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

FORM 10-Q

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended September 30, 2020

Commission File Number 001-33720

Remark Holdings, Inc.

Delaware	33-1135689
State of Incorporation	IRS Employer Identification Number

800 S. Commerce St.
Las Vegas, NV 89106

Address, including zip code, of principal executive offices

702-701-9514

Registrant’s telephone number, including area code

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, $0.001 par value per share	MARK	The NASDAQ Stock Market LLC

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☑ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer”, “smaller reporting company” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☑	Smaller reporting company	☑
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

As of November 20, 2020, a total of 99,505,041 shares of our common stock were outstanding.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

The matters discussed in this Quarterly Report on Form 10-Q include “forward-looking statements” about the plans, strategies, objectives, goals or expectations of Remark Holdings, Inc. and subsidiaries (“Remark”, “we”, “us”, “our”). You will find forward-looking statements principally in the sections entitled Risk Factors and Management’s Discussion and Analysis of Financial Condition and Results of Operations. Such forward-looking statements are identifiable by words or phrases indicating that Remark or management “expects,” “anticipates,” “plans,” “believes,” or “estimates,” or that a particular occurrence or event “will,” “may,” “could,” “should,” or “will likely” result, occur or be pursued or “continue” in the future, that the “outlook” or “trend” is toward a particular result or occurrence, that a development is an “opportunity,” “priority,” “strategy,” “focus,” that we are “positioned” for a particular result, or similarly-stated expectations. You should not place undue reliance on these forward-looking statements, which speak only as of the date of this report or such other report, release, presentation, or statement.

In addition to other risks and uncertainties described in connection with the forward-looking statements contained in this report and other periodic reports filed with the Securities and Exchange Commission (“SEC”), there are many important factors that could cause actual results to differ materially. Such risks and uncertainties include general business conditions, changes in overall economic conditions, our ability to integrate acquired assets, the impact of competition and other factors which are often beyond our control.

This should not be construed as a complete list of all of the economic, competitive, governmental, technological and other factors that could adversely affect our expected consolidated financial position, results of operations or liquidity. Additional risks and uncertainties not currently known to us or that we currently believe are immaterial also may impair our business, operations, liquidity, financial condition and prospects. We undertake no obligation to update or revise our forward-looking statements to reflect developments that occur or information that we obtain after the date of this report.

PART I FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

REMARK HOLDINGS, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
(dollars in thousands, except share and per share amounts)

	September 30, 2020 (Unaudited)	December 31, 2019
Assets		
Cash and cash equivalents	$ 2,090	$ 272
Trade accounts receivable, net	2,850	1,964
Inventory, net	1,062	—
Prepaid expense and other current assets	5,831	4,623
Total current assets	11,833	6,859
Property and equipment, net	267	341
Operating lease assets	385	4,359
Investment in unconsolidated affiliates	1,065	1,935
Intangibles, net	355	509
Other long-term assets	2,177	824
Total assets	$ 16,082	$ 14,827
Liabilities and Stockholders' Deficit		
Accounts payable	$ 6,570	$ 8,126
Accrued expense and other current liabilities	8,987	14,326
Contract liability	541	313
Note payable	1,500	3,000
Loans payable, current	—	12,025
Total current liabilities	17,598	37,790
Loans payable, long-term	425	—
Operating lease liabilities, long-term	158	4,650
Warrant liability	748	115
Total liabilities	18,929	42,555
Commitments and contingencies		
Preferred stock,$0.001 par value; 1,000,000 shares authorized; zero issued	—	—
Common stock, $0.001 par value; 100,000,000 shares authorized; 99,502,416 and 51,055,159 shares issued and outstanding at September 30, 2020 and December 31, 2019, respectively	100	51
Additional paid-in-capital	351,529	319,275
Accumulated other comprehensive income	176	(227)
Accumulated deficit	(354,652)	(346,827)
Total stockholders' deficit	(2,847)	(27,728)
Total liabilities and stockholders' deficit	$ 16,082	$ 14,827

See Notes to Unaudited Condensed Consolidated Financial Statements

REMARK HOLDINGS, INC. AND SUBSIDIARIES
Unaudited Condensed Consolidated Statements of Operations and Comprehensive Loss
(dollars in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenue	$ 2,646	$ 686	$ 5,376	$ 4,760
Cost and expense				
Cost of revenue (excluding depreciation and amortization)	1,679	189	2,910	3,323
Sales and marketing	417	736	1,319	2,282
Technology and development	738	752	2,863	2,910
General and administrative	2,380	3,052	7,018	8,483
Depreciation and amortization	72	229	228	814
Impairments	463	—	463	—
Other operating expense	—	—	—	6
Total cost and expense	5,749	4,958	14,801	17,818
Operating loss	(3,103)	(4,272)	(9,425)	(13,058)
Other income (expense)				
Interest expense	(60)	(457)	(1,296)	(1,397)
Other income, net	(58)	(24)	(1)	23
Change in fair value of warrant liability	5,570	(160)	(633)	502
Gain on lease termination	2,044	—	3,582	—
Other loss, net	21	(28)	(52)	(27)
Total other income (expense), net	7,517	(669)	1,600	(899)
Income (loss) from continuing operations	4,414	(4,941)	(7,825)	(13,957)
Loss from discontinued operations, net of tax	—	—	—	(2,610)
Net income (loss)	$ 4,414	$ (4,941)	$ (7,825)	$ (16,567)
Other comprehensive income (loss)				
Foreign currency translation adjustments	65	(289)	403	(256)
Comprehensive income (loss)	$ 4,479	$ (5,230)	$ (7,422)	$ (16,823)
Weighted-average shares outstanding, basic and diluted	99,450	46,282	80,903	43,085
Net loss per share, basic and diluted				
Continuing operations	$ 0.04	$ (0.11)	$ (0.10)	$ (0.32)
Discontinued operations	—	—	—	(0.06)
Consolidated	$ 0.04	$ (0.11)	$ (0.10)	$ (0.38)

