

TERM SHEET BATTLE



AN IMPROVISED MOCK NEGOTIATION OF A SERIES A FINANCING

THE CAST

Hampus Jakobsson

Carl Silbersky

Jimmy Fussing Nielsen

Brad Furber

David Klose

THE CHARACTERS

Hampus - Co-Founder & CEO Boxes of Beauty, Inc.

Carl - Angel Investor and Chairman, Boxes of Beauty, Inc.

Jimmy - Managing Partner of Ravenous Ventures II, L.P.

Brad - Referee, Creator, Writer and Director

David - Master of Ceremonies and Producer

Setting the Stage/Background

Boxes of Beauty, Inc. ("BoBi") was co-founded by three Swedish entrepreneurs, Hampus, Ole and Lene in October, 2010. BoBi is creating a go-to online community of members passionate about health and beauty products interested in receiving "samples" from brand manufacturers. There are at least three other relatively early stage competitors with similar pureplay health and beauty sample subscription business models, two of which are already backed by sophisticated venture investors. To date, BoBi has been able to bootstrap and angel finance (£ 300K) its way to building a community currently approaching 250,000 members.

BoBi was originally organized as an AB under Swedish law, but it reorganized its top level entity as a Delaware corporation shortly after it was accepted and enrolled into the Fall 2011 program of Startupbootcamp ("SBC"), a well-known European accelerator. The three co-founders of BoBi each own 700,000 shares of common stock. Carl, a Swedish angel investor and entrepreneur, purchased 360,000 shares of common stock of BoBi for £ 300K in early October 2011. SBC owns 240,000 shares of common stock. Options to purchase an additional 300,000 shares of common stock have been granted to individuals who have joined the BoBi team as employees, contractors, consultants and advisors since its inception. BoBi participated in the SBC Investor Day program in late November 2011. Jimmy, a General Partner of Ravenous Ventures II, L.P. ("Rave"), a UK venture capital firm with over \$300 Million in assets under management, attended the SBC Investor Day and was impressed enough by the BoBi pitch that he invited the BoBi team to make a presentation to his firm in early January 2012. BoBi management let it be known that BoBi would be very pleased to sell a 20% equity stake in exchange for £ 1.5M, and management was also confident that with that amount of equity at its disposal BoBi could achieve the following milestones within twelve months or less: (i) community over 500,000, (ii) revenue over £ 100K/month, and (iii) gross profit over £ 5K/month. After several follow-up meetings with BoBi management and considerable market due diligence, Rave delivered to BoBi on Valentine's Day, February 14, 2012, a proposed Term Sheet to lead a Series A financing, a copy of which is attached to this Playbill as Addendum A.

Rave has engaged Dewey Cheatem & Howe, a law firm that represents dozens of venture capital firms doing business in the USA and Europe, to draft the Series A Term Sheet and definitive documents contemplated thereby, perform legal due diligence, and provide such other legal services as may be necessary and appropriate to negotiate and close the proposed Series A financing.

BoBi has engaged David, a partner at in the Malmö office MOLL WENDÉN Advokatbyrå, a law firm that has substantial experience representing startup, emerging growth and mature companies doing business in Scandinavia and internationally. David has reviewed the proposed Series A Term Sheet, and provided his initial written comments and feedback thereon to BoBi's Board of Directors.

Hampus, the CEO of BoBi, has requested a meeting with Jimmy to discuss the proposed Series A Term Sheet. Carl, BoBi's Chairman (and sole outside cash investor), will also be present at this meeting. Jimmy is very experienced negotiating term sheets, and he has asked that initial meeting be among principals only, so that he has a chance to explain the purpose and intent of the various proposed terms and conditions, and to provide Hampus and Carl with ample time and opportunity to ask questions and receive answers without concern for the meter/billable hours.

Talking Points

Hampus and Carl have a number of questions regarding the proposed Term Sheet. Hampus suggests that in his experience, meetings of this sort are most efficient and productive if the parties can first identify the main questions and potential points of contention.

