Risk Factors Comparison 2023-06-01 to 2022-05-31 Form: 10-K

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An investment in our securities involves a high degree of risk. You should carefully consider the risks described below, as well as the other information in this annual report on Form 10- K, including our consolidated financial statements and the related notes and" Management' s Discussion and Analysis of Financial Condition and Results of Operations." Our business, prospects, financial condition, or operating results could be harmed by any of these risks, as well as other risks not known to us or that we consider immaterial as of the date of this annual report on form 10- K. The trading price of our securities could decline due to any of these risks, and, as a result, you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. This annual report on Form 10- K also contains forward- looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward- looking statements as a result of a number of factors, including the risks described below. See" Cautionary Note Regarding Forward- Looking Statements. " Risks Related to Our Strategy Our future operating performance is subject to numerous challenges and uncertainties. Our recent rapid growth may not be indicative of our future operating performance, which will depend on our ability to leverage our competitive strengths and execute on our strategy. Our competitive strengths include: our proprietary product and customer data; strong customer relationships; vertically integrated design, development and manufacturing of our products; and omnichannel approach including both direct to consumer and retail sales. Our strategy is to expand into new product categories, in particular the ~~food~~ **consumables** category; create a unified customer experience; and focus on the path to profitability. Our ability to leverage our competitive strengths and execute on our strategy is subject to numerous challenges and uncertainties including, but not limited to **,** the following: • costs or other issues with acquiring new customers and retaining existing customers; • adverse impacts on shipping and fulfillment services and costs; • changes in trends and consumer preferences; • interruptions in our business due to technology failures, cybersecurity breaches or labor shortages; • our ability to retain existing suppliers and attract new suppliers and scale our supply chain; • our ability to develop a unified, scalable, high- performance technology and fulfillment infrastructure; • our ability to hire and retain talented, experienced people at all levels of our organization; • impacts related to the COVID- 19 pandemic; and • changes in the macro- economic environment, such as inflation, **increasing interest rates,** instability in the **banking system or** financial markets, changes in the labor markets, and political, economic and social instability, such as war in the Ukraine, in particular as such changes impact consumer discretionary spending. If we fail **to** meet the challenges or navigate the uncertainties described above, as well as those described elsewhere in this " Risk Factors " section, our business, financial condition and results of operations will be materially adversely affected. We may fail to acquire new customers in a cost- effective manner. In order to expand our customer base, we must appeal to customers who have historically purchased their dog products from other retailers, such as traditional brick and mortar retailers or the websites of our competitors. While we believe that many of our new customers originate from word- of- mouth and other non- paid referrals from our current customers, we have made, and expect to continue to make, significant investments to acquire new customers. We must be able to appropriately, effectively and efficiently allocate our marketing **spend** for multiple products, including: accurately identifying, targeting and reaching our audience of current and potential customers with our marketing messages; selecting the right marketplace, media and specific media vehicle in which to advertise; adapting quickly to changes in the algorithmic logic, privacy policies, and other procedures used by search engines, social media platforms and other third party platforms; identifying the most effective and efficient level of spending in each marketplace, media and specific media vehicle; determining the appropriate creative message and media mix for advertising, marketing and promotional expenditures; managing marketing costs, including creative and media expenses, in order to maintain acceptable ~~subscriber and~~ customer acquisition costs; differentiating our products as compared to other products; creating greater brand awareness; driving traffic to our ~~website~~ **websites** , and websites of our retail partners and adapting our marketing tactics as e- commerce, search, and social networking evolve. Also, search engines, social media platforms frequently update and change the logic that determines the placement and display of results of a user' s search, such that the purchased or algorithmic placement of links to our ~~website~~ **websites** can be negatively affected. Moreover, a search engine or social media platform could, for competitive or other purposes, alter its search algorithms or results, causing our ~~website~~ **websites** to place lower in search query results. In addition, social networking and e- commerce channels continue to rapidly evolve, including with regard to their policies and procedures, and we may be unable to cost- effectively develop or maintain a presence within these channels. If the costs of acquiring new customers exceeds our expectations, we may not be able to acquire the necessary number of customers who purchase products in volumes sufficient to grow our business and generate the scale necessary to achieve operational efficiency and / or our margins could decrease, which could have a material adverse effect on our business, financial condition and results of operations. We may be unable to maintain a high level of customer engagement or protect our brand and reputation. Our strong customer relationships and our brand and reputation are the basis for the high- level customer engagement that drives increases to our average order volume and our overall growth. A significant portion of our revenue is recurring revenue from subscription customers, especially those customers who are highly engaged and purchase our add- to- box offerings ~~or our~~ **which include toys, treats, toppers, dental and** other **products** ~~offerings, such as BARK Food and BARK Bright~~ . Maintaining and protecting our brand and reputation depends largely on our ability to provide our customers with an engaging and personalized customer experience, including valued services, high- quality merchandise, appropriate prices and highly- trained customer support representatives. Customer complaints or negative reviews or publicity about our products, services, merchandise, monthly themes, delivery times, or customer support, especially on social media platforms, could harm our brand and reputation and diminish customer use of our services and the trust that our customers place in us. Also, if our customers no longer find our products appealing or appropriately priced, they may make fewer purchases and may cancel their subscriptions or stop purchasing products. Even if our existing customers continue to find our offerings appealing, they may decide to reduce their subscription and purchase less merchandise over time as their interest in new dog products declines. Failure to maintain our high level of engagement and protect our brand and reputation with our customers would cause our revenue to decrease, which could have a material adverse effect on our business, financial condition and results of operations. We may not be able to accurately predict consumer trends, successfully introduce new products, improve existing products, or expand into new offerings. Our growth depends, in part, on our ability to successfully introduce new products to our existing BarkBox and Super Chewer subscriptions and **Toys & accessories** ~~to introduce new product lines, including BARK Home (everyday products), BARK Bright (dental, health~~ and **Consumables categories** ~~wellness), and BARK Food (personalized food blend)~~ , and to improve and reposition our existing products to meet the requirements of our customers and the needs of their dogs. To be successful, we must accurately predict and respond to evolving consumer trends, demands and preferences, including predicting monthly themes for our BarkBox and Super Chewer subscriptions that will resonate with ~~subscribers and~~ customers as timely and clever. The development and introduction of new products and expansion into new offerings also involves considerable costs. Any new product or offering may not generate sufficient customer interest to become a profitable product or to cover the costs of its development and promotion and could result in a decrease in customer retention, a reduction in purchases or negatively affect our brand and reputation. If we are unable to anticipate, identify, develop or market products, or create new offerings ~~,~~ that respond to changes in **customer** requirements and preferences, or if our new product introductions, repositioned products, or new offerings fail to gain consumer acceptance, we may be unable to grow our business as anticipated, or our revenue, margins and profitability may decline or not improve, which could materially adversely ~~effect~~ **affect** ~~on~~ our business, financial condition and results of operations. Our success depends on the continuing efforts of our key employees and our ability to attract and retain highly skilled personnel and senior management. Our ability to maintain our competitive position is largely dependent on the ~~services~~ **contributions** of our senior management and other key personnel. In addition, our future success depends on our continuing ability to attract, develop, motivate and retain highly qualified and