

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): January 29, 2014

REMARK MEDIA, INC.

(Exact name of registrant as specified in its charter)

Delaware	001-33720	33-1135689
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)
3930 Howard Hughes Parkway, Suite 400, Las Vegas, Nevada		89169
(Address of principal executive offices)		(Zip Code)

Registrant's telephone number, including area code: (702) 701-9514

N/A

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

On January 29, 2014, Remark Media, Inc. (the “Company”) issued a Senior Secured Convertible Term Note in the original principal amount of \$3,500,000 (the “January 2014 Note”) to Digipac, LLC (“Digipac”) in exchange for \$3,500,000 in cash. The January 2014 Note bears interest at a rate of 6.67% per annum for the first year and 8.67% per annum thereafter, with interest payable quarterly and all unpaid principal and any accrued but unpaid interest due and payable on the second anniversary of its issuance. The Company may prepay all or a portion of the January 2014 Note at any time upon at least 15 days’ prior written notice to Digipac. The Company’s issuance of the January 2014 Note was authorized and approved by the Audit Committee of the Company’s Board of Directors (the “Board”), as well as by the full Board.

At the time of the issuance of the January 2014 Note, Digipac held 3,556,672 shares of the Company’s common stock (“Common Stock”) and approximately an additional 675,925 shares of the Common Stock were issuable upon the conversion of the unpaid principal and accrued but unpaid interest under a Senior Secured Convertible Term Note of the Company dated November 13, 2013 in the original principal amount of \$2,500,000 held by Digipac. Kai-Shing Tao, the Company’s Chairman of the Board and Chief Executive Officer, is the manager and a member of Digipac, and as a result has the power to vote and dispose of the securities held by Digipac. Douglas Osrow, the Company’s Chief Financial Officer, also is a member of Digipac.

At any time, Digipac may elect to convert all or any portion of the outstanding principal amount and accrued but unpaid interest under the January 2014 Note into shares of Common Stock at a conversion price of \$5.03 per share (the “Conversion Price”). The Company also may elect to convert all or any portion of the outstanding principal amount and accrued but unpaid interest under the January 2014 Note into Common Stock at the Conversion Price if the volume weighted average price of the Common Stock is equal to at least 150% of the Conversion Price for at least 30 of the 40 trading days immediately prior to the date of the Company’s election. The January 2014 Note also provides that the Company and Digipac will negotiate and enter into a registration rights agreement providing Digipac with demand and piggyback registration rights with respect to the shares of Common Stock underlying the January 2014 Note.

The foregoing description of the January 2014 Note is not complete and is qualified in its entirety by reference to the full text of the January 2014 Note, which is filed herewith as Exhibit 4.1 and incorporated herein by reference.

On January 29, 2014, in connection with the issuance of the January 2014 Note, the Company and Digipac entered into Amendment Number Three to Security Agreement (the “Third Amendment”). The Third Amendment amends that certain Security Agreement dated as of November 23, 2012 by and between the Company and Digipac (the “Security Agreement”) to include the Company’s obligations under the January 2014 Note as obligations secured by the Security Agreement. The Security Agreement provides that the Company’s obligations are secured by all assets of the Company other than the shares of common stock of Sharecare, Inc. owned by the Company.

The foregoing description of the Third Amendment is not complete and is qualified in its entirety by reference to the full text of the Third Amendment, which is filed herewith as Exhibit 10.1 and incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure set forth under Item 1.01 above pertaining to the issuance of the January 2014 Note is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The disclosure set forth under Item 1.01 above pertaining to the issuance of the January 2014 Note is incorporated by reference into this Item 3.02.

The offer and sale of the January 2014 Note were made in reliance upon an exemption from the registration requirements pursuant to Section 4(2) under the Securities Act of 1933, as amended, based upon representations made by Digipac to the Company in the January 2014 Note.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
4.1	Senior Secured Convertible Note, dated January 29, 2014, made by Remark Media, Inc. for benefit of Digipac, LLC.
10.1	Amendment Number Three to Security Agreement, dated as of January 29, 2014, by and between Remark Media, Inc. and Digipac, LLC.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

REMARK MEDIA, INC.

