Risk Factors Comparison 2024-02-23 to 2023-02-24 Form: 10-K

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Any investment in our securities involves a high degree of risk. Please consider the following risk factors carefully. If any one or more of the following risks were to occur, it could have a material adverse effect on our business, prospects, financial condition and results of operations, and the market price of our securities could decrease significantly. Statements below to the effect that an event could or would harm our business (or have an adverse effect on our business or similar statements) mean that the event could or would have a material adverse effect on our business, prospects, financial condition and results of operations, which in turn could or would have a material adverse effect on the market price of our securities. Many of the risks we face involve more than one type of risk. Consequently, you should carefully read all of the risk factors below, and in any reports we file with the SEC after we file this Form 10- K, before making any decision to acquire or hold our securities. Risks Relating to Our Company and its Operational, Litigation and Regulatory Environment We depend on third- party companies to perform functions critical to our business, and any failure or increased cost on their part could have a material adverse effect on our business. We depend on third- party companies, including third- party carriers **, insurers, warranty providers,** and a large number of independent fulfillment partners whose products we offer for sale on our Website, to perform functions critical to our ability to deliver products and services to our customers on time and at a reasonable cost. We depend on our carriers **, insurers, warranty providers,** and fulfillment partners to perform traditional retail operations such as maintaining inventory, preparing merchandise for shipment to our customers ~~and~~ **,** delivering purchased merchandise on a timely and cost- effective basis **, insuring the products, and offering warranty services associated with products** . We also depend on the delivery and product assembly services that we and they utilize, on the payment processors that facilitate our customers' payments for their purchases, and on other third parties (including SaaS, IaaS, and other cloud- based third- party service providers) over which we have no control, for the operation of our business. Difficulties with any of our significant fulfillment partners or third- party carriers, **insurers, warranty providers,** delivery or product assembly services, payment processors or any of the third- party service providers involved in our business, regardless of the reason, could have a material adverse effect on our financial results, business and prospects. We face intense competition and may not be able to compete successfully against existing or future competitors. The online retail market is evolving rapidly and is intensely competitive. Barriers to entry are minimal, and current and new competitors can launch new websites at a relatively low cost. We currently compete with numerous competitors, including: • online retailers with or without discount departments, including Amazon. com, AliExpress (part of the Alibaba Group), eBay **, Temu** , and Rakuten. com; • online shopping services, including Google Shopping, Facebook, Instagram, and TikTok; • online specialty retailers such as Wayfair, Build. com, Houzz, Hayneedle, Rugs. com, Groupon, **and** World Market ~~, and Zulily~~ ; • furniture specialists including Bob' s Discount Furniture, Havertys, Raymour & Flanigan, At Home, Tuesday Morning, Living Spaces, Nebraska Furniture Mart, RC Willey, and Rooms To Go; • traditional general merchandise and specialty retailers and liquidators including Ashley Furniture, ~~Bed, Bath & Beyond,~~ Best Buy, Big Lots, Costco, Crate and Barrel, Ethan Allen, Gilt, Home Depot, HomeGoods, Hudson' s Bay Company, IKEA, J. C. Penney Company, Kirkland' s, Kohl' s, Lands' End, Lowe' s, Macy' s, Nordstrom ~~, Pier 1 Imports~~ , Pottery Barn, Restoration Hardware, Ross Stores, Saks Fifth Avenue, Sears, T. J. Maxx, Target, Walmart, West Elm, and Williams- Sonoma, all of which also have an online presence; and • online liquidators such as SmartBargains. We expect that existing and future traditional manufacturers and retailers will continue to add or improve their e- commerce offerings, and that our existing and future e- commerce competitors, including Amazon, will continue to increase their offerings, their delivery capabilities, and the ways in which they enable shoppers to purchase goods, including their mobile technology and the voice- activated shopping services offered by Amazon. Further, large marketplace websites and sites which aggregate marketplace sellers with a large product selection are becoming increasingly popular, and we may not be able to place our products on these sites to take advantage of their internal search platforms and some shoppers may begin their searches at these websites rather than utilize traditional search engines at all. Many of our competitors specialize in one or more of the areas in which we offer products. For example, our furniture offerings compete with numerous retail furniture websites and traditional furniture retail specialists. We also face competition from shopping services such as Google Shopping, which offers products from Walmart, Costco, Target and many other retailers. Competition from our competitors, many of whom have longer operating histories, larger customer bases, greater brand recognition, greater access to capital and significantly greater financial, marketing and other resources than we do, affects us and has had and could continue to have a material adverse effect on our financial results, business and prospects. Our business depends on effective marketing, including marketing via email, search engine marketing, influencer marketing, and social media marketing, and our competitors have and may continue to directly increase our marketing costs, may outspend us on marketing **or be more efficient** , and also have and may continue to cause us to decrease certain types of marketing. We depend on effective marketing and customer traffic. We depend on search engine marketing, email, and other e- commerce marketing methods to promote our site and offerings and to generate a substantial portion of our revenue. If a significant portion of our target customers no longer utilize email, or if we are unable to effectively and economically deliver email or marketing materials through other channels to our potential customers, whether for legal, regulatory or other reasons, it would have a material adverse effect on our business. We also rely on social media and influencers for marketing purposes, and anything that limits our ability or our customers' ability or desire to utilize social media could have a material adverse effect on our business. In addition to competing with us for customers, suppliers, and employees, our competitors have and may continue to directly increase our operating costs, by driving up the cost of various forms of online advertising. Furthermore, our competitors may outspend us **or be more efficient** on various forms of advertising or marketing, making our