skilled employees. The market for such positions is competitive, in particular, due to the **ongoing** labor market effects **or distortions** from the COVID- 19 pandemic. Qualified individuals are in high demand and we may incur significant costs to attract **and retain** them. In addition, the loss of any of our senior management or other key employees or our inability to recruit and develop mid- level managers could impede our ability to execute our business plan and we may be unable to find adequate replacements. All of our employees are at- will employees, meaning that they may terminate their employment relationship with us at any time, and their knowledge of our business and industry could be extremely difficult to replace. If we fail to retain talented senior management and other key personnel, or if we do not succeed in attracting well- qualified employees or retaining and motivating existing employees, our business, financial condition, and results of operations could be materially adversely affected. We face challenges due to our reliance on third party sales channels to sell and distribute our products. We sell some of our products through a network of retailers and e- tailers (~~together with~~ **in addition to** our direct sales channel). Our products are available through Amazon. com as well as in retail locations including Target, Petco, PetSmart, Costco, Walmart **, Kroger** and CVS, and many others. We depend on these indirect sales channel partners to distribute and sell our products to dog parents, which subjects us to a number of challenges, including: • ~~The~~ **the** sales and business practices, reputation or failure to comply with laws and regulations, of or by our sales channel partners, of which we may or may not be aware, may affect our business and reputation; • ~~Adverse~~ **adverse** changes in our relationships with our sales channel partners could impact sales of our products; • ~~Economic~~ **economic** conditions, labor issues, natural disasters, regional or global pandemics, evolving consumer preferences, and purchasing patterns of our distribution partners, or competition between our sales channels, could result in sales channel disruption; • ~~Our~~ **our** sales channel partners **, who** also sell products offered by our competitors ~~and~~ , **and** in the case of retailer house brands, may also be our competitors **, which sales may compete with our own products** ; • ~~Certain~~ **certain** of our sales channel partners could decide to de- emphasize the product categories that we offer, ~~and certain of our third- party e- commerce partners could~~ change their algorithmic logic, policies or procedures making our products harder for customers to find **,** or remove them from e- commerce sites altogether; and • ~~We must build~~ **building** relationships with new channel partners ~~and~~ **or** ~~adapt~~ **adapting** to new distribution and marketing models ~~as we~~ **in order to** expand **into** new product categories and markets ~~, which~~ may require significant management attention and operational resources **,** and ~~may~~ affect our accounting, including revenue recognition, gross margins, and the ability to make comparisons from period to period. If we fail to effectively meet the challenges described above our business and future operating results will be materially adversely affected. Risks Related to the **Macro- Economic Environment and the** COVID- 19 Pandemic ~~and the Macro- Economic Environment~~ We rely on consumer discretionary spending, which may be adversely affected by economic downturns and other macroeconomic conditions or trends. Our business depends on consumer discretionary spending. Some of the factors that may negatively influence consumer spending include high levels of unemployment; higher consumer debt levels; reductions in net worth, declines in asset values, and related market uncertainty; home foreclosures and reductions in home values; fluctuating interest rates and credit availability; **bank failures;** global pandemics, including the COVID- 19 pandemic and the loosening of restrictions as the pandemic conditions improve; fluctuating fuel and other energy costs; fluctuating commodity prices; **and** the high rate of inflation and general uncertainty regarding the overall future political and economic environment. Furthermore, any increases in consumer discretionary spending during times of crisis may be temporary, such as those related to government stimulus programs or remote- work environments, and consumer spending may decrease when those programs or circumstances end. In addition, economic conditions in certain regions may be affected by natural disasters, such as hurricanes, tropical storms, earthquakes, and wildfires; other public health crises; and other major unforeseen events. Consumer purchases of discretionary items, including the merchandise that we offer, generally decline during recessionary periods or periods of economic uncertainty, when disposable income is reduced or when there is a reduction in consumer confidence. Any decline in consumer discretionary spending could negatively impact our revenue, which could have a material adverse effect on our business, financial condition and results of operations. We may **continue to** be impacted by the COVID- 19 global pandemic ~~and~~ **. The extent to which the COVID- 19 pandemic may continue to impact our business will depend on future developments** related **to any resurgence or geographic spread of the disease, any mutations or emergence of new diseases, and the duration and severity of potential outbreaks. In the past, the COVID- 19 pandemic resulted in travel restrictions, required social distancing, business closures, governmental and business disruptions, and other actions taken by the United States** government ~~, private sector~~ and ~~individual consumer responses~~ **the governments of other countries** . The COVID- 19 pandemic has disrupted the global supply chain and may **continue to** cause disruptions to our operations. ~~Additional federal or state mandates ordering the shutdown of non- essential businesses could also impact our ability to take or fulfill our subscribers' or customers' orders and operate our business.~~ Many of our personnel ~~are working~~ **continue to work** remotely, which could have a negative impact on the execution of our business plans and operations. ~~Our offices are currently open on a limited basis as allowed under state and local orders. While we have implemented what we believe to be a comprehensive protocol to ensure the safety and well- being of employees returning to the office, including daily health screenings, physical changes to our floor layout, and required proper personal protection equipment, these measures may not be sufficient to mitigate the risks posed by the virus or otherwise be satisfactory to government authorities.~~ Natural disasters, power outages, connectivity issues, or other events that impact our employees' ability to work remotely, could disrupt business for a substantial period of time. The increase in remote working may also result in consumer privacy, IT security and fraud concerns as well as increase our exposure to potential wage and hour issues. **While conditions appear** ~~Operations of our fulfillment centers may be substantially disrupted by additional federal or state mandates ordering shutdowns of non- essential services or by the inability of our employees~~ to **have improved,** ~~travel to work. Our plans to open new fulfillment centers or to expand the capacity of our existing fulfillment centers over the next few years may also be delayed or be more costly. Uncertainty and unpredictability around the duration of~~ the COVID- 19 pandemic **has had,** and ~~associated~~ **continues to have, unprecedented and unexpected effects on the global economy, civil society, labor markets, and certain industries. As a result, it is difficult to predict the magnitude or scope of the adverse impacts that these effects may have directly, or indirectly, on our** business ~~disruptions and the extent of the spread of the virus in the United States and to other areas of the world continues to adversely impact national and global economies and could continue to negatively impact consumer spending on which we rely. While conditions appear to be improving~~ , **operating results and** ~~we are still unable to predict whether the ultimate impact of the COVID- 19 pandemic could have a material adverse effect on our business,~~ financial condition **in the future** ~~or results of operations~~ . Risks Related to our Manufacturing, Inventory and Supply Chain Our business critically relies on a limited number of suppliers, manufacturers, and logistics partners. We rely on a limited number of contract manufacturers, suppliers and logistics providers to manufacture and transport our products. We do not currently have alternative or replacement providers and we do not generally maintain long- term supply contracts with any of these providers. We face a number of risks relating to these providers, including: • ~~Our~~ **our** suppliers, manufacturers or logistics partners could be impacted by a natural disaster, an epidemic such as the ~~ongoing~~ COVID- 19 pandemic, or other interruptions at a particular location; • ~~Our~~ **our** manufacturers and suppliers are primarily located in Asia, which introduces risks related to geopolitical developments and differences in regulatory standards and legal systems; • ~~Our~~ **our** existing supply channels may not be able to satisfy a significant increase in demand for our products, or we may need to replace an existing manufacturer or supplier. It could take a significant amount of time to identify a manufacturer or supplier that has the capability and resources to manufacture our products to our specifications in sufficient volume, and with acceptable quality control, technical capabilities, responsiveness and service, financial stability, regulatory compliance, and labor and other ethical practices; • ~~Our~~ **our** current product purchases are centralized