Rocker Pays $5 Million to Overstock.com to Settle Lawsuit

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SALT LAKE CITY, Dec 08, 2009 /PRNewswire-FirstCall via COMTEX/ -- In the news release, Rocker Pays $5 Million to Overstock.com to Settle Lawsuit, issued 08-Dec-2009 by Overstock.com, Inc. over PR Newswire, we are advised by the company that the first paragraph, first sentence, should read "paid" rather than "will pay." Also, the third paragraph, first sentence, should read "SEC would now institute a pre-borrow requirement); and Rocker Partners has paid Overstock" rather than "SEC would not institute a pre-borrow requirement); and Rocker Partners is paying Overstock" as originally issued inadvertently. The complete, corrected release follows:

Rocker Pays $5 Million to Overstock.com to Settle Lawsuit

Overstock.com, Inc. (Nasdaq: OSTK) today announced that Rocker Partners (now known as Copper River Partners) paid $5 million to Overstock.com to settle Overstock's claims against the remaining defendants in its case against Rocker Partners, David Rocker, Marc Cohodes, and the management companies and hedge funds they controlled and advised. The defendants have agreed to dismiss their cross-complaint against Overstock.com and Patrick Byrne. Below is a letter from Patrick Byrne, the company's Chairman and CEO, commenting on the settlement (see our story at DeepCapture.com for full details).

Dear Owner:

The good guys won.

I announced Overstock's lawsuit against Rocker in an August 12, 2005 conference call I titled, "The Miscreants' Ball". In that call (and in subsequent elaboration on DeepCapture.com) I claimed that a network of dirty Wall Street players was engineering modern bear raids, destroying companies and destabilizing the system. I claimed that the network of hedge fund manipulators and compliant reporters intersected in a dirty journalist named Jim Cramer. In the network, I claimed, were hedge funds such as David Rocker's; putatively independent research firms like Gradient which essentially took dictation from hedge funds; a small group of financial journalists such as Herb Greenberg and Carol Remond who, it appears, also took assignments from this hedge fund network; Milberg Weiss (a plaintiff's class action law firm which was coordinating its lawsuits with these bear raids); and Eliot Spitzer (whose investigations as New York's Attorney General mirrored the trading activities of these hedge funds, which were among his largest backers). In addition, I said that the SEC was saying grace over all of this because they had become hopelessly "captured" by Wall Street's worst elements.

Since then, the SEC's turn-a-blind-eye deference towards Wall Street has been revealed by the Aguirre and Madoff-Markopoulis affairs (if not much more); Milberg Weiss imploded under DOJ indictments and its leaders were jailed; Jim Cramer was exposed on national TV for the scoundrel he is; Eliot Spitzer was also exposed (but not yet, I believe, for his real connection to this crew); Herb Greenberg and others of the journalists I named have crawled under rocks (or gone to work for the hedge fund network for which I had so implausibly claimed they were shilling); David Rocker's hedge fund melted down (thanks, according to DowJones, to the SEC finally closing the gaping option market maker loophole against which Overstock had been lobbying for three years - if only, the SEC would now institute a pre-borrow requirement); and Rocker Partners has paid Overstock $5 million (that is on top of Gradient's earlier retraction and apology, and any monies Gradient paid which I cannot disclose).

So let's score that one for the good guys.

What is of vastly greater significance than this $5 million payment, however, is an examination of the cover-up conducted by elements of the New York financial press. Taking the lead was CNBC, which spent a great deal of airtime downplaying the significance of this suit, vilifying me, and smearing Overstock. For example, though less than 1/4 of the Miscreants' Ball conference call had even been about Overstock, and the remaining 3/4 concerned the modern bear raid, CNBC aggressively distorted the former and refused to mention (or allow mention of) the latter. This pattern was followed with suspicious alacrity by some of the more prominent members of the New York financial press, some of whom (e.g., Bethany McLean) saw some public emails which demonstrated precisely the relationship I had suggested, and some of whom (e.g., Herb Greenberg, Joe Nocera, and Dan Calaruso) were later secretly taped trying to persuade other journalists to engage in a cover-up. Ultimately, I resorted to creating a website of investigative journalism called www.DeepCapture.com (winner of the 2008 Weblogs Award for Best Business Blog), at which point CNBC, FortuneMagazineJoe Nocera, etc. developed sudden cases of laryngitis about me (lest they have to mention the website where my opinions were expressed without filtering: DeepCapture.com).