marketing efforts less effective. We may elect to decrease our use of search engine marketing or other forms of marketing from time to time in order to decrease our costs, which may have a material adverse effect on our financial results and business. We may also elect to spend additional amounts on search engine marketing or other forms of marketing from time to time in order to increase traffic to our Website, or to take other strategic actions to increase traffic and / or conversion, and such increased spending may not be effective on a cost- benefit basis, or at all. If we are unable to develop, improve, implement and maintain effective and efficient cost- effective advertising and marketing programs, it would have a material adverse effect on our financial results and business. Numerous potential economic factors, including a recession, other economic downturns, inflation, our ~~increasing~~ exposure to the U. S. housing industry, and the potential for a decrease in consumer spending, have affected and could continue to adversely affect us. Various potential adverse economic conditions, including a recession, other economic downturns, inflation, and weakness in the U. S. housing market, could decrease consumer discretionary spending and further adversely affect our financial performance ~~. Consumer prices for all items rose 6. 5 % percent from December 2021 to December 2022. High inflation rates have led to increased interest rates~~ . We believe that our sales of home- related products are affected by the strength of the U. S. housing industry **and overall consumer sentiment on discretionary goods** . A recession or other economic downturn, in particular in the U. S. housing industry, has ~~already~~ negatively impacted our sales **in the past** , and could have a material adverse effect on our financial results, business, and prospects. Similarly, a substantial portion of the products and services we offer are products or services that consumers may view as discretionary items rather than necessities. As a result, our results of operations are sensitive to changes in macroeconomic conditions that impact consumer spending, including discretionary spending. Difficult macroeconomic conditions also impact our customers' ability to obtain consumer credit. Other factors, including consumer confidence, employment levels, interest rates, fuel and energy costs, tax rates, and consumer debt levels could reduce consumer spending or change consumer purchasing habits. Slowdowns in the U. S. or global economy, or an uncertain economic outlook, could materially adversely affect consumer spending habits, have ~~already~~ negatively impacted our sales **in the past** , and could have a material adverse effect on our financial results, business, and prospects. Tariffs, bans ~~, the spread of illness~~ , or other measures or events that increase the effective price of products or limit our ability to access products we or our suppliers or fulfillment partners import into the United States could have a material adverse effect on our business. We and many of our suppliers and fulfillment partners source a large percentage of the products we offer on our Website from China and other countries. If the United States imposes tariffs or bans on imports, or if other factors that are outside of our control increase the prices of imported products sold on our Website or limit our ability to access products sold on our Website, the increased prices and / or supply chain challenges could have a material adverse effect on our financial results, business and prospects. **Our changing business model and use of the Overstock brand, Bed Bath & Beyond brand, and Beyond brand, could negatively impact our business. We changed our company name from Overstock. com, Inc. to Beyond, Inc., purchased the Bed Bath & Beyond brand, changed our company ticker symbol from OSTK to BYON, and transferred the listing of our common stock from NASDAQ to the NYSE. These changes may cause negative impacts to our business, including customers and shareholders, confusion about our brands, the need for higher promotional discounting or marketing costs to acquire and maintain customers, diversion of the attention of management or key personnel, employee fatigue resulting from implementation efforts, disruptions to existing business relationships, unexpected economic, political, or regulatory risks; or any other unforeseen costs, expenses, losses, disruptions, delays, or negative impacts.** The changing job market, the **changes in our leadership team, the change in our compensation approach, the** loss of key personnel, the changing job structure, or any inability to attract, retain and engage ~~additional~~ key personnel could affect our ability to successfully grow our business. Our performance is substantially dependent on the continued service and performance of our senior management **, our board of directors,** and other key personnel. ~~Our~~ **We underwent significant changes to our executive management team and our board of directors in 2023, with certain key positions still remaining open. We also underwent changes to our workforce in 2023 when we had a reduction in force. We adjusted our approach to equity compensation provided to our executives from a time- based approach to a** performance ~~also depends on~~ **- based approach. Uncertainties, including any substantial changes in leadership, or any negative impacts associated with performance- based compensation, may cause employees to seek other opportunities or impair** our ability to **recruit new** ~~retain and motivate our officers and key~~ employees. **With** ~~Given the current labor migration trends in the U. S., and~~ more businesses allowing employees to work remotely, we are forced to compete with businesses in other locations and states to attract and retain key employees. **Currently** ~~We recently announced that under our FORWARD (Future of Remote Work and Re- entry Design) Plan~~ , most of our local workforce ~~will increase their~~ **works a hybrid schedule, where they work** onsite ~~workdays to~~ three days each week and perform the remaining workdays in that week remotely. ~~This hybrid~~ **We are planning to sell our corporate headquarters, which if completed, could result in more remote work. The changes in leadership, the reduction in force, the changed approach to performance- based compensation, and the uncertainty of the future** job structure ~~for most of our workforce, with increased time onsite,~~ could create consequences such as a lack of productivity, a lack of engagement, employee dissatisfaction, and employee fatigue ~~. Some~~ **and could result in** key employees **finding other employers** ~~may leave to work for businesses that offer full- time remote work schedules, full- time onsite work schedules, or for businesses they otherwise find~~ more attractive **than working for our Company** . The loss of, or the inability to retain or engage the services of key employees for any reason, could harm our business. Our future success depends on our ability to identify, attract, hire, train, engage, retain, and motivate highly- skilled personnel. Our failure to attract, retain, and engage the personnel necessary to successfully operate our business could have a material adverse effect on