among a few manufacturers and suppliers to realize substantial cost savings, which exposes us to credit and other risks, including insolvency, financial difficulties, supply chain delays or other factors **which** may result in our manufacturers or suppliers not being able to fulfill the terms of their agreements with us; and • ~~We~~ **we** have signed a number of contracts whose performance depends upon third party suppliers delivering products on schedule to meet our contractual commitments. Concentration in the number of our manufacturers and suppliers could lead to delays in the delivery of products or components, and possible resultant breaches of contracts that we have entered into with our customers; increases in the prices we must pay for products; problems with product quality; and other concerns. Any of the above risks could delay delivery of our products to customers in a timely and cost effective manner, which could have a material adverse effect on our business, financial condition and ~~operating~~ results **of operations** . We face challenges due to limited control over our suppliers, contract manufacturers, and logistics partners. We have limited control over our suppliers, contract manufacturers, and logistics partners, which subjects us to the following risks, many of which have materialized **during** ~~due to~~ the COVID- 19 pandemic, including: failure to satisfy demand for our products; reduced control over delivery timing, product reliability, the manufacturing process and components used in our products; limited ability to develop comprehensive manufacturing specifications that take into account any materials shortages or substitutions; variance in the manufacturing capability of our third- party manufacturers; price increases; failure of a significant supplier, manufacturer, or logistics partner to perform its obligations for technical, market, or other reasons; misappropriation of our intellectual property; changes in local economic conditions in the jurisdictions where our suppliers, manufacturers, and logistics partners are located; the imposition of new laws and regulations, including those relating to labor conditions, quality and safety standards, imports, duties, tariffs, taxes, and other charges on imports, as well as trade restrictions and restrictions on currency exchange or the transfer of funds; and insufficient warranties and indemnities on components supplied to our manufacturers or performance by our partners. If we fail to meet the challenges described above, our business and future operating results will be materially adversely affected. Shipping, which is subject to numerous risks, is a critical part of our business. We currently rely on third- party national, regional and local logistics providers to deliver our products. We may not be able to negotiate acceptable pricing and other terms with these providers, or these providers may experience performance problems or other difficulties in processing our orders or delivering our products to customers. In addition, our ability to receive inbound inventory efficiently and ship merchandise to customers may be negatively affected by factors beyond our and these providers' control, including inclement weather, natural disasters, fire, flood, power loss, earthquakes, pandemics, acts of war or terrorism or other events specifically impacting our or other shipping partners, such as labor disputes, financial difficulties, system failures and other disruptions to the operations of the shipping companies on which we rely. We are also subject to risks of damage or loss during delivery by our shipping vendors. If the products ordered by our ~~subscribers or~~ customers are not delivered in a timely fashion or are damaged or lost during the delivery process, our ~~subscribers or~~ customers could become dissatisfied and cease buying **our** products. Further, due to the **effects** ~~continuing spread~~ of **the** COVID- 19 **pandemic** ~~and related governmental work and travel restrictions~~, there may **continue to** be disruptions and delays in national, regional and local shipping, which may negatively impact our ~~subscribers' and~~ customers' experience. Changes to the terms of our shipping arrangements and delays or failures in delivery of our products may have a material adverse ~~affect~~ **effect** on our margins and profitability, which could adversely affect our business, financial condition and results of operations. We may be unable to manage the complexities created by our ~~omni-channel~~ **omnichannel** operations. Our omnichannel operations, such as offering our products through our ~~website~~ **websites** , on third party websites and in traditional brick and mortar stores, create additional complexities in our ability to manage inventory levels, as well as certain operational issues, including timely shipping and refunds. Accordingly, our success depends to a large degree on continually evolving the processes and technology that enable us to plan and manage inventory levels and fulfill orders, address any related operational issues and further align channels to optimize our omnichannel operations. If we are unable to successfully manage these complexities, it may have a material adverse effect on our business, financial condition, operating results and prospects. If we are unable to implement appropriate systems, procedures and controls, we may not be able to successfully offer our products, grow our business and account for transactions in an appropriate and timely manner. Our ability to successfully offer our products, grow our business and account for transactions in an appropriate and timely manner requires an effective planning and management process and certain other automated management and accounting systems. We currently do not have ~~an~~ **a fully** integrated enterprise resource planning system and certain other automated management and accounting systems. We periodically update our operations and financial systems, procedures and controls; however ~~;~~ **,** our current procedures ~~that~~ may not scale proportionately with our business growth or with becoming a public company. Our systems will continue to require automation, modifications and improvements to respond to current and future changes in our business. Failure to implement in a timely manner appropriate internal systems, procedures and controls could materially and adversely affect our business, financial condition and results of operations. We may not be able to successfully optimize, operate and manage our fulfillment centers and shipping services. If we do not optimize and operate our fulfillment centers and shipping services successfully and efficiently, it could result in excess or insufficient fulfillment capacity, an increase in costs **and / or inventory shrinkage** or impairment charges or harm to our business in other ways. In addition, if we do not have sufficient fulfillment or shipping capacity or experience a problem fulfilling or shipping orders in a timely manner, our customers may experience delays in receiving their purchases, which could harm our reputation and our relationship with our customers. We also anticipate the need to add additional fulfillment center and shipping capacity as our business continues to grow. We may not be able to locate suitable facilities or services on commercially acceptable terms in accordance with our expansion plans, or recruit qualified managerial and operational supply personnel to support our expansion plans. If we are unable to secure new facilities for the expansion of our fulfillment and shipping operations, recruit qualified personnel to support any such facilities, or effectively control expansion- related expenses, our business, financial condition, and results of operations could be materially adversely affected. Risk Related to Our Industry Our estimate of the size of our addressable market may prove to be inaccurate. Data for retail sales of dog products is collected for most, but not all channels, and as a result, it is difficult to accurately estimate the size of the market and predict with certainty the rate at which the market for our products will grow, if at all. While our market size estimate was made in good faith and is based on assumptions and estimates we believe to be reasonable, this estimate may not be accurate. If our estimates of the size of our addressable market are not accurate, our potential for future growth may be less than we currently anticipate, which could have a material adverse effect on our business, financial condition, and results of operations. We may not be able to compete effectively in the dog products and services retail industry. The dog products and services retail industry, in particular on the Internet, is highly competitive and we expect this competition to continue to increase. We compete with pet product retail stores, supermarkets, warehouse clubs and other mass and general retail and online merchandisers. We also compete with a number of specialty dog supply stores and independent dog stores, catalog retailers and other specialty e- tailers. As we expand our offerings, such as our BARK Food line, we will face additional competition. In the **consumables** ~~dog food~~ category, there are numerous brands and products that compete for shelf space and sales, with competition based primarily upon brand recognition and loyalty, product packaging, quality and innovation, taste, nutrition, breadth of product line, price and convenience. Many of these current competitors have, and potential competitors may have, longer operating histories, greater brand recognition, larger fulfillment infrastructures, greater technical capabilities, significantly greater financial, marketing and other resources and larger customer bases than we do, allowing our competitors to derive greater net sales and profits from their existing customer base, acquire customers at lower costs or respond more quickly than we can to new or emerging technologies and changes in consumer preferences or habits. Our competitors may engage in more extensive research and development