Dated: February 4, 2014

By: /s/ Douglas Osrow
Name: Douglas Osrow
Title: Chief Financial Officer

EXHIBIT INDEX

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THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO BORROWER THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT.

Senior Secured Convertible Term Note

\$3,500,000

January 29, 2014

FOR VALUE RECEIVED, REMARK MEDIA, INC., a Delaware corporation ("**Borrower**"), hereby promises to pay to the order of DIGIPAC, LLC, a Delaware limited liability company ("**Lender**"), the principal sum of Three and One Half Million Dollars (\$3,500,000) (the "**Principal Amount**"), in lawful money of the United States of America and in immediately available funds.

1. **Maturity.** The unpaid Principal Amount plus accrued and unpaid interest thereon shall be due and payable on the second anniversary of the date of this Note (the "**Maturity Date**"), unless converted prior thereto pursuant to Section 4, which Maturity Date may be extended only pursuant to a writing signed by Borrower and Lender.

2. **Interest.** Borrower further promises to pay interest on the unpaid Principal Amount of this Note at a rate per annum equal to six and 67/100 percent (6.67%) for the first year of this Note. For the period commencing January 25, 2015 and thereafter Borrower further promises to pay interest on the unpaid Principal Amount of this Note at a rate per annum equal to eight and 67/100 percent (8.67%). Interest will be computed on the basis of a 365 or 366-day year, as applicable, and the actual number of days elapsed. Interest shall be payable quarterly in arrears to Lender on the last day of each quarter commencing on the first such date to occur after the execution of this Note.

3. **Prepayment.** Borrower may prepay this Note, in full or in part, at any time prior to the Maturity Date if, and only if, Borrower provides Lender at least fifteen (15) days' prior written notice of such prepayment.

4. **Conversion of the Note.**

4.1 Subject to and upon compliance with the terms and provisions of this Note, at any time Lender or Borrower (subject to the requirements of Section 4.3) shall have the right to convert the unpaid Principal Amount of, and interest due under, this Note into shares of common stock of Borrower as set forth below.

- (a) At any time on or prior to the Maturity Date (or after the Maturity Date if Borrower has failed to timely repay the unpaid Principal Amount plus accrued and unpaid interest thereon on the terms of this Note), Lender shall have the option, upon Lender's written notice to Borrower, (or Borrower shall have the option, upon Borrower's written notice to Lender) to elect to convert the outstanding and unpaid Principal Amount or any portion thereof, plus, at Lender's election (or at Borrower's election if the Borrower elected to convert), any accrued and unpaid interest thereon (collectively, the "**Conversion Amount**"), into fully paid and non-assessable shares of the common stock ("**Common Stock**") of Borrower at the Common Stock Conversion Price (as defined in Section 4.1(c)) (the "**Common Stock Conversion**"). To the extent that the entire amount due under the Note is not converted into Common Stock, the Borrower will deliver a new note with similar terms and conditions as this Note which will reflect the remaining amounts owed to Lender under this Note.
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- (b) The number of shares of Common Stock to be issued upon conversion of this Note pursuant to this Section 4.1 shall be determined by dividing (i) the Conversion Amount by (ii) the Common Stock Conversion Price. Borrower shall issue and deliver to Lender certificates or cause book entries to be made by its transfer agent evidencing such Common Stock within five (5) business days after the Common Stock Conversion.
- (c) The “**Common Stock Conversion Price**” shall be equal to \$5.03.
- (d) Borrower will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of Common Stock upon the full conversion of this Note.
- (e) The number of shares of Common Stock issuable upon the exercise of Lender’s and Borrower’s conversion rights contained in this Section 4.1 shall be subject to adjustment from time to time upon the happening of certain events, as follows:
 - (i) Splits and Subdivisions. If Borrower should at any time or from time to time prior to any conversion in accordance with this Section 4.1 (the “**Conversion Date**”), if any, fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of the holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as “**Common Stock Equivalents**”) without payment of any consideration by such holder for the additional shares of Common Stock or Common Stock Equivalents, then, as of such record date (or the date of such distribution, split or subdivision if no record date is fixed), the Common Stock Conversion Price shall be proportionately decreased and the number of shares of Common Stock which this Note is convertible into pursuant to this Section 4.1 shall be appropriately increased in proportion to such increase of outstanding shares.

