price.

In an interview with Law360, Stellmach and Sandoloski said they had two things in mind when they began working with Rumble: transparency and aggressiveness.

"Our client had done nothing wrong, so our concern wasn't the SEC staff reaching an incorrect conclusion. Our concern was how fast they would reach a conclusion," said Stellmach, co-chair of Willkie's global investigations and enforcement and white-collar defense practice groups. "We were essentially in a race against the clock because SEC investigations average about 22 months ... but that wasn't an acceptable timeline when our client was facing a coordinated short-seller attack."

Michael Ellis, Rumble's general counsel, agreed and said Culper's allegations against Rumble were baseless because the SEC had previously investigated Rumble's MAU numbers in the lead-up to the company's September 2022 initial public offering and found no issues.

"We knew that there was nothing to the allegations, that the SEC had already looked at this, and that the quicker we got to the facts, the quicker we'd be vindicated ... and we just wanted to be as



William Stellmach



Sean Sandoloski

transparent as possible throughout the process," Ellis told Law360 in an interview.

Stellmach and Sandoloski worked quickly, replying to the SEC's document request within two weeks and gave a presentation to SEC staff with "granular detail" outlining why Culper's allegations were wrong, in hopes that the regulator's inquiry would be shortened to months instead of years.

Rumble "basically expedited production of everything for the SEC, and that meant providing information and background to make the data comprehensible," Stellmach said.

But the pace shifted in early January when, according to the Willkie lawyers, the SEC's Freedom of Information Act Office confirmed the existence of the agency's Rumble investigation to a journalist, who then published a story on the matter.

This was a "big shocking twist," Sandoloski said, since the SEC seldom publicly confirms the existence of its ongoing investigations.

Sandoloski and Stellmach said their work shifted into overdrive as the now-publicized regulatory inquiry made the company's share price even more vulnerable.

"We impressed upon [the SEC] the impact this was having on our client and their shareholders, and that the longer this whole investigation lingered out there ... the greater the harm," Stellmach said.

The details of what occurred within the SEC FOIA office that caused the confirmation of the investigation are unclear, but Stellmach said the regulator's enforcement staff "appreciated" what had happened and the damage it caused, and worked with them to "reach the right result."

The SEC declined to provide comment for the story, and Culper Research did not respond to requests for comment.

The Willkie attorneys' efforts paid off on Feb. 20, when the SEC issued a formal declination letter indicating the investigation had been closed and commission staff was not recommending enforcement. Rumble CEO Chris Pavlovski posted a copy of the letter to X, formerly known as Twitter.

Stellmach and Sandoloski said they also had an extra advantage in handling the SEC's inquiry because they both previously worked for federal agencies, including the SEC and the U.S. Department of Justice.

Before joining Willkie as a partner in 2015, Stellmach was a federal prosecutor for more than a decade, which included working as the chief of the DOJ's fraud section. He also spent two years with the SEC's Division of Enforcement.

Sandoloski also worked for three years as a trial attorney in the appellate section of the DOJ's antitrust division. He has been with Willkie since 2022, where he is a counsel.

"Having been on the other side of the table, it equips you with an appreciation for their sensitivities and what they're looking for," Stellmach said. "It gives you a certain instinct that I think is hard to develop otherwise."

Stellmach added that he believes SEC staff should not be faulted in this case for following up on Culper's report, but he hopes there will be some practiced skepticism in the future by the regulator.

"There are instances where short-sellers do identify actual flaws, and that's the challenge that I think we all live with, and I think what the SEC has to navigate. Because if somebody comes to them with something that is facially credible, they have an obligation to take a look at it," Stellmach said.

"But everybody needs to be sensitive about what the playbook is," he added.

In other words, the short-seller strategy of publicizing claims and pushing them out through the media in hopes of making a profit is well known, and should be kept in mind, Stellmach said.

Sandoloski added that short-seller attacks aren't going to disappear without government action.

"I think short-sellers will continue doing what they're doing, running the playbook that they run and getting the gains they get from their short positions until there is some sort of enforcement action or guidance from the Department of Justice or SEC."

Ellis, Rumble's general counsel, agreed, saying short-sellers are always going to target companies. If another company were to find itself in a similar situation, his advice is simple: "Transparency is your best friend."

--Editing by Jay Jackson Jr. and Lakshna Mehta.