efforts, undertake more far- reaching marketing campaigns and adopt more aggressive pricing policies (including but not limited to predatory pricing policies and the provision of substantial discounts), allowing them to build larger customer bases or generate gross profit from their customer bases more effectively than we do. Current and future competitors may also make strategic acquisitions or establish cooperative relationships among themselves or with others. If we fail to compete effectively, or are required to offer promotions and other incentives or adopt more aggressive pricing strategies, our operating margins could decrease, which could materially adversely affect our business, financial condition and ~~operating~~ results **of operations** . Risks Related to Information Technology and Cybersecurity We are subject to risks related to online payment methods. We currently accept payments using a variety of methods, including credit card, debit card, PayPal **, Venmo, Apple Pay, Shop Pay** and gift cards. As we offer new payment options to ~~subscribers~~ **customers** , we may be subject to additional regulations, compliance requirements, fraud and other risks. For certain payment methods, we pay interchange and other fees, which may increase over time and raise our operating costs and lower profitability. We are also subject to payment card association operating rules and certification requirements, including the Payment Card Industry Data Security Standard and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. Furthermore, as our business changes, we may be subject to different rules under existing standards, which may require new assessments that involve costs above what we currently pay for compliance. In the future, as we offer new payment options to ~~subscribers~~ **customers** , including by way of integrating emerging mobile and other payment methods, we may be subject to additional regulations, compliance requirements and fraud **, if our customers re- use their login and password information across multiple websites, exposing us to breaches on other sites** . If we fail to comply with the rules or requirements of any provider of a payment method we accept, if the volume of fraud in our transactions limits or terminates our rights to use payment methods we currently accept, or if a data breach occurs relating to our payment systems, we may, among other things, be subject to fines or higher transaction fees and may lose, or face restrictions placed upon, our ability to accept credit card payments from ~~subscribers~~ **customers** or facilitate other types of online payments. If any of these events were to occur, our business, financial condition, and results of operations could be materially adversely affected. We rely on software- as- a- service (" SaaS ") technologies from third parties. We rely on SaaS technologies from third parties in order to operate critical functions of our business, including financial management services, credit card processing, customer relationship management services, supply chain services and data storage services. If these services become unavailable due to extended outages or interruptions or because they are no longer available on commercially reasonable terms or prices, or for any other reason, our expenses could increase, our ability to manage our finances could be interrupted, our processes for managing sales of our offerings and supporting our customers could be impaired, our ability to communicate with our suppliers could be weakened and our ability to access or save data stored to the cloud may be impaired until equivalent services, if available, are identified, obtained and implemented. We are also subject to certain standard terms and conditions with these providers, who have broad discretion to change their terms of service and other policies with respect to us, which may be unfavorable. Any failure to maintain successful partnerships with our SaaS providers could impact our success and materially adversely affect our business, financial condition and results of operations. Limitations on our use of " cookies " may impact our ability to cost- effectively acquire new customers. Federal and state governmental authorities continue to evaluate the privacy implications inherent in the use of third- party " cookies " and other methods of online tracking for behavioral advertising and other purposes. The U. S. government has enacted, or has considered or is considering legislation or regulations that could significantly restrict the ability of companies and individuals to engage in these activities, such as by regulating the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools or the use of data gathered with such tools. Additionally, some providers of consumer devices and web browsers have implemented, or announced plans to implement, means to make it easier for Internet users to prevent the placement of cookies or to block other tracking technologies, which if widely adopted could result in making cookies and other methods of online tracking significantly less effective. This regulation of the use of ~~these~~ cookies and other current online tracking and advertising practices or the loss of our ability to make effective use of services that employ such technologies could ~~increase~~ limit our ability to acquire new customers on cost- effective terms, which could materially adversely affect our business, financial condition, and results of operations. We may be unable to maintain and scale our technology. Our reputation and ability to acquire, retain and serve our customers depends on the reliable performance of our ~~website~~ **websites** and mobile application and our **cloud-** ~~underlying network infrastructure. As our subscriber and customer base~~ **based solutions** ~~and the amount of information shared on our website and mobile application continue to grow, we will need an increasing amount of network capacity and computing power~~ . The operation of these systems **, and the consolidation of our websites,** is complex and could result in operational failures. Interruptions or delays in these systems **, or in the consolidation of our websites** , whether due to system failures, computer viruses, physical or electronic break- ins, undetected errors, design faults or other unexpected events or causes, could affect the security or availability of our ~~website~~ **websites** and mobile application and prevent our customers from accessing our ~~website~~ **websites** and mobile application. If sustained or repeated, these performance issues could reduce the attractiveness of our products and services. In addition, the costs and complexities involved in **consolidating our websites or** expanding and upgrading our systems may prevent us from doing so in a timely manner and may prevent us from adequately meeting the demand placed on our systems. Any web or mobile platform interruption or inadequacy that causes performance issues or interruptions in the availability of our ~~website~~ **websites** or mobile application could reduce consumer satisfaction and result in a reduction in the number of customers using our products and services, which could have a material adverse effect on our business, financial condition and results of operations. Our disaster recovery arrangements may be insufficient. The occurrence of a natural disaster, power loss, telecommunications failure, data loss, computer virus, an act of terrorism, cyberattack, vandalism or sabotage, act of war or any similar event, or a decision to close the third- party data centers on which we normally operate or the facilities of any other third- party provider without adequate notice or other unanticipated problems at these facilities could result in lengthy interruptions in the availability of our ~~website~~ **websites** and mobile application. Cloud computing, in particular, is dependent upon having access to an Internet connection in order to retrieve data. If a natural disaster, pandemic (such as the COVID- 19 pandemic), blackout or other unforeseen event were to occur that disrupted our ability to obtain an Internet connection, we may experience a slowdown or delay in our operations. While we have some limited disaster recovery arrangements in place, our preparations may not be adequate to account for disasters or similar events that may occur in the future and may not effectively permit us to continue operating in the event of any problems with respect to our systems or those of our third- party data centers or any other third- party facilities. Our disaster recovery and data redundancy plans may be inadequate, and our business interruption insurance may not be sufficient to compensate us for the losses that could occur. If any such event were to occur to our business, our operations could be impaired, which could have a material adverse effect on our business, financial condition, and results of operations. The security of our **and our** partners' computer networks and databases containing personal information may be compromised. In the ordinary course of ~~our~~ business, we and our vendors collect, process, and store certain personal information and other data relating to individuals, such as our ~~subscribers,~~ customers and employees, including ~~subscriber and~~ customer payment card information. We rely substantially on commercially available systems, software, tools, and monitoring to provide security for our processing, transmission, and storage of personal information and other confidential information. We, or our vendors, may suffer a data compromise from hackers or other unauthorized parties who gain access to personal information or other data, including payment card data or confidential business information, which may not be discovered in a timely fashion. In addition, cyber- attacks such as ransomware attacks could lock us out of our information systems and disrupt our operations. The techniques used to obtain unauthorized access or to sabotage systems change frequently and generally are not identified until they are launched against a target, and we, and our