our financial results, business and prospects. We rely upon paid and natural search engines to rank our product offerings, and our financial results may suffer if we are unable to maintain our prior rankings in natural searches. We rely on paid and natural search engines to attract consumer interest in our product offerings, including Google, Bing, and Yahoo!. Changes to their ranking algorithms and competition from other retailers to attract consumer interest may adversely affect our product offerings in paid and / or natural searches, and we may at times be subject to ranking penalties if the operators of search engines believe we are not in compliance with their guidelines. Search engine companies change their natural search engine algorithms periodically and online retailers compete to rank well with these search engine companies. Our ranking in natural searches may be adversely affected by those changes, as has occurred from time to time, which has led us to pursue revenue growth in other more expensive marketing channels. Google' s search engine is dominant in our business and has historically been a significant source of traffic to our website, much of it at essentially no incremental cost to us. Search engine companies may also determine that we are not in compliance with their guidelines from time to time, as has occurred in the past, and they may penalize us in their search algorithms as a result. In recent years, we have experienced declines in our rankings in Google' s natural search engine, which has required us to utilize more expensive marketing channels or otherwise compensate for the loss of some of the natural search traffic. Any future declines in our rankings in Google' s natural search engine could have a material adverse effect on our business. If we are not profitable and / or are unable to generate sufficient positive cash flow from operations, our ability to continue in business will depend on our ability to raise additional capital, obtain financing or monetize significant assets, and we may be unable to do so. At December 31, ~~2022~~ **2023 ,** our accumulated deficit was $ ~~173~~ **481** . ~~8~~ **7** million. We experienced significant losses in years leading up to 2020. Although our financial results were significantly better in 2020 and 2021, we incurred additional losses in 2022 **and 2023,** which included significant non- cash losses on our equity method investments **and a write- down loss on our corporate headquarters** . If we are unable to successfully manage our business in the future, our ability to continue in business could depend on our ability to raise sufficient additional capital, obtain sufficient financing, or sell or otherwise monetize significant assets such as our corporate headquarters **which is currently being marketed for sale** . Additionally, we may not be able to raise capital on acceptable terms or at all. The occurrence of any of the foregoing risks would have a material adverse effect on our financial results, business and prospects ~~. Remote or hybrid work schedules, resulting from future pandemics or otherwise, could have technology and security consequences, could result in policies, mandates, or regulations that apply unevenly to businesses, could cause employee fatigue, and could negatively impact our operations. Many of our employees and contractors continue to work remotely or on a hybrid work schedule. Additional risks are inherent when employees and contractors work remotely, including risks that third- party Internet and phone service providers may not provide adequate services for employees and contractors to perform their responsibilities, risks that hardware, software, or other technological problems or failures could prevent employees or contractors from performing their responsibilities and could take an excessive amount of time to resolve and risks that employees and contractors may not be trained as effectively or monitored as closely from remote locations, creating greater risks for the security of confidential information. Additionally, government policies, mandates, or regulations created in response to the future spread of disease or illness could apply unevenly to businesses, whether based on business size, industry, or some other reason, which could make certain businesses less desirable for employment and could impair our ability to attract and / or retain key employees. Employees may leave to work for businesses they find more attractive. Any such occurrences could have a material negative impact on the business~~ . Our business depends on the Internet, our infrastructure and transaction- processing systems. We are completely dependent on our infrastructure and on the availability, reliability and security of the Internet and related systems. Although we have migrated and continue to migrate some of our computer systems and operations to the public cloud, a substantial majority of our computer and communications infrastructure is running in our private cloud on hardware that is located at a single ~~Overstock~~ **Beyond** owned and operated facility **which we are currently marketing for sale** . Our systems and operations are vulnerable to damage or interruption from fire, flood, power loss, telecommunications failure, terrorist attacks, cyber- attacks, acts of war, break- ins, earthquake and similar events. Our back- up facility by itself is not adequate to support fulfillment of sales orders. Our servers and applications are vulnerable to malware, physical or electronic break- ins, internal sabotage, and other disruptions, the occurrence of any of which could lead to interruptions, delays, loss of critical data or the inability to accept and fulfill customer orders. Any internal or critical third- party system interruption that results in the unavailability of our Website or our mobile app or reduced performance of our transaction systems could interrupt or substantially reduce our ability to conduct our business. We have experienced periodic systems interruptions due to server failure, application failure, power failure and intentional cyber- attacks in the past, and may experience additional interruptions or failures in the future. Any failure or impairment of our infrastructure or of the availability of the Internet or related systems **caused by any source, including the transfer of our hardware to another location if we sell the facility where it is now located,** could have a material adverse effect on our financial results, business and prospects. In addition, the occurrence of any event that would adversely affect e- commerce or discourage or prevent consumers from shopping online or via mobile apps could significantly decrease the volume of our sales. We are subject to ~~cyber security~~ **cybersecurity** risks and risks of data loss or other security breaches. Our business involves the storage and transmission of users' proprietary information, and security breaches could expose us to a risk of loss or misuse of this information, and to resulting claims, fines, and litigation. We have developed certain software products to assist with the operation and management of our business **,** which could contain flaws or vulnerabilities that could present ~~cyber security~~ **cybersecurity** - related risks ~~,~~ **or result in** data