

OVERSTOCK.COM, INC
Form 10-Q/A
November 10, 2008
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q/A

(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2008

Or

- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number: 000-49799

OVERSTOCK.COM, INC.

(Exact name of registrant as specified in its charter)

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Delaware
(State or other jurisdiction of
incorporation or organization)

87-0634302
(I.R.S. Employer
Identification Number)

6350 South 3000 East

Salt Lake City, Utah 84121

(Address, including zip code, of

Registrant's principal executive offices)

Registrant's telephone number, including area code: **(801) 947-3100**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer
(Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the act). Yes No

There were 22,734,916 shares of the Registrant's common stock, par value \$0.0001, outstanding on May 6, 2008.

Table of Contents

EXPLANATORY NOTE

Overstock.com, Inc. (the Company) is amending its Quarterly Report on Form 10-Q (Form 10-Q or Original Filing) for the quarter ended March 31, 2008, to restate its consolidated financial statements and other financial information for the quarters ended March 31, 2007 and 2008 to correct errors related to the accounting for customer refunds and credits, the accounting for gift cards issued to customers. This Amendment to Form 10-Q/A (Amendment) amends the Quarterly Report on Form 10-Q for the quarter ended March 31, 2008, as filed on May 09, 2008.

The Company's decision to restate the aforementioned financial information was made on October 20, 2008 as a result of management's identification of errors related to the accounting for customer refunds and credits. Management subsequently determined that a portion of the error previously believed to be related to the accounting for customer refunds and credits was actually related to the accounting for gift cards issued to customers. As more fully described in Note 3 of the financial statements (see Item 1 of Part I, Financial Statements (Unaudited) (Restated) Note 3 Restatement of Financial Statements) management, including its CEO (principal executive officer) and Senior Vice President, Finance (principal financial officer), concluded, and the Board of Directors agreed with management's conclusions that:

The Company's controls were not designed or operating effectively to ensure all refunds and credits issued to customers and gift cards issued to customers were completely and accurately recorded in the consolidated financial statements. These control failures impacted accounts receivable and deferred revenue in the consolidated balance sheet as well as revenue and returns expense (a component of revenue), in the consolidated statement of operations. As a result, revenue, net of returns expense, was misstated in the consolidated statement of operations and accounts receivable and deferred revenue were misstated in the consolidated balance sheet as of and for the years ended December 31, 2007, 2006, 2005, and 2004 and the related interim periods, and as of March 31, 2008 and the three months ended March 2008. The amount of these errors were determined to be material to the consolidated financial statements.

In addition, from the Company's inception through the third quarter of 2007, the Company had recorded revenue based on product ship date. As disclosed the Annual Report on Form 10-K for the year ended December 31, 2007, the Company determined that it should not record revenue until product delivery date because risk of loss transfers to the customer upon delivery and acceptance. In the fourth quarter of 2007, the Company performed a detailed analysis of this error and determined that the impact of this error on any prior annual or interim period was not material and the impact of recording the cumulative effect of the error in the fourth quarter of 2007 was immaterial to the full year. Therefore, the Company recorded the cumulative effect of the error in the fourth quarter of 2007. As the Company is now restating its previously issued consolidated financial statements to correct accounting errors related to customer refunds and credits and gift cards issued to customers, it has reversed the cumulative effect of the correction of the error in the fourth quarter of 2007 and restated all prior periods to reflect revenue recognition based on the product's estimated delivery date in its consolidated financial statements for the years ended December 31, 2007, 2006, 2005, 2004 and 2003 (see Item 1 of Part I, Financial Statements (Unaudited) (Restated) Note 3 Restatement of Financial Statements). The Company also recorded other miscellaneous adjustments as part of this restatement that were previously identified but determined to be immaterial.

In addition, the control failures described above constitute a material weakness in the Company's internal control over financial reporting as of March 31, 2008 (See Item 4 of Part I, Controls and Procedures (Restated)).

Except as required to reflect the effects of the restatement for the items above, no additional modifications or updates in this Amendment have been made to the Original Filing on Form 10-Q. Information not affected by the restatement remains unchanged and reflects the disclosures made at the time of the Original Filing. This amendment does not describe other events occurring after the original filing, including exhibits, or modify or update those disclosures affected by subsequent events. This Amendment should be read in conjunction with the Company's filings

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made with the SEC subsequent to the filing of the Original Filing, as those filings may have been amended, as information in such reports and documents may update or supersede certain information contained in this Amendment. Accordingly, this Amendment only amends and restates Item 1, 2 and 4 of Part I of the Original Filing, in each case, solely as a result of, and to reflect, the restatement, and no other information in the Original Filing is amended hereby. Additionally, pursuant to the rules of the SEC, Item 6 of Part II of the Original Filing has been amended to contain currently dated certifications of the Chief Executive Officer and Senior Vice President, Finance. As required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002, the certifications of our Chief Executive Officer and Senior Vice President, Finance, are attached to this Amendment as Exhibits 31.1, 31.2, 32.1 and 32.2.