(i i) *Combination of Shares.* If prior to the Conversion Date, if any, the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common Stock, the Common Stock Conversion Price shall be proportionately increased and the number of shares of Common Stock which this Note is convertible into pursuant to this Section 4.1 shall be appropriately decreased in proportion to such decrease in outstanding shares.

(i i i) *Merger or Consolidation.* If at any time or from time to time prior to the Conversion Date, if any, there shall be a capital reorganization of Borrower's equity securities (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 4.1(e)) or a merger or consolidation of Borrower with or into another corporation, then as a part of such reorganization, merger or consolidation, provision shall be made so that Lender shall thereafter exclusively be entitled to receive upon the conversion of this Note in accordance with this Section 4.1, the number of shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) to which a holder of the number of shares of Common Stock (or of any shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) which may be) issuable upon the conversion of this Note pursuant to this Section 4.1 would have received if this Note had been converted into Common Stock in accordance with this Section 4.1 immediately prior to such reorganization, merger or consolidation.

(i v) *Reclassification, Conversion or Reorganization.* If the Common Stock (or any shares of stock or other securities which may be) issuable upon the conversion of this Note in accordance with this Section 4.1 shall be changed into the same or different number of shares of any class or classes of stock, whether by capital reorganization, conversion, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for in clauses (i) or (ii) of this Section 4.1(e) above, or a reorganization, merger or consolidation provided for in clause (iii) of this Section 4.1(e) above), then and in each such event Lender shall exclusively be entitled to receive upon the conversion of this Note pursuant to this Section 4.1 the kind and amount of shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) upon such reorganization, conversion, reclassification or other change, to which a holder of the number of shares of Common Stock (or of any shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) which may be) issuable upon the conversion of this Note pursuant to this Section 4.1 would have received if this Note had been converted into Common Stock pursuant to this Section 4.1 immediately prior to such reorganization, conversion, reclassification or other change, all subject to further adjustment as provided herein.

(v) *Notice of Adjustments and Record Dates.* Borrower shall promptly notify Lender in writing of each adjustment or readjustment of the Common Stock Conversion Price hereunder and the number of shares of Common Stock issuable upon the conversion of this Note pursuant to this Section 4.1. Such notice shall state the adjustment or readjustment and show in reasonable detail the facts on which that adjustment or readjustment is based. In the event of any taking by Borrower of a record of the holders of Common Stock for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, Borrower shall notify Lender in writing of such record date at least twenty (20) days prior to the date specified therein.

(v i) *No Impairment.* Borrower shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by Borrower, but shall at all times in good faith assist in the carrying out of all the provisions of this Note. Without limiting the generality of the foregoing, Borrower (i) shall reserve and keep available a number of its authorized shares of Common Stock, free from all preemptive rights, which shall be sufficient to permit the conversion of this Note in accordance with this Section 4.1 and (ii) shall take all such action as may be necessary or appropriate in order that all shares of Common Stock as may be issued pursuant to the conversion of this Note in accordance with this Section 4.1 shall, upon issuance, be validly issued, fully paid and nonassessable.

4.2 Method of Conversion. This Note may be converted by Lender or Borrower only as described in this Section 4. Lender agrees to deliver the original of this Note (or an affidavit to the effect that this Note has been lost, stolen or destroyed and an agreement acceptable to Borrower whereby Lender agrees to indemnify Borrower from any loss incurred by it in connection with this Note) upon the Common Stock Conversion for cancellation. Furthermore, Lender hereby agrees to execute and deliver to Borrower all transaction documents reasonably requested by Borrower in connection with the Common Stock Conversion, including a subscription agreement and other ancillary agreements (if requested), with customary representations and warranties and transfer restrictions.

4.3 Additional Requirement for Conversion by Borrower. The Borrower may not elect to have this Note converted into Common Stock pursuant to Section 4.1 of this Note unless the VWAP (as hereinafter defined) for the Borrower's Common Stock is at least 150% of the Common Stock Conversion Price for at least 30 out of the 40 trading days immediately prior to the date that the Borrower elects to convert. For the purposes of this Note, VWAP means, for any date, the daily volume weighted average price of the Company's Common Stock for such date (or the nearest preceding date on which the Common Stock actually traded) on the Nasdaq-CM, or such other trading market on which the Common Stock is then listed or quoted, as reported by NASDAQ VWAP.