loss, other security breaches, or damage to our business, our suppliers, or our customers. We have been subjected to a variety of cyber- attacks, which have increased in number and variety over time. We believe our systems are probed by potential hackers virtually 24 / 7, and we expect the problem will continue to grow worse over time. Cyber- attacks may target us, our customers, our suppliers, banks, credit card processors, delivery services, public cloud providers, e- commerce in general or the communication infrastructure on which we depend. Any flaws or vulnerabilities in the software we created or technologies designed to prevent attacks on our systems and other third- party systems, compromise of our security, data breaches, malfunctions, or errors, could result in a violation of applicable privacy and other laws, significant legal and financial exposure, damage to our reputation, and a loss of confidence in our security measures, any of which could have a material adverse effect on our financial results and business. Moreover, any insurance coverage we may carry may be inadequate to cover the expenses and other potential financial exposure we could face as a result of a cyber- attack or data breach. We ~~recently reversed~~ **have significant deferred tax assets and may not be able to realize** ~~the~~ **these assets in the future. We have established a** valuation allowance for ~~a significant portion of~~ our **net** deferred tax assets, **primarily due** ~~and we may not be able~~ to ~~realize these assets in the~~ **recent operating losses, forecasted near- term losses, and uncertainty regarding our** future **taxable income** ~~. Our deferred tax assets may also be subject to additional valuation allowances, which could adversely affect our operating results~~ . Determining whether a valuation allowance for deferred tax assets is appropriate requires judgment and an evaluation of all positive and negative evidence. At each reporting period, we assess the need for, or the sufficiency of a valuation allowance against deferred tax assets. ~~During 2021, based~~ **We intend to maintain a valuation allowance** on **our** ~~the weight of all the positive and negative evidence, we concluded that it was more likely than not that we will realize certain federal and state~~ net deferred tax assets **until** ~~based on future taxable income. Therefore, we reversed the~~ **there** ~~valuation~~ **is sufficient evidence to support the reversal of all or some portion of the** allowance ~~on those deferred tax assets during 2021. We maintain a valuation allowance against our deferred tax assets for capital losses and the state of Utah where not supported by future reversals of taxable temporary differences, because of the uncertainty regarding the realizability of these deferred tax assets. Our conclusion that it is more likely than not that we will realize certain federal and state net deferred tax assets is primarily based on our estimate of future taxable income. Our estimate of future taxable income is based on internal projections which primarily consider historical performance, but also include various internal estimates and assumptions and certain external data. We believe all of these inputs to be reasonable, although inherently subject to judgment. If actual results differ significantly from these estimates of future taxable income, we may need to reestablish a valuation allowance for some or all of our deferred tax assets. Establishing an allowance on our net deferred tax assets could have a material adverse effect on our financial condition and operating results~~ . We may be required to recognize losses relating to our equity method investments. At December 31, ~~2022~~ **2023** , we held equity method investments totaling approximately $ ~~296~~ **155** . ~~3~~ **9** million. The underlying equity interests are in entities that are in the startup or development stages. Equity method securities are inherently risky because we do not have the ability to influence business decisions. Further, these investments are inherently risky because the markets for the technologies or products these companies are developing are typically in the early stages and may never materialize. Since these investments are in companies that are in the early startup or development stages, even if their technology or products are viable, they may not be able to obtain the capital or resources necessary to successfully bring their technology or products to market. We have recognized losses related to these equity method securities in the past and may in the future recognize additional losses. Additionally, due to tax law limitations around deductibility of capital and investment losses, we may not be able to recognize a tax benefit on these losses when they occur. Any such loss could be material and could have a material adverse effect on our financial results. If governmental entities or providers of consumer devices and internet browsers further restrict or regulate the use of" cookie" tracking technologies, the amount or accuracy of online user information we collect could decrease, which could harm our business and operating results. Various federal, state and international governmental entities have enacted or are considering enacting legislation or regulations that could significantly restrict the ability of companies to use proprietary or third- party" cookies" and other methods of online tracking for behavioral advertising. For example, some governmental agencies have regulated 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 plan to implement methods of making it easier for Internet users to prevent the placement of cookies, to block other tracking technologies or to require new permissions from users for certain activities, which have impacted us in the past and have the potential to significantly reduce the effectiveness of such practices and technologies in the future **. For example, in January 2024, Google began testing a new feature in Chrome that limits cross- site tracking by restricting website access to third- party cookies by default, with a goal of phasing out third- party cookies for everyone in the second half of 2024** . Any further restriction on the use of cookies and other online tracking and advertising practices could limit our ability to effectively retain existing customers or acquire new customers and consequently, materially adversely affect our business, financial condition and operating results. If the legal, regulatory, or tax treatment of our company changes adversely, it could impact our ability to conduct business and, accordingly, our financial results. New or revised laws, regulations, or court decisions may subject us to additional requirements and new disclosures that could increase the cost of doing business, increase scrutiny for the way decisions are made, decrease our revenues, or impact our business model. For example, the SEC has proposed rules that would affect publicly- traded company disclosure obligations in the areas of climate change ~~and cyber security~~ which, if approved, would increase our costs of doing business and expose us to potential compliance risk. In addition, new or revised tax regulations or court decisions may subject us or our customers to additional taxes **. For