Now that Overstock has won, I would expect CNBC to invite me back to discuss these events, about which CNBC was so wrong and vocal. I estimate that the chance this happens, however, are roughly the same as the chance that any mainstream journalist who covers this $5 million settlement will mention DeepCapture.com, despite its having been central to these events.

I believe that the two factors which most determine the long-term health of a nation are its education system and its capital market (that is, its systems for developing human capital and for marrying it to financial capital). The miscreants of Wall Street may not be numerous, but they work together, and their blackguard ways impose an enormous social cost on our country. Presumably that claim will strike many as more plausible than it did when I first began publicly making it in August 2005.

I'd like to thank the late John O'Quinn, in whom I found an ally. I wish also to thank Overstock's fine legal team at Stein & Lubin for the superb work they did on this case. They will now be turning their full attention to Overstock.com's pending suit against the prime brokers (see below).

Your humble servant,

Patrick M. Byrne

History of the Rocker Case

In the landmark case, filed in Marin County, California August 11, 2005, Overstock.com, along with shareholder plaintiffs, sued Gradient Analytics, Inc.; Rocker Partners, L.P.; Rocker Management, LLC; Rocker Offshore Management Company, Inc. and their respective principals. On October 12, 2005, Overstock.com filed an amended complaint against the same entities alleging libel, intentional interference with prospective economic advantage and violations of California's unfair business practices act. On October 22, 2008, Overstock.com amended its complaint to name as additional defendants Cathy Longinotti, Mark Montgomery, Phillip Renna and Terrence Warzecha because of their former or existing status as general partners of Copper River Partners, L.P.

Overstock.com asserted that David Rocker, his partner, Marc Cohodes, entities under their control, and other confederates worked with the so-called "independent" research firm, Gradient Analytics, to defame Overstock.com by publishing false information in order to drive down Overstock.com shares and profit from their short positions in the stock. Overstock.com based its complaint on affidavits from four former Gradient insiders who swore that it was well known that Gradient worked closely with some of its short-selling hedge-fund subscribers to issue "special" negative reports on specific companies targeted by those subscribers, and that Rocker, among others, had special editorial privileges and coordinated publication timing to allow his hedge fund to position their portfolios in advance of publication. Overstock.com alleged that Rocker and Cohodes participated in suggesting and editing the false reports which were published throughout the period of 2004 to 2005, and which a judge, in commenting on the frequency of the attacks referred to as, "carpet bombing." Overstock.com also asserted that high profile reporters in the financial media were given unprecedented access to the Gradient reports for the purpose of further coordinated dissemination of the false Gradient reports in Rockers concerted effort to damage and defame the company and drive down its share price.

On October 10, 2008, Overstock and Patrick Byrne reached a confidential settlement agreement with Gradient Analytics and its current and former principals. Those defendants have been dismissed from the case after issuing a statement of "regret," reversing Gradient's published positions on Overstock.com, and stating that Gradient had "examined and improved its internal policies concerning how it communicates with clients, including hedge funds, and the media."

On May 14, 2009, the shareholder plaintiffs dismissed their claims against the Rocker defendants.

On November 9, 2007, Copper River Partners, L.P. f/k/a Rocker Partners L.P. filed a cross-complaint against Overstock.com and certain of its current and former directors. The Copper River cross-complaint alleged cross-defendants engaged in violations of California's state securities laws, violations of California's unfair business practices act, tortuous interference with contract and prospective business advantage, and deceit. On April 23, 2008, the court dismissed Copper River's cross claims against certain former Overstock.com directors. In that same ruling, the court dismissed four of the six claims against one of the former Overstock.com directors (and later Copper River dismissed the remaining claims against that director). In a separate ruling on the same day relating to Overstock.com and Patrick Byrne, the court dismissed the common law fraud claims and equitable indemnity claims and eliminated the possibility of money damages under Copper River's claims that Overstock.com and Byrne engaged in unfair business practices.