5. Representations and Warranties of Borrower. As a material inducement of the Lender to make the loan evidenced by this Note, the Borrower represents and warrants to the Lender that:

- 5.1 Organization; Powers. The Borrower: (a) is a corporation duly organized, validly existing and in good standing under the laws of Delaware; (b) has all requisite corporate power, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted; and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except (with respect to subsections (b) and (c)) where the failure to do so could not reasonably be expected to result in a material adverse effect on the property, business, operations, condition (financial or otherwise), prospects, liabilities or capitalization of the Borrower.
- 5.2 Authorization; Enforceability. Borrower has all necessary corporate power, authority and legal right to execute, deliver and perform its obligations under this Note and the Security Agreement (as defined below); the execution, delivery and performance by Borrower of this Note and the Security Agreement have been duly authorized by all necessary corporate action on its part (including, without limitation, any required shareholder approvals); and each of this Note and the Security Agreement has been duly and validly executed and delivered by Borrower and constitutes, and the Security Agreement when executed and delivered by Borrower will constitute, its legal, valid and binding obligations, enforceable against Borrower in accordance with their respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Specifically, this Agreement and the Security Agreement and the transactions contemplated hereby and thereby have been approved by Borrower in accordance with Section 144 of the Delaware General Corporation Law.
- 5.3 Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any governmental authority or agency, or any securities exchange, are necessary for the execution, delivery or performance by Borrower of this Note and the Security Agreement or for the legality, validity or enforceability hereof or thereof, except for filings and recordings in respect of the security interest created pursuant to the Security Agreement and filings required under the Securities Exchange Act of 1934, as amended (the "*1934 Act*").
- 5.4 No Breach. None of the execution and delivery of this Note and the Security Agreement, the consummation of the transactions herein and therein contemplated or compliance with the terms and provisions hereof and thereof will conflict with or result in a breach of, or require any consent under, the charter or by-laws of Borrower, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Borrower is a party or by which any of them or any of their property is bound or to which any of them is subject, or constitute a default under any such agreement or instrument, or (except for the security interest created pursuant to the Security Agreement) result in the creation or imposition of any lien upon any property of the Borrower pursuant to the terms of any such agreement or instrument.

5.5 Litigation. There are no legal or arbitral proceedings, or any proceedings by or before any governmental authority, now pending or (to the knowledge of Borrower) threatened against Borrower that, if adversely determined, could (either individually or in the aggregate) have a material adverse effect on the property, business, operations, condition (financial or otherwise), prospects, liabilities or capitalization of the Borrower.

5.6 Compliance with Laws and Agreements. Borrower is in compliance with all laws, regulations and orders of any governmental authority applicable to it or its property and all agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a material adverse effect on the property, business, operations, condition (financial or otherwise), prospects, liabilities or capitalization of the Borrower.

5.7 Capitalization. The authorized capital stock of Borrower consists, on the date hereof, of 20,000,000 shares of common stock, \$0.001 par value, of which 10,910,872 shares are duly and validly issued and outstanding, each of which shares is fully paid and nonassessable. Borrower has no issued and outstanding shares of preferred stock. Except for shares of common stock reserved for issuance pursuant to outstanding stock options, warrants and other convertible securities or available for issuance under existing equity plans, as of the date hereof, no person or entity has any agreement, subscription, option or any other right or commitment entitling such person or entity to acquire any shares of common stock from Borrower. Borrower has a sufficient number of authorized and unissued shares of common stock to provide for the Common Stock Conversion set forth in this Note.

6 . Representations and Warranties of Lender. As a material inducement of the Borrower to issue the securities evidenced by this Note, the Lender represents and warrants to the Borrower that:

6.1 Organization; Powers. Lender is a duly organized and validly existing limited liability company, is in good standing under the laws of Delaware, and has all requisite limited liability company power and authority to purchase the Note and common stock into which this Note is convertible.