example, various jurisdictions around the world have enacted or are considering revenue- based taxes such as digital services taxes and other targeted taxes, which could lead to inconsistent and potentially overlapping international tax regimes. The Organization for Economic Cooperation and Development (OECD) is coordinating negotiations among more than 140 countries with the goal of achieving consensus around substantial changes to international tax policies, including the implementation of a minimum global effective tax rate of 15 %** . Other new or revised legal, regulatory, or tax treatment could expose us to additional risk, increase the cost of doing business online, and increase internal costs necessary to capture data, report data, and collect and remit taxes ~~. For example, the Tax Cuts and Jobs Act of 2017 eliminated the option to immediately deduct research and development expenditures in 2022, and instead required them to be amortized in future years. This new requirement caused us to utilize significant federal and state net operating loss carryforwards in the current year. We expect to continue to utilize federal and state tax attributes at a faster rate than our financial statement earnings in the future and there may be increases to cash taxes paid unless legislation is passed that would defer, repeal, or otherwise modify these new requirements~~ . Any of these items could have a material adverse effect on our business and financial results. We and certain of our former and current officers and directors are named in shareholder class action lawsuits and shareholder derivative lawsuits, which could require significant additional management time and attention, result in significant additional legal expenses or result in government enforcement actions. We and certain of our former and current officers and directors are named in shareholder class action lawsuits and shareholder derivative lawsuits, and may become subject to further litigation, government investigations or proceedings arising therefrom. The pending litigation and any future litigation, investigations or other actions that may be filed or initiated against us or our current or former officers or directors may be time consuming and expensive. We cannot predict what losses, if any, we may incur in these litigation matters, and expect to incur significant legal expenditures in defending and responding to these litigation matters. Any such legal proceedings, if decided adversely to us, could result in significant monetary damages, penalties and reputational harm, and will likely involve significant defense and other costs. We have entered into indemnification agreements with each of our directors and certain of our officers, requiring us to indemnify them. Further, our insurance may not cover all claims that have been or may be brought against us, and insurance coverage may not continue to be available to us at a reasonable cost. As a result, we may be exposed to substantial uninsured or under- insured liabilities, including pursuant to our indemnification obligations, which could materially adversely affect our business, prospects, results of operations and financial condition. We and tZERO, in which we own a direct minority interest, are both the subjects of, and parties to, investigations by the SEC Division of Enforcement, which has required us to expend significant financial and legal resources. The resolution of those investigations may have a material adverse effect on our business, financial condition, results of operations and cash flows. As previously disclosed, in October 2019, we received a subpoena from the SEC requiring us to produce documents and other information related to the Series A- 1 Preferred stock dividend we announced to stockholders in June 2019 and requesting copies of 10b5- 1 plans entered into by certain officers and directors. In December 2019, we received a subpoena from the SEC requesting our insider trading policies and certain employment and consulting agreements. We also received requests from the SEC for our communications with our former Chief Executive Officer and Director, Patrick Byrne, and the matters referenced in the December 2019 subpoenas. In January 2021, we received a subpoena from the SEC requesting information regarding our Retail guidance in 2019 and certain communications with current and former executives, board members, and investors. We continue to cooperate with the SEC in these matters. Although we believe that we have fully complied with all relevant laws and regulations, there can be no assurance that the SEC will not commence an enforcement action against us **,** or members of our **management or former** management, or as to the ultimate resolution of any enforcement action that the SEC may decide to bring. Under applicable law, the SEC has the ability to impose significant sanctions on companies and individuals who are found to have violated the provisions of applicable federal securities laws, including cease and desist orders, civil money penalties, and barring individuals from serving as directors or officers of public companies. We have expended significant financial and legal resources responding to the SEC subpoena and such responses have required a significant amount of ~~the~~ time and attention of our senior management and personnel. Defending any enforcement action brought by the SEC against us or members of our management would involve further significant expenditures and the resolution of any such enforcement action could have a material adverse effect on our business, financial condition, results of operations and cash flows. Additionally, the outcome of any investigation related to the activities of tZERO could result in negative publicity for tZERO or us or limit the products which tZERO may be able to offer, which may have an adverse effect on the current and future business ventures of tZERO or us. If we do not successfully optimize and operate our distribution center, warehouse, and customer service operations, our business could be harmed. We have expanded, contracted, and otherwise modified our distribution center, warehouse, and customer service operations from time to time in the past, and expect that we will continue to do so. If we do not successfully optimize and operate our distribution center, warehouse, and customer service operations, it could significantly limit our ability to meet customer demand, customer shipping or return time expectations, or result in excessive costs and expenses for the size of our business. Because it is difficult to predict demand, we may not be able to manage our ~~facilities~~ **operations** in an optimal way, which may result in excess or insufficient inventory or warehousing capacity. Our fulfillment and customer service centers may also fail to staff at optimal levels. Our failure to manage our warehouse operations, distribution centers or our fulfillment and customer service centers optimally could adversely affect our financial results and customer experience and could have a material adverse effect on our financial results, business and prospects. **If we fail to effectively utilize technological advancements, including in artificial intelligence, our business and financial performance could be negatively impacted. Our industry is highly