Table of Contents

TABLE OF CONTENTS

<u>PART I. FINANCIAL INFORMATION</u>	4
<u>Item 1. Financial Statements (Unaudited) (Restated)</u>	4
<u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Restated)</u>	30
<u>Item 3. Quantitative and Qualitative Disclosures about Market Risk</u>	46
<u>Item 4. Controls and Procedures (Restated)</u>	46
<u>PART II. OTHER INFORMATION</u>	47
<u>Item 1. Legal Proceedings</u>	47
<u>Item 1A. Risk Factors</u>	47
<u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	62
<u>Item 3. Defaults upon Senior Securities</u>	62
<u>Item 4. Submission of Matters to a Vote of Security Holders</u>	62
<u>Item 5. Other Information</u>	62
<u>Item 6. Exhibits (Restated)</u>	63
<u>Signature</u>	64

Table of Contents**PART 1. FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS****Overstock.com, Inc.****Consolidated Balance Sheets (unaudited)****(in thousands)**

	December 31, 2007 (Restated)	March 31, 2008 (Restated)
Assets		
Current assets:		
Cash and cash equivalents	\$ 101,394	\$ 60,094
Marketable securities	46,000	29,750
Cash, cash equivalents and marketable securities	147,394	89,844
Accounts receivable, net	11,208	9,277
Notes receivable (Note 5)	1,506	1,004
Inventories, net	25,643	17,970
Prepaid inventory	3,572	2,568
Prepaid expenses	7,572	10,118
Total current assets	196,895	130,781
Property and equipment, net	27,197	22,069
Goodwill	2,784	2,784
Other long-term assets, net	86	30
Notes receivable (Note 5)	4,181	4,317
Total assets	\$ 231,143	\$ 159,981
Liabilities and Stockholders Equity		
Current liabilities:		
Accounts payable	\$ 70,358	\$ 32,839
Accrued liabilities	37,155	24,486
Deferred revenue	22,965	21,190
Capital lease obligations, current	3,796	2
Total current liabilities	134,274	78,517
Other long-term liabilities	3,034	2,828
Convertible senior notes	75,623	75,710
Total liabilities	212,931	157,055
Commitments and contingencies (Notes 8 and 9)		
Stockholders equity:		
Preferred stock, \$0.0001 par value, 5,000 shares authorized, no shares issued and outstanding as of December 31, 2007 and March 31, 2008		
Common stock, \$0.0001 par value, 100,000 shares authorized, 25,423 shares issued as of December 31, 2007 and March 31, 2008, respectively	2	2
Additional paid-in capital	333,909	335,188
Accumulated deficit	(252,327)	(257,051)
Treasury stock, 1,605 and 2,713 shares at cost as of December 31, 2007 and March 31, 2008, respectively	(63,278)	(75,218)

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Accumulated other comprehensive income (loss)		(94)		5
Total stockholders' equity		18,212		2,926
Total liabilities and stockholders' equity	\$	231,143	\$	159,981

The accompanying notes are an integral part of these consolidated financial statements.

Table of Contents

Overstock.com, Inc.

Consolidated Statements of Operations (unaudited)

(in thousands, except per share data)

	Three months ended March 31,	
	2007 (Restated)	2008 (Restated)
Revenue		
Direct revenue	\$ 46,990	\$ 51,764
Fulfillment partner revenue	115,166	151,050
Total revenue	162,156	202,814
Cost of goods sold		
Direct(1)	41,469	44,803
Fulfillment partner	96,077	124,040
Total cost of goods sold	137,546	168,843
Gross profit	24,610	33,971
Operating expenses:		
Sales and marketing(1)	11,284	15,019
Technology(1)	14,973	14,516
General and administrative(1)	10,689	9,563
Restructuring	6,089	
Total operating expenses	43,035	39,098
Operating loss	(18,425)	(5,127)
Interest income	990	1,304
Interest expense	(1,029)	(901)
Loss from continuing operations	(18,464)	(4,724)
Loss from discontinued operations	(3,624)	
Net loss	\$ (22,088)	\$ (4,724)
Net loss per common share basic and diluted:		
Loss from continuing operations	\$ (0.78)	\$ (0.20)
Loss from discontinued operations	\$ (0.16)	\$
Net loss per common share basic and diluted	\$ (0.94)	\$ (0.20)
Weighted average common shares outstanding basic and diluted	23,594	23,345