6.2 Authorization; Enforceability. Lender has all necessary limited liability company power, authority and legal right to execute, deliver and perform its obligations under this Note and the Security Agreement; the execution, delivery and performance by Lender of this Note and the Security Agreement have been duly authorized by all necessary corporate action on its part (including, without limitation, any required shareholder approvals); and each of this Note and the Security Agreement has been duly and validly executed and delivered by Lender and constitutes, and the Security Agreement when executed and delivered by Lender will constitute, its legal, valid and binding obligations, enforceable against Lender in accordance with their respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- 6.3 Purchase Entirely for Own Account. The securities to be received by Lender hereunder will be acquired for Lender's own account, not as nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the Securities Act of 1933, as amended (the "**1933 Act**"), and Lender has no present arrangement or intention of selling, granting any participation in, or otherwise distributing the same in violation of the 1933 Act without prejudice, however, to Lender's right at all times to sell or otherwise dispose of all or any part of such securities in compliance with applicable federal and state securities laws. Nothing contained herein shall be deemed a representation or warranty by Lender to hold the securities for any period of time. Lender is not a broker-dealer registered with the U.S. Securities and Exchange Commission (the "**SEC**") under the 1934 Act or an entity engaged in a business that would require it to be so registered.
- 6.4 Investment Experience. Lender acknowledges that it can bear the economic risk and complete loss of its investment in the securities and has such knowledge, sophistication and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.
- 6.5 Disclosure of Information. Lender has had an opportunity to receive all information related to the Borrower requested by it (including all of Borrower's filings pursuant to the 1934 Act) and to ask questions of and receive answers from the Borrower regarding the Borrower, its subsidiaries, their respective businesses and the terms and conditions of the offering of the securities. Neither such inquiries nor any other due diligence investigation conducted by Lender shall modify, limit or otherwise affect Lender's right to rely on the Borrower's representations and warranties contained in this Note or the Security Agreement.
- 6.6 Restricted Securities. Lender understands that the securities are characterized as "**restricted securities**" under the U.S. federal securities laws inasmuch as they are being acquired from the Borrower in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the 1933 Act only in certain limited circumstances.
- 6.7 Accredited Investor. At the time Lender was offered the securities it was, and at the date hereof it is, and on the date it converts any portion of the Note it will be, an "accredited investor" as defined in Rule 501(a) of Regulation D, as amended, under the 1933 Act.

- 6.8 No General Solicitation. Lender did not learn of the investment in the securities as a result of any general solicitation or general advertising.
7. Events of Default. The occurrence of any of the following events shall constitute an “*Event of Default*”:
- 7.1 Borrower shall fail, for any reason, to make any principal payment when due;
- 7.2 Borrower shall fail to pay any interest payable hereunder within thirty (30) days after the date when due;
- 7.3 a proceeding or case shall be commenced, without the application or consent of Borrower, in any court of competent jurisdiction, seeking (i) Borrower’s reorganization, liquidation, dissolution, arrangement or winding-up, or the composition or readjustment of Borrower’s debts, (ii) the appointment of a receiver, custodian, trustee, examiner, liquidator or the like of Borrower or of all or any substantial part of Borrower’s assets, or (iii) similar relief in respect of Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) or more days;
- 7.4 an order for relief against Borrower shall be entered in an involuntary case under the Federal Bankruptcy Code of 1978, as amended from time to time, presently codified as Title 11 of the United States Code (the “*Bankruptcy Code*”);
- 7.5 Borrower shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner or liquidator of itself or of all or a substantial part of its assets, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary case under the Bankruptcy Code, (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up or composition or readjustment of debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code or (vi) take any action for the purpose of effecting any of the foregoing;
- 7.6 Borrower breaches any of its representations, warranties contained in this Note or the Security Agreement in any material respect and such breach is not cured within ten (10) days after written notice thereof to Borrower.
8. Remedies.
- 8.1 Upon the occurrence and during the continuance of any Event of Default described in Sections 7.3, 7.4 or 7.5 (any such Event of Default, an “*Insolvency Event*”) (i) all amounts payable by Borrower pursuant to this Note shall become immediately due and payable, without presentment, demand, notice, protest or other requirements of any kind (all of which are hereby expressly waived by Borrower) and (ii) Lender shall be entitled to exercise any and all remedies available to Lender at law or in equity.