vendors, may be unable to anticipate these techniques or to implement adequate preventative measures. We may not have the resources or technical sophistication to anticipate or prevent rapidly evolving types of cyber- attacks. As our business partners **have** ~~move~~ **moved** to remote work ~~due~~ **in response** to the COVID- 19 pandemic, they may be more vulnerable to cyber- attacks. In addition, our vendors, or other third parties with whom we do business may attempt to circumvent security measures in order to misappropriate personal information, confidential information, or other data, or may inadvertently release or compromise such data. Compromise of our data security by third parties with whom we do business, failure to prevent or mitigate the loss of personal or business information, and delays in detecting or providing prompt notice of any such compromise or loss may disrupt our operations, damage our reputation, and subject us to litigation, government action, or other additional costs and liabilities that could materially adversely affect our business, financial condition, and ~~operating~~ results **of operations** . Risks Related to Our Intellectual Property We may be unable to adequately protect our intellectual property rights. We rely on trademark, copyright and patent law, trade secret protection, agreements and other methods with our employees and others to protect our proprietary rights. Effective intellectual property protection may not be available in every country and the protection of our intellectual property rights may require significant financial, managerial and operational expenditures. In addition, our efforts may not prevent third parties from infringing or misappropriating our intellectual property rights and any of our intellectual property rights could be challenged by others or invalidated through administrative processes or litigation. Our patent and trademark applications may never be granted and the process of obtaining patent protection is expensive and time- consuming. We may be unable to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Even if issued, these patents may not adequately protect our intellectual property, as the legal standards relating to the validity, enforceability and scope of patent protection are uncertain. In addition, others may independently develop or otherwise acquire equivalent or superior technology. Our confidentiality agreements may not effectively prevent disclosure of our proprietary information, technologies and processes and may not provide an adequate remedy in the event of unauthorized disclosure of such information. We might be required to spend significant resources to monitor and protect our intellectual property rights and we may be unable to discover or determine the extent of any infringement, misappropriation or other violation of our intellectual property rights and other proprietary rights. Failure to protect our intellectual property rights or costs associated with such protection could have a material adverse effect on our business, financial condition, and results of operations. We may be subject to intellectual property infringement claims or other allegations. Third parties have from time to time claimed, and may claim in the future, that we have infringed their intellectual property rights. These claims, whether meritorious or not, could be time- consuming, result in considerable litigation costs, ~~result in~~ injunctions against us or the payment of damages or royalties by us, require significant amounts of management time or **divert** ~~result in the diversion of~~ significant operational resources ~~and~~ **or cause** expensive changes to our business model. In addition, we may be unable to obtain or utilize on terms that are favorable to us, or at all, licenses or other rights with respect to intellectual property we do not own. These risks have been amplified by the increase in third parties whose sole or primary business is to assert such claims. Any payments we are required to make and any injunctions against us could materially adversely affect our business, financial condition, and results of operations. Risks Related to Government Regulation and Legal Proceedings We are subject to federal and state and foreign laws and regulations relating to privacy, data protection, advertising and consumer protection. We rely on a variety of marketing techniques, including email and social media marketing and postal mailings, which are subject to various federal and state laws and regulations. A variety of federal and state laws and regulations also govern our collection, use, retention, sharing and security of consumer data, particularly in the context of the online advertising that we rely on to attract new customers. These laws and regulations are constantly evolving and subject to potentially differing interpretations, in particular from one jurisdiction to another, and may conflict with other laws and regulations. In addition, various federal and state legislative and regulatory bodies, or self- regulatory organizations, may expand current laws or regulations, enact new laws or regulations or issue revised rules or guidance regarding privacy, data protection, consumer protection, and advertising. For example, the State of California enacted the California Consumer Privacy Act of 2018 (the " CCPA "), which requires companies that process information on California residents make new disclosures to customers about the collection of their data, use and sharing practices, and allow customers to opt out of certain data sharing with third parties and ~~provide~~ **provides** a new cause of action for data breaches. Further, the California Privacy Rights Act (the " CPRA ") significantly amends the CCPA and imposes additional data protection obligations on companies doing business in California, including additional consumer rights processes and opt outs for certain uses of sensitive data. It also creates a new California ~~data~~ **Privacy** ~~protection~~ **Protection** ~~agency~~ **Agency** specifically tasked to enforce the law, which could result in increased regulatory scrutiny of businesses in the areas of data protection and security. Similar laws have been proposed in other states and at the federal level, and if passed, such laws may have potentially conflicting requirements that could make compliance challenging. Our practices and procedures to comply with these laws and regulations may not always be effective, particularly as the legal landscape continues to evolve. In addition, some of our internal processes are manual, which could result in employee error and internal compliance failures. Any failure, or perceived failure, to comply with our posted privacy policies or with any federal or state privacy or consumer protection- related laws, regulations, industry self- regulatory principles, industry standards or codes of conduct, regulatory guidance, orders to which we may be subject or other legal obligations relating to privacy or consumer protection could adversely affect our reputation, brand and business, and may result in claims, liabilities, proceedings or actions against us by governmental entities, ~~subscribers,~~ customers, suppliers or others, or may require us to change our operations and / or cease using certain data. Any such claims, proceedings or actions could further harm our reputation and brand, force us to incur significant expenses in defense of such proceedings or actions, distract our management, increase our costs of doing business, result in a loss of ~~subscribers,~~ customers and suppliers and result in the imposition of monetary penalties. We may also be contractually required to indemnify and hold harmless third parties from the costs or consequences of our non- compliance with any laws, regulations or other legal obligations relating to privacy or consumer protection or any inadvertent or unauthorized use or disclosure of data that we store or handle as part of operating our business. Any harm to our reputation or brand, being subject ~~of~~ **to** regulatory action and incurring related fees, distraction of our management and loss of customers or suppliers could have a material adverse effect on our business, financial condition and results of operations. We are subject to product safety, labor, or other laws. The products we sell to our customers are subject to regulation by the Federal Consumer Product Safety Commission, the Federal Trade Commission, and similar state and international regulatory authorities. As such, our products could be subject to recalls and other remedial actions. Product safety, labeling, and licensing concerns may result in our voluntarily removing selected products from our inventory. Recalls or voluntary removal of products can result in, among other things, lost sales, diverted resources, potential harm to our reputation, increased customer service costs and legal expenses. In addition, some of the merchandise we sell may expose us to product liability claims, litigation or regulatory actions. Although we maintain liability insurance, we cannot be certain that our coverage will be adequate for liabilities actually incurred or that insurance will continue to be available to us on economically reasonable terms or at all. In addition, some of our agreements with our vendors may not indemnify us from product liability for a particular vendor' s merchandise or our vendors may not have sufficient resources or insurance to satisfy their indemnity and defense obligations. In addition, failure of our vendors to comply with applicable laws and regulations and contractual requirements could lead to litigation against us, resulting in increased legal expenses. Furthermore, the failure of any vendors to provide safe and humane factory conditions at their facilities could damage our reputation with our customers and result in legal claims against us. Our international relationships also require us to overcome logistical and other challenges based on differing languages, cultures, legal and regulatory schemes and time zones. Foreign labor laws, standards and customs may vary