competitive and is undergoing rapid changes due to technological advancement in areas such as artificial intelligence (AI). Our future success depends in part on our ability to effectively utilize these technological advancements. Our competitors may outpace us in incorporating AI into their product offerings and engagement with customers, which could affect our competitiveness and operational outcomes. Our efforts to utilize these technological advancements may not be successful, may result in substantial integration and maintenance costs, and may expose us to additional risks. Personal data within any dataset, collected from our business, is vulnerable to unintentional dissemination or intentional destruction, which could lead to heightened business and security costs, reputational damage, administrative penalties, or legal claims defense expenses. The content, analyses, or recommendations generated by AI programs, if deficient, inaccurate, or biased, could adversely impact our business, financial condition, and operational results, as well as our reputation. Moreover, ethical concerns associated with AI could lead to brand damage, competitive disadvantages, or legal repercussions. Any problems with our implementation or use of AI or other technological advancements could negatively impact our business or results of our operations.** Global conflict ~~, increasing tensions between the United States and Russia, the United States and China, and other effects of the ongoing conflict in Ukraine,~~ could negatively impact our business, results of operations, and financial condition. Global conflict could increase costs and limit availability of fuel, energy, and other resources we depend upon for our business operations and could also limit product assortment availability. For example, while we do not operate in Russia or Ukraine, the increasing tensions between the United States and Russia and the other effects of the ongoing conflict in Ukraine, have resulted in many broader economic impacts such as the United States imposing sanctions and bans against Russia and Russian products imported into the United States. Such sanctions and bans have impacted and may continue to impact commodity pricing such as fuel and energy costs, making it more expensive for us and our partners to deliver products to our customers. Further, we and many of our suppliers and fulfillment partners source a large percentage of the products we offer on our Website from China. Relations between the United States and China have become increasingly strained and if tensions were to escalate, it could limit our ability to provide a full assortment of furniture and home furnishings on our Website. Sanctions, bans, trade restrictions, or other economic actions in response to ~~the~~ present or future ~~conflict~~ **conflicts** ~~in Ukraine, China, or in response to any other global conflict~~ could result in an increase in costs, further disruptions to our supply chain, and a lack of consumer confidence resulting in reduced demand. While the extent of such items is not presently known, any of them could negatively impact our business, results of operations, and financial condition. We are partially self- insured with respect to our employees' health insurance. If the actual costs of these claims exceed the amounts we have accrued for them, we would incur additional expense. Since January 1, 2017, we have been partially self- insured with respect to our employees' health insurance, except to the extent of stop- loss coverage that limits our losses both on a per employee basis and an aggregate basis. The actual costs of our employees' health insurance claims could exceed our estimates of those costs for a number of reasons, including more claims or larger claims than we expect, and increases in the costs of healthcare generally. If the actual cost of our employees' health insurance claims and related expenses exceeds the amounts we have accrued, we may be required to record additional charges for these claims and / or to establish additional cash reserves, which could have a material adverse effect on our financial results, business and prospects. We may be unable to protect our proprietary technology and to obtain trademark protection for our marks. Our success depends to a significant degree upon the protection of our software and other proprietary intellectual property rights. We rely on a combination of laws and contractual restrictions with our employees, customers, suppliers, affiliates, and others to establish and protect our proprietary rights, including the law pertaining to trade secrets. Despite these precautions, it may be possible for a third party to copy or otherwise obtain and use our intellectual property or trade secrets without authorization. In addition, we cannot ensure that others will not independently develop similar intellectual property. Third parties have in the past recruited and may in the future recruit our employees who have had access to our proprietary technologies, processes and operations. These recruiting efforts expose us to the risk that such employees and those hiring them will misappropriate and exploit our intellectual property and trade secrets. We may be unable to protect against such risks, in the United States or elsewhere, which could have a material adverse effect on our business. Although we have registered and are pursuing the registration of our key trademarks in the United States and some other countries, some of our trade names may not be eligible to receive registered trademark protection. In addition, effective trademark protection may not be available or we may not seek protection in every country in which we market or sell our products and services, including in the United States. Our competitors might adopt product or service marks like our marks or might try to prevent us from using our marks. Any claim by another party against us, or customer confusion related to our trademarks, or our failure to obtain trademark registration, could have a material adverse effect on our financial results, business and prospects. We are currently subject to claims that we have infringed intellectual property rights of third parties and may be subjected to additional infringement claims in the future. We are currently and may in the future be subject to claims that we have infringed the intellectual property rights of others, by offering allegedly infringing products or otherwise. We have contested and expect to continue to contest claims we consider unfounded rather than settling such claims, even when we expect the costs of contesting the claims could potentially exceed the cost of settlement. Any claims may result in significant expenditure of our financial and managerial resources and may result in us making significant damages or settlement payments or changes to our business. We could be prohibited from using software or business processes, or required to obtain licenses from third parties, which could be expensive or unavailable. Any such difficulties could have a material adverse effect on our financial results, business and prospects. We depend on our suppliers' and fulfillment partners' representations regarding product safety, content and quality, product compliance with various laws and regulations, including