



## How Much is That Facebook Page Worth to Your Business?

Matthew V. Wilson

At first glance, this question may seem relatively unimportant in the context of an M&A transaction. It rings true that social media accounts usually receive little attention during the negotiation of a deal, which fact may be attributed to the generational technology-gap or mere oversight by the parties. But isn't Facebook just for kids (or soccer moms and dads), anyway? Perhaps; but perhaps not. Starbucks currently has over 36 million unique followers to its Facebook Fan page. Without question, that network of followers is one of the most valuable assets in the Starbucks portfolio. Social media platforms such as Twitter, YouTube, Instagram and Facebook provide a cheap and direct vehicle for a business to promote its brand, connect with consumers, and even conduct regular business. For this reason, it is important to view social media accounts as valuable assets and treat them as such when negotiating a transaction. At the same time, parties must also understand that they will encounter contractual hurdles when attempting to transfer ownership of these accounts.

We should pause momentarily and recognize that social media accounts are not actual assets in the traditional sense; rather, they are more akin to revocable licensed rights. In most instances, an account may be altered, suspended or terminated by the platform operator for any reason and without warning. Access to, and the use of, the accounts are governed by the platform's terms of service, which are substantively fluid and generally one-sided in favor of the operator. Understanding this landscape, we should not be surprised to learn that most social media accounts are not freely transferrable between parties. In the case of the major social platforms, the terms of service expressly prevent transfer without the consent of the platform owner – a fact that may ultimately prove detrimental to the unwary buyer.

Prior to engaging in a transaction, the parties should consult the applicable social platform terms and devise a strategy to achieve the transfer of accounts. While the platforms do not offer any procedural guidance to effect a formal transfer, and are not obligated to comply with any such requests, the platforms, as service providers, are generally incentivized to accommodate their customers. Accordingly, the parties are well-advised to contact the platform operators in the early stages of the negotiation process, notifying the platform of the proposed transaction and request to initiate the transfer process. Of course, there are no guarantees and such pursuits may prove fruitless. In the alternative, there are various unsanctioned strategies that may be employed in lieu of obtaining formal consent; however, each involves certain inherent risks and drawbacks that should be considered as well. Such strategies include:

- Structuring the acquisition as a purchase of stock or equity, rather than a purchase of assets;
- Mandating that the seller party continue to maintain the platform accounts, while providing the buyer party with perpetual access;
- Employing or engaging the existing account administrator(s) to continue maintaining the account(s) on behalf of the buyer party; or
- Simultaneously deactivating the accounts and opening new accounts using the same business names.

It is clear that none of the strategies identified above are perfect; however, given the limitations imposed by the platform terms, desperate buyers may be faced with few options. As such, would-be buyers are cautioned to consider the value of a target's social media assets and strategize accordingly.

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