greatly from those in the U. S. The U. S. or foreign countries could enact legislation or impose regulations, including unfavorable labor regulations, tax policies or economic sanctions that could have an adverse impact on our ability to conduct our business in the countries in which we have relationships. The difficulties inherent in complying with labor, safety and other laws, or consequences resulting from any failure to comply with those laws could result in increased costs, disruptions in our relationships with our vendors, and harm to our brand and reputation, which could have a material adverse effect on our business, financial condition and results of operations. We are subject to extensive governmental regulation. We are subject to a broad range of federal, state, local, and foreign laws and regulations intended to protect public and worker health and safety, natural resources and the environment. Our operations, including our manufacturing partners, are subject to regulation by the Occupational Safety and Health Administration ~~(" OSHA ")~~ , the Food and Drug Administration ~~(the " FDA ")~~ , the Department of Agriculture ~~(the " USDA ")~~ and by various other federal, state, local and foreign authorities regarding the processing, packaging, storage, distribution, advertising, labeling and export of our products, including food safety standards. In addition, we and our manufacturing partners are subject to additional regulatory requirements, including environmental, health and safety laws and regulations administered by the U. S. Environmental Protection Agency, state, local and foreign environmental, health and safety legislative and regulatory authorities and the National Labor Relations Board, covering such areas as discharges and emissions to air and water, the use, management, disposal and remediation of, and human exposure to, hazardous materials and wastes, and public and worker health and safety. Violations of, or liability under, any of these laws and regulations may result in administrative, civil or criminal fines, penalties or sanctions against us, revocation or modification of applicable permits, licenses or authorizations, environmental, health and safety investigations or remedial activities, voluntary or involuntary product recalls, warning or untitled letters or cease and desist orders against operations that are not in compliance, among other things. Such laws and regulations generally have become more stringent over time and may become more so in the future, and we may incur (directly, or indirectly through our manufacturing partners) material costs to comply with current or future laws and regulations or in any required product recalls. Complying with the current laws and regulations, and potential future changes to these laws and regulations, or failing to comply with these laws and regulations, could impose significant limitations and / or require changes to our business, which may involve substantial expenses, make our business more costly and less efficient to conduct, and compromise our growth strategy, which could have a material adverse effect on our business, **financial condition and results of operations. We may be adversely affected by changes in tax laws, rules or regulations. Existing tax laws, rules or regulations are subject to interpretation by tax authorities or amendment, repeal, or new enactments. For example, the 2018 U. S. Supreme Court decision in South Dakota v. Wayfair, Inc. required us to collect sales tax in many jurisdictions despite our lack of a physical presence in such jurisdictions. Also, the 2017 Tax Cuts and Jobs Act may limit our ability to use our substantial net operating losses to offset potential future taxable income, which is further dependent upon by our ability to generate taxable income before the expiration dates of the net operating losses, and we cannot predict with certainty when, or whether, we will generate sufficient taxable income to use all of our net operating losses. We are**

currently monitoring changes in the tax landscape, however, it is difficult to predict whether such changes could materially adversely affect our financial condition and results of operations. Future litigation could have a material adverse effect on our business. Lawsuits and other administrative, regulatory, or legal proceedings that may arise in the course of our operations can involve substantial costs, including the costs associated with investigation, litigation and possible settlement, judgment, penalty or fine. In addition, the stock market has recently experienced extreme price and volume fluctuations and companies have experienced fluctuations in their stock prices that have often been unrelated or disproportionate to their operating results. Under these circumstances, stockholders may sometimes institute securities class action litigation against such companies. Any litigation or other administrative, regulatory, or legal proceedings against us could result in substantial costs, and divert management' s attention and resources. Although we generally maintain insurance to mitigate certain costs, there can be no assurance that costs associated with lawsuits or other legal proceedings will not exceed the limits of **our** insurance policies. Moreover, we may be unable to continue to maintain our existing insurance at a reasonable cost, if at all, or to secure additional coverage, which may result in costs associated with lawsuits and other legal proceedings being uninsured. Our business, financial condition and results of operations could be materially adversely affected if fees associated with lawsuits or other legal proceedings or a judgment, penalty or fine is not fully or **is only** partially covered by insurance. General Risk Related to Our Business ~~We have identified material weaknesses in our internal controls over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. In the course of preparing our financial statements for fiscal year 2022, our management identified material weaknesses in our internal control over financial reporting. These material weaknesses include: (i) the insufficient review of account reconciliations for certain account balances; (ii) the lack of formalized processes and controls around inventory management; (iii) the improper accounting for the review of complex or non- routine transactions; and (iv) the lack of effective internal controls around change management and those internal controls that would restrict access to financial systems to appropriate users and ensure that appropriate segregation of duties is maintained. Specifically, certain change management controls were not adhered to, and certain personnel had access to financial applications, programs and data beyond that needed to perform their individual job responsibilities and without independent monitoring. In addition, certain financial personnel had incompatible duties which allowed for the creation, review and processing of certain financial data without independent review and authorization. The material weakness set forth in this (iv) affects substantially all financial statement accounts. We will not be able to fully remediate these material weaknesses until the appropriate steps have been completed and have been operating effectively for a sufficient period of time, see " Item 9A- Controls and Procedures. " Further weaknesses in our disclosure controls and internal control over financial reporting may be discovered in the future. Failing to develop or maintain effective disclosure controls and internal control over financial reporting could cause us to fail to meet our reporting obligations, may result in a misstatement of our financial statements or cause investors to lose confidence in us, which could have a material adverse effect on our business, financial condition or results of operations.~~ Our estimates or judgments relating to our critical accounting policies could prove to be incorrect. We prepare our financial statements in accordance with U. S. GAAP, which requires our management to make estimates, judgments, and assumptions that affect the amounts reported in our consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, see " Management' s Discussion and Analysis of Financial Condition and Results of Operations. " The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities, and equity as of the date of the financial statements, and the amount of revenue and expenses, during the periods presented, that are not readily apparent from other sources. Significant assumptions and estimates used in preparing our consolidated financial statements include those related to determination of fair value of ~~our~~ **the Company' s allowance for uncollectible accounts receivable, excess and obsolete** inventory ~~reserves~~ - **reserve** ~~, common stock and warrants~~ , stock- based compensation **, fair value of right- of- use assets** and the valuation of embedded derivatives. If our assumptions change or if actual circumstances differ from those in our assumptions, our operating results ~~to~~ **could** fall below the expectations of industry or financial analysts and investors, resulting in a decline in the trading price of our common stock. We may be unable to accurately forecast our revenue and appropriately plan for our expenses in the future. Revenue is difficult to forecast with certainty because it depends on a number of factors, some of which are outside of our control, including the volume, timing, and type of orders we receive and increased third party costs or transportation and freight costs. Many of these factors are uncertain and are likely to fluctuate significantly from period to period. We base our expense levels and investment plans on our estimates of revenues and gross margins, and many of our expenses, such as office leases, manufacturing costs and personnel costs, will be relatively fixed in the short term and will increase as we continue to make investments in our business and hire additional personnel. If our revenue forecasts do not cover our planned operating expenses, our business and future operating results will be materially adversely affected. ~~The requirements of being a public company may strain our resources and divert management' s attention.~~ We **have in** ~~are subject to the reporting requirements of the Exchange Act, the Sarbanes- Oxley Act and any rules promulgated thereunder, as well as the rules of NYSE. The requirements of these~~ -- **the** ~~rules~~ **past** and **may in the future identify material weaknesses in** ~~regulations increase our legal and financial compliance costs, make some activities more difficult, time- consuming or~~ **our** ~~costly and increase demand on our systems and resources. The Sarbanes- Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal controls for financial reporting. In order to maintain and, if required, improve our disclosure controls and procedures and~~ internal control over financial reporting **. In order** to ~~meet this standard~~ **maintain effective internal control over financial reporting** , ~~significant resources~~ **we must perform system** and **process evaluations, document our controls and perform testing of our key controls over financial reporting to allow for** management ~~oversight~~ **and our independent public accounting firm to report on the effectiveness of our internal control over financial reporting. In the past, we have identified material weaknesses in our**