8.2 Upon the occurrence and during the continuance of any Event of Default other than an Insolvency Event, (i) Lender may, by written notice to Borrower, declare all amounts payable by Borrower pursuant to this Note to be due and payable, and all such amounts shall immediately become due and payable and (ii) Lender shall be entitled to exercise any and all remedies available to Lender at law or in equity. Written notice pursuant to this clause (b) shall be sufficient if it is addressed to Borrower and states that such an Event of Default has occurred and Lender is providing notice that all amounts due and payable pursuant to this Note are immediately due and payable in accordance with this clause (b).

9 . Default Interest. Upon the occurrence and during the continuance of an “*Event of Default*,” interest shall accrue on the unpaid Principal Amount at the rate of interest specified in Section 2 PLUS three percent (3%) per annum, or such lower maximum amount of interest permitted to be charged under applicable law.

10. Security. The obligations of Borrower to Lender under this Note are secured pursuant to that certain Security Agreement between Borrower and Lender dated as of November 23, 2012, as amended by that certain Amendment Number One to Security Agreement between Borrower and Lender dated as of April 2, 2013, that certain Amendment Number Two to Security Agreement between Borrower and Lender dated as of November 14, 2013, and that certain Amendment Number Three to Security Agreement between Borrower and Lender dated as of the date hereof (as the same may be further amended from time to time, the “*Security Agreement*”). In addition to the rights and remedies given it pursuant to the Security Agreement, Lender shall have all those rights and remedies allowed by applicable laws. The rights and remedies of Lender are cumulative and recourse to one or more right or remedy shall not constitute a waiver of the others. Borrower shall be liable for all commercially reasonable costs, expenses and attorneys’ fees incurred by Lender in connection with the collection of the indebtedness evidenced by the Note.

11 . Registration Rights. Lender shall have registration rights with respect to all shares of Common Stock into which this Note is convertible. Lender and Borrower shall negotiate in good faith the terms of a registration rights agreement providing Lender with demand, “piggyback” and S-3 registration rights and other customary terms and conditions as soon as reasonably practicable after the date of this Note.

12. Notices. Any notice, demand, communication or other document required, permitted, or desired to be given under this Note or the Security Agreement shall be in writing and shall be delivered personally or sent by United States registered or certified mail, return receipt requested, postage prepaid, by Federal Express or other reputable overnight courier, or by facsimile (with confirmation of receipt), and addressed to the party at the respective numbers and/or addresses set forth below, and the same shall be deemed given and effective (i) upon receipt or refusal if delivered personally or by hand delivered messenger service, (ii) the date received or refused if sent by Federal Express or other reputable overnight courier, (iii) the date received or refused if mailed by United States registered or certified mail, return receipt requested, postage prepaid, and (iv) the date received if sent by facsimile or electronic mail during normal business hours of the recipient and on the next business day if sent after normal business hours of the recipient. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to Lender: Digipac, LLC
One Hughes Center Drive, Unit 1901
Las Vegas, Nevada 89169
Facsimile: 702-586-8721
Electronic mail: Stao@pacificstarpartners.com
Attention: Mr. Kai-Shing Tao

If to Borrower: Remark Media, Inc.
3930 Howard Hughes Parkway, Suite 400
Las Vegas, Nevada 89169
Facsimile: N/A
Electronic mail: N/A
Attention: Chairman of the Audit Committee

13. Captions; Interpretation. The captions and headings of Sections and paragraphs of this Note are for convenience only and are not to be considered as defining or limiting in any way, the scope or intent of the provisions hereof. The term "Borrower" shall include each person and entity now or hereafter liable hereunder, whether as maker, successor, assignee or endorsee, each of whom shall be jointly, severally and primarily liable for all of the obligations set forth herein.

14. Merger. This Note and the Security Agreement constitutes the entire agreement of the parties with respect to the transactions contemplated herein and therein, and all prior discussions, negotiations and document drafts with respect to the transactions contemplated hereby and thereby are merged herein and therein.