Economic Issues

1. Price
 - A. Pre- and Post-Money Valuation. BoBi was asking for £6M in pre-money valuation, and Rave is meeting that request. BoBi is asking for £7.5M post-money valuation, and Rave is offering £7.5M (1st Closing) and £9M (2nd Closing).
 - B. Equity Dilution: BoBi is asking for 20%. Rave is offering 20% (1st Closing) and 33% (2nd Closing).
 - C. Questions/Issues: What is the purpose of Rave's proposal to create a tranching financing? Is the 2nd Closing a "call" (i.e., "mandatory" at the option of BoBi) or an "option" ("discretionary" at the option of Rave)? Who decides if milestones have been achieved?
2. Liquidation Preference
 - A. Why is there a 2X liquidation preference? How does that work in operation?
 - B. What is the rationale behind a term that gives Rave both a liquidation preference, first, and full participation rights on an as-converted basis, second? Isn't that getting two bites at the apple? Is that fair?
 - C. What is "market"? Are "market" terms different in UK vs Sweden vs USA?
3. Vesting/Reverse Vesting on Founders Stock and Options
 - A. If the founders' stock has already been issued, then why would VC, angel and/or *co-founders* want "reverse vesting" (i.e., buyback rights)? Is it "fair"?
 - B. What is "market" in terms of reverse vesting on founders stock. What are the tax consequences? Who could/should incur the tax risks/expenses?
 - C. What is "market" for vesting on forward-looking option grants?
 - D. Is there a big difference in what is "market" between UK vs Sweden vs USA?
 - E. What about acceleration provisions in the event of M&A? What is the difference between a "single trigger" and "double trigger" acceleration provision?
4. Option Pool
 - A. How much is "enough"? For how long a period is it intended to last?
 - B. How does size of unallocated option pool affect pre- and post-money valuation?
5. Anti-dilution Formula
 - A. What is the difference between "full ratchet" and "weighted average" antidilution formulas? What is difference between "broad-based" and "narrow-based" weighted average antidilution formulas?
 - B. What is "market"?
 - C. Are there differences between UK vs Sweden vs USA?
 - D. Is this solely an "economic" issue, or is this also a "control/voting" issue?

Control Issues

1. Composition and Election of Board of Directors
 - A. What is the "right" number of directors for an early stage company – 3, 4 or 5?
 - B. If common holders have right to elect one (or two) directors, and Series A holders have right to elect one (or two) directors, then how is the third (or fifth) director selected (i.e., by mutual consent of other directors, or by vote of all shareholders as a single class, or what)?
 - C. Should one board seat automatically go to the CEO?
 - D. Are there differences between UK vs Sweden vs USA in terms of standard board composition and corporate governance?
 - E. What about board observers – is that a good idea or common practice?
 - F. How are inside and outside directors generally compensated?

2. Protective Provisions
 - A. Why should investors get the right to veto certain actions?
 - B. Are protective provisions/veto rights generally meant to restrict or intrude into operations or ordinary course of business matters?
 - C. What is "market"?
 - D. What about using "materiality" qualifiers?
 - E. What about use of "belt and suspenders" protective provisions – at both the board level (Series A board designee), and shareholder level?
 - F. When should these protection provisions terminate?

3. Drag-Along Rights
 - A. Why and when should the preferred stock holders (in this case a minority of the voting stock) be able to force a sale of the company?
 - B. How might founders and management be adversely impacted, and what alternatives exist as protection?
 - C. What is "market"?
 - D. Are there differences between UK vs Sweden vs USA (and even in USA, among different states/coasts) in terms frequency and structure of drag-along rights?

4. Redemption Rights
 - A. What is the rationale for redemption rights?
 - B. Are there any traps for the unwary, such as adverse change provisions or mandatory features that create accounting and balance sheet issues?
 - C. What is market?

5. Right of First Refusal/Right of Co-Sale
 - A. How has the emergence of private secondary markets changed standard terms and conditions for this once universally accepted agreement?
 - B. If it's good for the geese (the common holders), should it be good for the ganders (the preferred holders) too?
 - C. What is market?

6. No Shop/Confidentiality
 - A. What is the rationale for shutting down the dating process?
 - B. Would a simple nonsolicitation be good enough instead?
 - C. How long is "long enough" and should obligations terminate immediately if the VC terminates the process?
 - D. Should acquisitions be carved out?