registration and / or reporting obligations, and for proper labeling of products. We rely on our suppliers' and fulfillment partners' representations of product safety, content and quality, product compliance with various laws and regulations, including registration and / or reporting obligations, and proper labeling of products. Issues or concerns regarding product safety, compliance, registration and / or reporting, labeling, content or quality could result in consumer or governmental claims and could adversely affect our financial results and business. Any indemnity agreement we may have with a supplier or fulfillment partner of a product may be inadequate or inapplicable, and any insurance coverage we may carry may be inadequate. Even unsuccessful claims could result in the expenditure of funds and management time and could have a negative impact on our business. The occurrence of any of the foregoing could have a material adverse effect on our financial results, business and prospects. We have an evolving business model, which increases the complexity of our business. In prior years we added additional types of services and product offerings and in some cases, we modified or discontinued those offerings, and in some cases have re- launched offerings we had previously terminated. We ~~may continue to try to~~ **are expanding the types of products and services that we** offer ~~additional types of products~~ **, and accordingly may further expand** ~~or~~ **our** ~~services~~ **offerings in the future** , and we do not know whether any of them will be successful. From time to time **,** we have also modified aspects of our business model relating to our product mix and the mix of direct / partner sourcing of the products we offer. ~~We recently~~ **For example, we** eliminated our assortment of non- home goods offered for sale on our Website ~~in order~~ to increase our brand association with" home" ~~expertise~~ **which resulted in reduced revenues, and we subsequently determined to offer non- home goods through another channel** . In addition, we continue to experiment with new technologies to enhance the customer experience and iterate on delivery of new features. The additions and modifications to our business have increased the complexity of our business and impacted our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions. ~~The elimination of non~~ **Further, our efforts to right** - **size** ~~home goods has resulted in reduced revenues which we have not yet been able to fully offset. Further,~~ our **cost structure** ~~efforts to promote a culture of innovation~~

~~amongst our technologists in an~~ **and create a more flexible technology stack** ~~attempt to stay ahead of the competition~~ may result in the introduction of technologies that are less mature or stable **,** which could cause problems in our website or back- end logistics systems. ~~Future additions to or modifications of our business are likely to have similar effects.~~ Further, any new business **, products or services** , technology, or website we launch that is not favorably received by consumers could damage our reputation or our brand. The occurrence of any of the foregoing could have a material adverse effect on our financial results, business, prospects, and the trading prices of our securities. If Pelion is not successful in managing the Medici Ventures, L. P. fund or has to resign if there is a change in the interpretation or application of the Investment Advisers Act of 1940 (the" Advisers Act"), we would be unable to realize the anticipated benefits of this arrangement. As the general partner of the Medici Ventures, L. P. fund, Pelion has control over the limited partnership and its activities, including day- to- day operations and investment decisions. Pelion is able to sell investments of the limited partnership at any time, make additional investments, modify, amend or change existing investments, make new investments and otherwise control the activities of the limited partnership. The success of the Medici Ventures, L. P. fund depends on Pelion' s ability to successfully manage the activities of the Medici Ventures, L. P. fund portfolio companies and its existing and future portfolio company investments. Pelion may not be successful in managing these investments and we may not receive the benefits we anticipate of the transaction with Pelion. Moreover, even if successful in managing the Partnership, Pelion has the right to withdraw as general partner under certain circumstances, including certain changes in Pelion' s status under the Advisers Act. The occurrence of such an event is beyond our control, and, as a result, there can be no assurance that Pelion will remain as general partner for the term contemplated. If Pelion is no longer serving as the general partner, we will have the right under the partnership agreement to appoint a new general partner; however, it may not be possible to accomplish this in a timely manner, which could result in the termination of the partnership. Even if a new general partner is appointed in a timely manner, it may be unable to manage the activities of the Medici Ventures, L. P. fund and its portfolio company investments, which would prevent us from receiving the anticipated benefits of the partnership. Our international business efforts could adversely affect us. We sell products in international markets **and are seeking to expand our international sales** . International sales and transactions are subject to inherent risks and challenges that could adversely affect us, including: • the need to develop new supplier and manufacturer relationships **and create new logistics capabilities** ; • the need to comply with additional U. S. and foreign laws and regulations; • changes in international laws, regulatory requirements, taxes and tariffs; • our limited experience with different local cultures and standards; • geopolitical events, such as war and terrorist attacks; • the risk that the products we offer may not appeal to customers in international markets, whether due to the products themselves, the time to deliver, a lack of brand recognition, or another reason; and • the additional resources and management attention required for such expansion. Our international business could expose us to penalties for non- compliance with laws applicable to international business and trade, including the U. S. Foreign Corrupt Practices Act, which could have a material adverse effect on our business. Foreign data protection, privacy and other laws and regulations are different and often more restrictive than those in the United States. Compliance with such laws and regulations will result in additional costs and may necessitate changes to our business practices, which may adversely affect our business. A lack of brand recognition, increased costs associated with shipping products cross- border, increased times to deliver products to customers, or other matters that may reduce customer demand, could adversely affect our business. To the extent that we make purchases or sales denominated in foreign currencies, we would have foreign currency risks, which could have a material adverse effect on our financial results, business and prospects. Risks Relating to Our Common Stock The trading price of our common stock may be