internal control over financial reporting which we have remedied. If we, or our independent registered public accounting firm, identify deficiencies in our internal control over financial reporting in the future that are **deemed to** ~~required, and, as a result, management' s attention may~~ be **material weaknesses** ~~diverted from other business concerns. Additionally~~ , **our investors could lose confidence in our reported financial information, we** ~~these rules and regulations make it more difficult and more expensive for us to obtain director and officer liability insurance. We~~ may be required to **restate** ~~accept reduced coverage or incur substantially higher costs to obtain coverage. The increased costs of compliance with public company reporting requirements and our potential failure to satisfy these~~ **those** ~~requirements~~ **financial statements, the market price of our stock may decline and we** could **be subject to lawsuits, sanctions or investigations by regulatory authorities, which would require additional financial and management resources and otherwise could have a** ~~materially~~ -- **material** ~~adversely~~ -- **adverse** ~~affect~~ **effect on** our business, financial condition or results of operations. Certain of our key performance indicators are subject to inherent challenges in measurement, and real or perceived inaccuracies. We track certain key performance indicators, including metrics such as ~~active subscriptions,~~ average **order value** ~~monthly subscription churn, new subscriptions~~ and customer acquisition costs, with internal systems and tools. Estimates or similar metrics published by third parties may differ from our reported key performance indications, due to differences in sources, methodologies, or assumptions. For example, we rely on third- party marketing analytics systems to identify marketing spend by channel, which we then reconcile across a number of systems. In addition, we rely on third- party warehouse and fulfillment providers to communicate the receiving and shipping information that drives active customer count and related data. Our internal systems and tools have a number of limitations, and our methodologies for tracking these metrics may change over time, which could result in unexpected changes to our key performance indicators, including the metrics or estimates that we publicly disclose. While these metrics or estimates are based on what we believe to be reasonable estimates for the applicable period of measurement, there are inherent challenges in measuring our key performance indicators. Some of these challenges include manual reconciliation of information provided by different input systems, resulting in undetected errors. If our key performance indicators are not accurate representations of our business, or if investors do not perceive our key performance indicators to be accurate, or if we discover material inaccuracies with respect to these numbers, our reputation may be significantly harmed, which could have a material adverse effect on our business, financial condition and results of operations. We have a history of losses and we may be unable to achieve or sustain profitability. We expect our operating expenses to increase over the next several years as we increase our advertising, expand into new markets, expand our offerings, hire additional personnel, incur additional expenses related to being a public company and continue to develop features on our ~~website~~ **websites** and mobile applications. In particular, we intend to continue to invest substantial resources to grow and diversify our product offerings and in marketing to acquire new customers. Our operating expenses may also be adversely impacted by increased costs and delays in launching in new markets and expanding fulfillment center capacity, in particular as a result of the COVID- 19 pandemic and other macro- economic conditions. Our future growth and operating performance must eventually offset our operating losses or we may not be able to achieve or sustain profitability. We may fail to manage or integrate acquisitions of, or investments in, new or complementary businesses, facilities, technologies or products, or through strategic alliances. From time to time, we may consider opportunities to acquire or make investments in complementary businesses, facilities, technologies, offerings, or products, or enter into strategic alliances, in order to enhance our capabilities, expand our outsourcing and supplier network, complement our current products or expand the breadth of our offerings. Acquisitions, investments and other strategic alliances involve numerous risks, including: problems integrating the acquired business, facilities, technologies ~~, subscribers~~ , customers, partners or products, issues maintaining uniform standards, procedures, controls and policies; unanticipated costs; diversion of management' s attention from our existing business; adverse effects on existing business relationships with suppliers, manufacturing partners, and retail partners; challenges with entering new markets in which we may have limited or no experience; potential loss of key employees of acquired businesses; and increased legal, accounting and compliance costs. Failure to integrate acquired businesses, facilities, technologies and products effectively could materially and adversely affect our business, financial condition, and results of operations. Our operating flexibility may be limited by our credit facilities and debt instruments. Our revolving credit facility and the indenture governing our 2025 Convertible Notes ~~(the " Notes ")~~ both limit our ability to, among other things: incur or guarantee additional debt; make certain investments and acquisitions; incur certain liens or permit them to exist; enter into certain types of transactions with affiliates; merge or consolidate with another company; and transfer, sell or otherwise dispose of assets, including our cash. In addition, if our stock price does not meet the conversion price of the **2025 Convertible** Notes, then we will have to repay the principal of the **2025 Convertible** Notes in cash, which we may not have available. Our revolving credit facility also contains covenants requiring us to satisfy certain financial covenants. These limitations, requirements and costs may affect our ability to obtain future financing, pursue attractive business opportunities, maintain flexibility in planning for, and reacting to, changes in business conditions, which could have a material adverse effect on our business, financial condition, and results of operations. We may not be able to raise the capital we need to grow our business. In the future, we could be required to raise capital through public or private financing or other arrangements. Such financing may not be available on acceptable terms, or at all, and our failure to raise capital when needed could harm our business. We may sell common stock, convertible securities and other equity securities in one or more transactions at prices and in a manner as we may determine from time to time. If we sell any such securities in subsequent transactions, investors in our common stock may be materially diluted. New investors in such subsequent transactions could gain rights, preferences and privileges senior to those of holders of our common stock. Debt financing, if available, may involve restrictive covenants and could reduce our operational flexibility or profitability. If we cannot raise funds on acceptable terms, we may be forced to raise funds on undesirable terms, or our business may contract or we may be unable to grow our business or respond to competitive pressures, any of which could have a material adverse effect on our business, financial condition, and results of operations. Risks Relating to Ownership of Our Common Stock Our stock price may be volatile or decline regardless of our operating performance. The market price of our common stock may fluctuate significantly or decline in response to numerous factors, many of which are beyond our control, including: actual or anticipated fluctuations in our revenue and results of operations; financial projections we may provide to the public, any changes in these projections or our failure to meet these projections; failure of securities analysts to maintain coverage of BARK, changes in financial estimates or ratings by any securities analysts who follow BARK or our failure to meet the estimates or the expectations of investors; announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures, or capital commitments; changes in operating performance and stock market valuations of other retail or technology companies generally, or those in our industry in particular; price and volume