Trial for both the Overstock.com complaint and the Copper River cross-complaint were set for February 9, 2010.

History of the Prime Broker Case

On February 2, 2007, Overstock.com, along with five shareholder plaintiffs, filed a lawsuit in San Francisco against Morgan Stanley & Co. Incorporated, Goldman Sachs & Co., Bear Stearns Companies, Inc., Bank of America Securities LLC, Bank of New York, Citigroup Inc., Credit Suisse (USA) Inc., Deutsche Bank Securities, Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., and UBS Financial Services, Inc. In September 2007, Overstock.com filed an amended complaint adding two plaintiff shareholders, naming Lehman Brothers Holdings Inc. as a defendant, eliminating the previous claim of intentional interference with prospective economic advantage and clarifying various points of other claims in the original complaint.

This suit alleges that the prime broker defendants, who control over 80% of the prime brokerage market, participated in an illegal stock market manipulation scheme and that the defendants had no intention of covering short sell orders with borrowed stock, as they are required to do, causing what are referred to as "fails to deliver" and that the defendants' actions caused and continue to cause dramatic distortions within the nature and amount of trading in Overstock.com stock, as well as dramatic declines in the share price of Overstock.com stock. The suit asserts that a persistent large number of "fails to deliver" creates significant downward pressure on the price of a company's stock and that the amount of "fails to deliver" has exceeded the entire supply of outstanding Overstock.com shares. The suit accuses the defendants of violations of California securities laws and common law, specifically, conversion, trespass to chattels, intentional interference with prospective economic advantage, and violations of California's Unfair Business Practices Act.

In April 2007, defendants filed a demurrer and motion to strike the Overstock.com complaint. Overstock.com opposed the demurrer and motion to strike. In July 2007, the court substantially denied defendants' demurrer and motion to strike. In November 2007, the defendants filed additional motions to strike. In February 2008, the court denied defendants' motion to strike the Overstock.com claims under California's Securities Anti-Fraud statute and defendants' motion to strike the Overstock.com common law punitive damages claims, but granted in part the defendants' motion to strike the Overstock.com claims under California's Unfair Business Practices Act, while allowing the Overstock.com claims for injunctive relief under California's Unfair Business Practices Act.

Lehman Brothers Holdings filed for bankruptcy on September 15, 2008 and Barclays Bank has purchased its investment banking and trading business. Overstock.com elected not to pursue its claims against Lehman Brothers Holdings in the bankruptcy proceedings. On January 12, 2009, the prime broker defendants filed a motion to strike portions of the Second Amended Complaint regarding allegations of collective action among defendants and the request for punitive damages. Also, on January 12, 2009, the prime broker defendants filed a demurrer to the first and second causes of action for conversion and trespass to chattels and a motion to strike various other allegations of the Second Amended Complaint. On March 19, 2009, the court sustained the demurrer to the first and second causes of action, but granted leave to amend the complaint. The motion to strike was denied. On April 20, 2009, Overstock.com amended its complaint against all the defendants, re-pleading conversion and trespass to chattels causes of action. The prime broker defendants again filed demurrer to the amended complaint and, on July 23, 2009, the court sustained the demurrer. Discovery in this case continues.

No trial date has been set.

About Overstock.com

Overstock.com, Inc. is an online retailer offering brand-name merchandise at discount prices. The company offers its customers an opportunity to shop for bargains conveniently, while offering its suppliers an alternative inventory distribution channel. Overstock.com, headquartered in Salt Lake City, is a publicly traded company listed on the NASDAQ Global Market System and can be found online at http://www.overstock.com. Overstock.com regularly posts information about the company and other related matters on its website under the heading "Investor Relations."

This press release contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Such forward-looking statements include, but are not limited to, statements regarding the prime broker suit. Our Form 10-K/A for the year ended December 31, 2008, our subsequent quarterly reports on Form 10-Q, or any amendments thereto, and our other subsequent filings with the Securities and Exchange Commission identify important factors that could cause our actual results to differ materially from those contained in our projections, estimates or forward-looking statements.

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