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DEALMAKERS

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DEALMAKERS OF THE YEAR

BIG PICTURE DEAL

When Facebook Inc. offered \$1 billion for a company with 13 employees and no revenue, Instagram's team hammered out a deal in a single weekend.



By Ross Todd

SILICON VALLEY CAN BE A SMALL WORLD, as Orrick, Herrington & Sutcliffe partner Stephen Venuto can tell you. Venuto initially opted *not* to represent the cofounders of Instagram, Kevin Systrom and Mike Krieger, after meeting with them in early 2010. At the time, Systrom and Krieger hadn't yet developed their wildly popular mobile photo-sharing application. They were still working on Burbn, a mobile check-in app similar to one being designed by another company Venuto represented. (Venuto says he tries to avoid this kind of "moral conflict" in his practice.)

Still, Venuto wound up representing Instagram in the blockbuster tech deal of 2012. A venture capital investor referred the company's founders back to Venuto about a year after that first meeting. With Instagram then firmly focused on photo sharing, Venuto signed on to be the company's outside corporate counsel as its user base skyrocketed by millions per month. In April 2012 he closed a \$50 million venture funding deal that valued the company at \$500 million. Then Facebook Inc. came calling. The social media giant, on the verge of its own initial public offering, was ready to pay \$1 billion in cash and stock for an 18-month-old company with 13 employees and no revenue, its largest purchase to date.

Venuto scoured the venture deal to make sure that it couldn't trip up the Facebook proposal. Large investors often get veto rights over future deals: "A mistake in a start-up that in any other company would be insignificant can kill a company," he says. Then came a frenzied weekend of dealmaking. The deal was signed on Easter Sunday—less than 55 hours after Systrom and Facebook founder and CEO Mark Zuckerberg began negotiating on Good Friday. The speed of execution "wasn't because everybody just rolled [over], and it wasn't because it was just cookie-cutter," Venuto says. "It was because we just hyperactively did this thing, and [the team] accorded out instantaneously."

It probably didn't hurt that Venuto already knew some of the players on the other side of the table, including Facebook's Zuckerberg. Venuto had been Facebook's first outside corporate counsel, before the company moved its corporate work to Fenwick & West in 2007. Indeed, the VC who'd brought Instagram back to Venuto's door was Benchmark Capital Holdings Co. L.L.C.'s Matt Cohler, the first Facebook executive recruited from outside the company. (We told you that Silicon Valley is a small world.)

Once the agreement was signed, the Orrick team's work had just begun. Facebook was already operating under a 2011 consent agreement with the Federal Trade Commission over privacy issues, and Instagram faced privacy concerns of its own. Venuto leaned heavily on Washington, D.C., of counsel Patricia Zeigler and her antitrust team to navigate two rounds of requests from the FTC as part of the government's review of the deal. Orrick lawyers had to certify that they had reviewed every corporate document produced by Instagram as part of the FTC process. Venuto estimates that about 40 Orrick lawyers worked on the deal at some point. (Fenwick provided deal counsel to Facebook, and Covington & Burling advised on antitrust issues.) After getting clearance from both the FTC and the California Department of Corporations, the deal closed in early September. A subsequent drop in Facebook's stock price put the final value at \$736.5 million.

Venuto needn't fret about selling away a client, though. Alumni of companies he's represented have a habit of finding their way back to him. He has represented a list of Facebook alumni that includes Dustin Moskovitz at Asana, Adam D'Angelo at Quora Inc., and Mark Zuckerberg's sister Randi at Zuckerberg Media. Venuto "is an outstanding lawyer, but he's also an outstanding business partner," VC Cohler says. He "is someone who cares about everybody [who's] involved in a company."

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DEAL IN BRIEF

FACEBOOK INC.—INSTAGRAM

DEAL VALUE	\$736.5 million
FIRM'S ROLE	Target's Counsel



PROP STYLING BY JEFF STYLES

DEAL TRIVIA Venuto had 27 guests at his house on Easter Sunday as he finished work on the deal from his home office.