(1) Includes stock-based compensation as follows (Note 12):

Cost of goods sold direct	\$ 107	\$ 49
Sales and marketing	\$ 78	\$ 84
Technology	\$ 177	\$ 214

General and administrative	\$	711	\$	987
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The accompanying notes are an integral part of these consolidated financial statements.

Table of Contents

Overstock.com, Inc.

Consolidated Statements of Stockholders' Equity

and Comprehensive Loss (unaudited)

(in thousands)

	Common stock		Additional	Accumulated	Treasury stock		Accumulated	
	Shares	Amount	Paid-in	Deficit	Shares	Amount	Other	Total
			Capital				Comprehensive	
							Income (loss)	
Balance at December 31, 2007 (Restated)	25,423	\$ 2	\$ 333,909	\$ (252,327)	(1,605)	\$ (63,278)	\$ (94)	\$ 18,212
Treasury stock issued for 401(k) matching contribution			(41)		2	60		19
Stock-based compensation			1,184					1,184
Stock-based compensation to consultants in exchange for services			(14)					(14)
Stock-based compensation related to performance shares			150					150
Purchase of treasury stock					(1,110)	(12,000)		(12,000)
Comprehensive loss (Restated):								
Net loss (Restated)				(4,724)				(4,724)
Net unrealized gain on marketable securities							122	122
Cumulative translation adjustment							(23)	(23)
Total comprehensive loss (Restated)								(4,625)
Balance at March 31, 2008 (Restated)	25,423	\$ 2	\$ 335,188	\$ (257,051)	(2,713)	\$ (75,218)	\$ 5	\$ 2,926

The accompanying notes are an integral part of these consolidated financial statements.

Table of Contents

Overstock.com, Inc.

Consolidated Statements of Cash Flows (unaudited)

(in thousands)

	Three months ended March 31,		Twelve months ended March 31,	
	2007	2008	2007	2008
	(Restated)	(Restated)	(Restated)	(Restated)
Cash flows from operating activities of continuing operations:				
Net loss	\$ (22,088)	\$ (4,724)	\$ (112,125)	\$ (30,672)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities of continuing operations:				
Loss from discontinued operations	3,624		9,727	300
Depreciation and amortization	7,771	6,497	33,948	28,221
Realized (gain) from marketable securities			(1,868)	
Loss on disposition of property and equipment			1	1
Stock-based compensation	1,073	1,184	4,235	4,633
Stock-based compensation to consultants for services	5	(14)	(15)	170
Stock-based compensation performance shares		150		(400)
Issuance of common stock from treasury for 401(k) matching contribution	602	19	882	(89)
Amortization of debt discount and deferred financing fees	86	87	364	345
Asset impairment and depreciation (restructuring)			791	2,169
Restructuring charges	6,089		10,972	4,025
Notes receivable accretion		(136)		(408)
Changes in operating assets and liabilities, net of effect of acquisition and discontinued operations:				
Accounts receivable, net	8,084	1,931	(882)	(1,331)
Inventories, net	5,792	7,673	60,827	108
Prepaid inventory	(360)	1,004	6,234	33
Prepaid expenses	(1,962)	(2,546)	936	(683)
Other long-term assets, net	90		539	381
Accounts payable	(35,088)	(37,519)	(8,574)	9,418
Accrued liabilities	(23,289)	(12,669)	(17,945)	4,712
Deferred revenue	(8,669)	(1,775)	(2)	6,639
Other long-term liabilities		(206)		(399)
Net cash (used in) provided by operating activities of continuing operations	(58,240)	(41,044)	(11,955)	27,173
Cash flows from investing activities of continuing operations:				
Change in restricted cash			55	
Purchases of marketable securities		(6,539)		(81,756)
Sales and maturities of marketable securities		22,911	49,475	52,169
Expenditures for property and equipment	(477)	(1,313)	(17,114)	(3,479)
Proceeds from sale of property and equipment			1	
Proceeds from the sale of OTravel, net of cash transferred				9,892
Collection of note receivable	3,941	502	3,941	1,757
Decrease in cash resulting from de-consolidation of variable interest entity			(102)	