adversely affected by short- selling activities involving our common stock. The trading price of our common stock has been and may continue to be volatile. Our stock price fluctuations may be due in part to short- selling activity related to our common stock. The practice of short- selling activity may adversely affect our common stock price, which in turn could adversely affect our ability to raise capital and could have a material adverse effect on our financial results, business and prospects. Significant fluctuations in our quarterly operating results may adversely affect the market prices of our common stock, and you may lose all or a part of your investment. Our revenues and operating results have varied in the past and may continue to vary significantly from quarter to quarter due to a number of factors, many of which are outside our control. In addition to the other risk factors described in this report, factors that have caused and / or could cause our quarterly operating results to fluctuate and in turn affect the market prices of our common stock include: • increases in the cost of advertising and changes in our sales and marketing expenditures; • our inability to retain existing customers or encourage repeat purchases; • the extent to which our existing and future marketing campaigns are successful; • price competition, particularly in the costs of marketing and product pricing; • the amount and timing of operating costs and capital expenditures; • the amount and timing of our purchases of inventory; • our inability to manage distribution operations or provide adequate levels of customer service; • increases in the cost of fuel, transportation or distribution; • our inability to implement technology changes or integrate operations and technologies from acquisitions or other business combinations; • our efforts to offer new lines of products and services; • our inability to attract users to our website; and • losses associated with our equity method investments. Any of the foregoing could have a material adverse effect on our financial results and business and our ability to raise capital and could have a material adverse effect on the holders of our common stock. Future sales or other distributions of our stock may depress our stock price or subject us to limitations on our ability to use our net operating and tax credit carryforwards. Sales or other distributions of a substantial number of shares of our common stock, in the public market or otherwise, by us or by a significant stockholder, has in the past and could in the future, depress the trading price of our common stock and impair our ability to raise capital through the sale of additional equity securities. The transfer of ownership of a significant portion of our outstanding shares of common stock in the public market or otherwise, by us or by a significant stockholder, within a three- year period could adversely affect our ability to use our net operating losses and tax credit carryforwards to offset future taxable net income. In addition, we may issue additional shares of our common or preferred stock from time to time in the future in amounts that may be significant. We have sold common stock including under" at the market" sales agreement and in follow- on underwritten offerings in the past and may do so in the future. We also previously issued a class of preferred stock that was publicly traded , and may in the future issue preferred stock that is publicly traded. The sale of substantial amounts of our common or preferred stock, by us or a significant stockholder, or the perception that these sales may occur, could adversely affect the trading prices of our securities or subject us to limitations on our ability to use our net operating and tax credit carryforwards. Anti- takeover provisions contained in our amended and restated certificate of incorporation and amended and restated bylaws, and provisions of Delaware law, could impair a takeover attempt. Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain provisions which could have the effect of rendering more difficult, delaying, or preventing an acquisition deemed undesirable by our Board of Directors. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws include provisions: • limiting the liability of, and providing indemnification to, our directors and officers; • limiting the ability of our stockholders to call and bring business before special meetings; • providing that our Board of Directors is classified into three classes of directors with staggered three- year terms; • only permitting the Board of Directors to fix the number of directors and to fill vacancies; • prohibiting cumulative voting in the election of directors; • prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders; • requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our Board of Directors; • controlling the procedures for the conduct and scheduling of Board of Directors and stockholder meetings; and • designating a state court located in the State of Delaware as the sole and exclusive forum for specified matters. These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management. Any provision of our amended and restated certificate of incorporation, amended and restated bylaws or Delaware law that has the effect of delaying, preventing or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock or other securities and could also affect the price that some investors are willing to pay for our common stock or other securities. We are subject to the risk of possibly becoming an investment company under the Investment Company Act. The Investment Company Act regulates certain companies that invest in, hold or trade securities. Primarily as a result of a portion of our assets consisting of indirectly- held minority investment positions through the Medici Ventures, L. P. fund, we are subject to the risk of inadvertently becoming an investment company. Because registration under the Investment Company Act would make it impractical for us to operate our business, we need to avoid becoming subject to the registration requirements of the Investment Company Act. To do so, we may structure transactions in a less advantageous manner than if we did not have Investment Company Act concerns, or we may avoid otherwise economically desirable transactions and / or strategic initiatives due to those concerns. In addition, events beyond our control, including significant appreciation or depreciation in the value of certain of our holdings or adverse developments with respect to our ownership of certain of our subsidiaries, could result in us inadvertently becoming an investment company. If it were established that we were an investment company, there would be a risk, among other material adverse consequences, that we could become subject to monetary penalties or injunctive relief, or both, in an action brought by the SEC, that we would be unable to enforce contracts with third parties or that third parties could seek to obtain rescission of transactions with us undertaken during the period it was established that we were an unregistered investment company. If it were established that we were an investment company, it would have a material adverse effect on our business and financial operations and our ability to continue our business.