fluctuations in the overall stock market, including as a result of trends in the economy as a whole; trading volume of our common stock; the inclusion, exclusion or removal of our common stock from any indices; changes in members of our Board **of Directors** or management; transactions in our common stock by directors, officers, affiliates and other major investors; lawsuits threatened or filed against us; changes in laws or regulations applicable to our business; changes in our capital structure, such as future issuances of debt or equity securities; short sales, hedging and other derivative transactions involving our capital stock; general economic conditions in the U. S. or global markets; other events or factors, **such as** ~~including those resulting from~~ the COVID- 19 pandemic **, the** war ~~, such as~~ in the Ukraine **, increased inflation, bank failures** , incidents of terrorism or responses to these events; and the other **events or** factors described in this " Risk Factors " section. An active trading market for our common stock may not be sustained. Our common stock is listed on the NYSE under the symbol " BARK. " An active trading market for our common stock may not be sustained. Accordingly, there may not be a liquid trading market in which to sell your shares of our common stock when desired or at acceptable prices. Sales of shares by existing stockholders may cause our stock price to decline. If our existing stockholders sell or indicate an intention to sell substantial amounts of our common stock in the public market, the trading price of our common stock could decline. In addition, shares underlying any outstanding options and restricted stock units will become eligible for sale if exercised or settled, as applicable, and to the extent permitted by the provisions of various vesting agreements and Rule 144 of the Securities Act. All the shares of common stock subject to stock options outstanding and reserved for issuance under our equity incentive plans have been registered on Form S- 8 under the Securities Act and such shares are eligible for sale in the public markets, subject to Rule 144 limitations applicable to affiliates. If these additional shares are sold, or if it is perceived that they will be sold in the public market, the trading price of our common stock could decline. Securities or industry analysts may not publish accurate or favorable research about BARK. The trading market for our common stock is influenced in part by the research and reports that securities or industry analysts may publish about us, our business, our market, or our competitors. If one or more of the analysts initiate research with an unfavorable rating or downgrade our common stock, provide a more favorable recommendation about our competitors, or publish inaccurate or unfavorable research about our business, the price of our common stock could decline. Our certificate of incorporation may prevent us from receiving the benefit of certain corporate opportunities. The " corporate opportunity " doctrine provides that corporate fiduciaries, as part of their duty of loyalty to the corporation and its stockholders, may not take for themselves an opportunity that in fairness should belong to the corporation. Section 122 (17) of the DGCL, however, expressly permits a Delaware corporation to renounce in its certificate of incorporation any interest or expectancy of the corporation in, or in being offered an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation or its officers, directors or stockholders. Article THIRTEENTH of our certificate of incorporation provides that doctrine of corporate opportunity shall not apply with respect to us or any of our officers or directors, or any of their respective affiliates. As a result, we may be not be offered certain corporate opportunities which could be beneficial to our company and our stockholders. While it is difficult at this time to predict how this provision may adversely impact our stockholders, it is possible that we could not be offered the opportunity to participate in a future transaction that might have resulted in a financial benefit to us, which could, in turn, result in a material adverse effect on our business, financial condition, results of operations, or prospects. Delaware law, our certificate of incorporation and bylaws may impede a merger, tender offer, or proxy contest. Our certificate of incorporation and amended and restated bylaws contain provisions that could depress the trading price of our common stock by impeding a change in control of BARK or changes in our management that our stockholders may deem advantageous. These provisions include: a classified board; removal of directors only for cause or a super majority vote; super majority vote required to amend of certain provisions of our certificate of incorporation and any provisions of our bylaws; issuance of " blank check " preferred stock authorized; stockholders may not call special stockholder meetings; stockholder action by written consent prohibited; indemnification of our director and officers; Board **of Directors** is expressly authorized to make, alter, or repeal our bylaws; and advance notice requirements for nominations for election to our Board **of Directors** or for proposing matters that can be acted upon by stockholders at annual stockholder meetings. Substantially all disputes between BARK and our stockholders are subject to exclusive forum provisions. Our certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a breach of fiduciary duty, any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our certificate of incorporation or our bylaws or any action asserting a claim against us that is governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to these provisions. These exclusive- forum provisions may limit a stockholder' s ability to bring a claim in a judicial forum of its choosing for disputes with us or our directors, officers or other employees, which may discourage lawsuits against us and our directors, officers and other employees. This choice of forum provision does not preclude or contract the scope of exclusive federal or concurrent jurisdiction for any actions brought under the Securities Act or the Exchange Act. Accordingly, our exclusive forum provision will not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder, and our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations. We do not intend to pay dividends for the foreseeable future. We currently intend to retain any future earnings to finance the operation and expansion of our business and we do not expect to declare or pay any dividends in the foreseeable future. Moreover, the terms of our revolving credit facility may restrict our ability to pay dividends, and any additional debt we may incur in the future may include similar restrictions. As a result, stockholders must rely on sales of their common stock after price appreciation as the only way to realize any future gains on their investment. Ownership of our stock is concentrated among our current officers, directors and their respective affiliates. Our existing executive officers, directors and their respective affiliates, together as a group, beneficially own a significant amount of the outstanding **shares** of our common stock. This group, if it acts together, could have the ability to influence matters requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation and approval of significant corporate transactions. As a result, this group could, for example, delay or prevent a change in control of BARK and the approval of certain transactions. We may issue additional shares of common stock or other equity securities, which would dilute your ownership interests and could depress the market price of our common stock. We currently have options, RSUs and warrants outstanding that are convertible into shares of our common stock. In addition, our 2025 Convertible Notes are convertible based on outstanding principal balance and accrued interest. We also have the ability to issue equity awards that are convertible into shares of our common stock under our 2021 Equity Incentive Plan and under our Employee Stock Purchase Plan, see ~~footnote~~ **Note** 7 — Debt, and ~~footnote 9~~ **Note 8** — Stock- Based Compensation Plans, to our consolidated financial statements set forth in this annual report on Form 10- K. We may issue additional shares of common stock or other equity securities of equal or senior rank in the future in connection with, among other things, future acquisitions or repayment of outstanding indebtedness, without stockholder approval, in a number of circumstances. Our issuance of additional shares of common stock or other equity securities of equal or senior rank would dilute our existing shareholders and may cause the market price of our common stock to decline. Risks Related to the 2025 Convertible Notes Our obligation to redeem the 2025 Convertible Notes may not protect holders. Our obligation to offer to redeem the 2025 Convertible Notes upon the occurrence of a fundamental change will be triggered only by certain specified transactions. The term " fundamental change " is limited to certain specified transactions and may not include other events that might adversely affect our financial condition or the market value of the 2025 Convertible Notes or our common stock. Our obligation to offer to redeem the new notes upon a fundamental change would not necessarily afford holders of the 2025 Convertible Notes protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us. There is no existing public trading market for the 2025 Convertible Notes. No market for the 2025 Convertible Notes exists and may not develop. Even if a market develops, it may not persist. We do not intend to apply for listing of the 2025 Convertible Notes on any securities exchange or other market. The liquidity of any trading market and the trading price of the 2025 Convertible Notes may be adversely affected by changes in our financial performance or prospects and by changes in the financial performance of or prospects for companies in our industry generally.