15. Expenses. Borrower agrees to pay or reimburse the Lender for: (a) all reasonable out-of-pocket costs and expenses of Lender (including, without limitation, the fees and expenses of counsel to Lender) in connection with (i) the negotiation, preparation, execution and delivery of this Note and the extension of credit hereunder and (ii) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Note (whether or not consummated); and (b) all reasonable out-of-pocket costs and expenses of the Lender (including, without limitation, fees and expenses of legal counsel) in connection with (i) any Event of Default and any enforcement or collection proceedings resulting therefrom, including, without limitation, all manner of participation in or other involvement with (x) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (y) judicial or regulatory proceedings and (z) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated) and (ii) the enforcement of this Section 15.

16. Modification; Waiver. No modification, waiver, amendment, discharge or change of this Note shall be valid unless the same is in writing and signed by the Lender. No waiver of any breach or default hereunder shall constitute or be construed as a waiver by Lender of any subsequent breach or default or of any breach or default of any other provision of this Note, unless specifically set forth in a writing executed by Lender. To the extent permitted by applicable law, Borrower waives all rights and benefits of any statute of limitations, moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisal or exemption now provided or which may hereafter be provided by law, both as to itself and as to all of its properties, real and personal, against the enforcement and collection of the indebtedness evidenced hereby.

17. Governing Law. MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE UNDER OR RELATING TO THIS NOTE OR THE SECURITY AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA.

18. Consent to Jurisdiction. BORROWER HEREBY CONSENTS TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE IN THE FEDERAL OR STATE COURTS IN NEW YORK COUNTY, NEW YORK, AND AGREES THAT ALL DISPUTES BASED ON OR ARISING OUT OF THIS NOTE OR THE SECURITY AGREEMENT SHALL ONLY BE SUBMITTED TO AND DETERMINED BY SAID COURTS, WHICH SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION.

19. Time is of the Essence. Time is hereby declared to be of the essence of this Note and every portion hereof and thereof.

20. Attorneys' Fees. In the event of any dispute arising out of, or in connection with, this Note, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

21. Severability. If any provision or provisions, or if any portion of any provision or provisions, in this Note or the Security Agreement is found by a court of competent jurisdiction to be in violation of any applicable law, and if such court declares such portion, provision, or provisions of this Note or Security Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision, or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, and that the remainder of this Note or Security Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable portion, provision, or provisions were not contained herein or therein, and that the rights, obligations, and interests of Borrower and Lender under the remainder of this Note and the Security Agreement shall continue in full force and effect.

22. Assignment. Borrower may not assign this Note or the Security Agreement without the prior written consent of Lender. Lender may assign or transfer this Note and the Security Agreement without the prior written consent of Borrower.

23. Savings Clause. Nothing contained in this Note shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum interest rate permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum interest permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by Borrower to Lender.

24. Counsel. Digipac acknowledges that Olshan Frome Wolosky LLP ("*Olshan*") represents only the Company in the preparation and negotiation of this Note and the Security Agreement. Digipac acknowledges that it has waived the opportunity to retain separate counsel. Digipac consents to the representation of the Company by Olshan in its business dealings and in connection with this Note and any disputes arising thereunder.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned parties have caused the due execution of this Note as of the day and year first herein above written.

REMARK MEDIA, INC.,
a Delaware corporation

By: /s/ Theodore P. Botts
Name: Theodore P. Botts
Title: Chairman of the Audit Committee of the Board of
Directors

AGREED AND ACCEPTED BY:

DIGIPAC, LLC,
a Delaware limited liability company

By: /s/ Kai-Shing Tao
Name: Kai-Shing Tao
Title: Manager

[SIGNATURE PAGE TO SENIOR SECURED CONVERTIBLE TERM NOTE]

AMENDMENT NUMBER THREE TO SECURITY AGREEMENT

This AMENDMENT NUMBER THREE (this "**Amendment**") to that certain Security Agreement, dated as of November 23, 2012, as amended (the "**Original Agreement**"), by and between Remark Media, Inc., a Delaware corporation ("**Borrower**"), and Digipac, LLC, a Delaware limited liability company ("**Secured Party**," and together with Borrower, the "**Parties**"), is made and entered into as of January 29, 2014 (the "**Amendment Date**"), by and between Borrower and Secured Party, with respect to the following facts:

RECITALS

WHEREAS, on November 23, 2012, Borrower issued to Secured Party that certain 6.67% Senior Secured Convertible Promissory Note in the original principal amount of One Million Eight Hundred Thousand Dollars (\$1,800,000) (the "**November 2012 Note**"), on April 2, 2013, Borrower issued to Secured Party that certain Senior Secured Promissory Note in the original principal amount of Four Million Dollars (\$4,000,000) (the "**April 2013 Note**"), and on November 14, 2013, Borrower issued to Secured Party that certain Senior Secured Convertible Promissory Note in the principal amount of Two and One Half Million Dollars (\$2,500,000) (the "**November 2013 Note**");

WHEREAS, the obligations of Borrower under the November 2012 Note, the April 2013 Note and the November 2013 Note are secured by the Original Agreement;

WHEREAS, Secured Party perfected its security interest in the Collateral (as defined in the Original Agreement) by filing a UCC-1 financing statement with the office of the Delaware Secretary of State on December 3, 2012;

WHEREAS, on the Amendment Date, Borrower issued to Secured Party that certain Senior Secured Convertible Promissory Note in the principal amount of Three and One Half Million Dollars (\$3,500,000) (the "**January 2014 Note**"); and

WHEREAS, the Parties desire to amend the Original Agreement to include Borrower's obligations to Secured Party under the January 2014 Note as obligations of Borrower secured by the Original Agreement, as further provided in this Amendment.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and upon the terms and conditions set forth herein, the Parties hereby agree as follows:

1. **Amendment**. The Original Agreement is hereby amended in the following respects, and such provisions shall be deemed to be incorporated into and made a part of the Original Agreement mutatis mutandis.

a. The January 2014 Note shall be secured by the same Collateral (as defined in the Original Agreement) as the November 2012 Note, the April 2013 Note and the November 2013 Note, and such security interest shall be on the terms and conditions set forth in the Original Agreement. As of the Amendment Date, Borrower's obligations under the January 2014 Note shall be deemed to be secured obligations pursuant to the Original Agreement.

b. Any reference in the Original Agreement to “Note” shall be deemed to include the November 2012 Note, the April 2013 Note, the November 2013 Note and the January 2014 Note.

2. **Miscellaneous.**

a. **Representation and Warranties.** Borrower represents and warrants to Secured Party that (i) the representations and warranties of Borrower contained in the Original Agreement, including without limitation, Borrower’s representations and warranties contained in Section 5 of the Original Agreement, are true and correct in all respects as of the Amendment Date, (ii) no Event of Default (as defined in the November 2012 Note) has occurred under the November 2012 Note, and (iii) no Event of Default (as defined in the Original Agreement) has occurred under the Original Agreement.

b. **No Other Amendment.** Except as expressly amended in this Amendment, all provisions of the Original Agreement shall remain in full force and effect, and the parties thereto and hereto shall continue to have all their rights and remedies under the Original Agreement. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Original Agreement, the provisions of this Amendment shall govern.

c. **Relation to Original Agreement.** This Amendment constitutes an integral part of the Original Agreement. Upon the effectiveness of this Amendment, each reference in the Original Agreement to “this Agreement,” “hereunder,” “hereof,” or words of like import referring to the Original Agreement, shall mean and be a reference to the Original Agreement as amended hereby.

d. **Successors and Assigns.** This Amendment shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns except as otherwise provided herein.

e. **Counterparts.** This Amendment may be executed by the parties hereto on any number of separate counterparts, any of which may be executed and transmitted by facsimile, and each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument.

f. **Governing Law.** This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its principles of conflicts of law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed and delivered as of the date first above written.

BORROWER:

REMARK MEDIA, INC.,
a Delaware corporation

By: /s/ Theodore P. Botts
Name: Theodore P. Botts
Title: Chairman of the Audit Committee of the Board of
Directors

SECURED PARTY:

DIGIPAC, LLC,
a Delaware limited liability company

By: /s/ Kai-Shing Tao
Name: Kai-Shing Tao
Title: Manager