See Notes to Unaudited Condensed Consolidated Financial Statements

REMARK HOLDINGS, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Stockholders' Deficit
(in thousands, except number of shares)

	Three Months Ended September 30, 2020					
	Common Stock Shares	**Common Stock Par Value**	**Additional Paid-In Capital**	**Accumulated Other Comprehensive Income (Loss)**	**Accumulated Deficit**	**Total**
Balance at June 30, 2020	99,408,916	$ 99	$ 351,417	$ 111	$ (359,066)	(7,439)
Net loss	—	—	—	—	4,414	4,414
Share-based compensation	—	—	38	—	—	38
Common stock issued	—	—	—	—	—	—
Equity instrument exercises	93,500	1	74	—	—	75
Other	—	—	—	65	—	65
Balance at September 30, 2020	99,502,416	$ 100	$ 351,529	$ 176	$ (354,652)	$ (2,847)

	Three Months Ended September 30, 2019					
	Common Stock Shares	**Common Stock Par Value**	**Additional Paid-In Capital**	**Accumulated Other Comprehensive Income (Loss)**	**Accumulated Deficit**	**Total**
Balance at June 30, 2019	46,130,159	$ 46	$ 315,829	$ 65	$ (332,839)	$ (16,899)
Net loss	—	—	—	—	(4,941)	(4,941)
Share-based compensation	—	—	65	—	—	65
Common stock issued	2,300,000	2	1,838	—	—	1,840
Other	—	—	—	(289)	—	(289)
Balance at September 30, 2019	48,430,159	$ 48	$ 317,732	$ (224)	$ (337,780)	$ (20,224)

	Nine Months Ended September 30, 2020					
	Common Stock Shares	**Common Stock Par Value**	**Additional Paid-In Capital**	**Accumulated Other Comprehensive Income (Loss)**	**Accumulated Deficit**	**Total**
Balance at December 31, 2019	51,055,159	$ 51	$ 319,275	$ (227)	$ (346,827)	$ (27,728)
Net loss	—	—	—	—	(7,825)	(7,825)
Share-based compensation	—	—	131	—	—	131
Common stock issued	48,298,893	48	31,982	—	—	32,030
Equity instrument exercises	148,364	1	141	—	—	142
Other	—	—	—	403	—	403
Balance at September 30, 2020	99,502,416	$ 100	$ 351,529	$ 176	$ (354,652)	$ (2,847)

	Nine Months Ended September 30, 2019					
	Common Stock Shares	**Common Stock Par Value**	**Additional Paid-In Capital**	**Accumulated Other Comprehensive Income (Loss)**	**Accumulated Deficit**	**Total**
Balance at December 31, 2018	39,053,312	$ 39	$ 308,018	$ 32	$ (321,213)	$ (13,124)
Net loss	—	—	—	—	(16,567)	(16,567)
Share-based compensation	—	—	379	—	—	379
Common stock issued	9,374,597	9	9,331	—	—	9,340
Equity instrument exercises	2,250	—	4	—	—	4
Other	—	—	—	(256)	—	(256)
Balance at September 30, 2019	48,430,159	$ 48	$ 317,732	$ (224)	$ (337,780)	$ (20,224)

See Notes to Unaudited Condensed Consolidated Financial Statements

REMARK HOLDINGS, INC. AND SUBSIDIARIES

Unaudited Condensed Consolidated Statements of Cash Flows

(dollars in thousands)

	Nine Months Ended September 30,	
	2020	**2019**
Net cash used in continuing operating activities	$ (14,532)	$ (10,748)
Net cash used in discontinued operating activities	—	(7,159)
Net cash used in operating activities	(14,532)	(17,907)
Cash flows from investing activities:		
Proceeds from sale of business	—	30,000
Purchases of property, equipment and software	(171)	(5)
Payment of payroll costs capitalized to software in progress	—	(127)
Advance to unrelated entity	(1,410)	—
Net cash (used in) provided by continuing investing activities	(1,581)	29,868
Net cash used in discontinued investing activities	—	(18,396)
Net cash (used in) provided by investing activities	(1,581)	11,472
Cash flows from financing activities:		
Proceeds from issuance of common stock, net	32,147	9,344
Proceeds from debt issuance	425	—
Payment of loan fees and debt issuance cost	—	(2,275)
Repayments of debt	(13,781)	(25,526)
Payment of contingent consideration in business acquisitions	(860)	—
Net cash provided by (used in) financing activities	17,931	(18,457)
Net change in cash, cash equivalents and restricted cash	1,818	(24,892)
Cash, cash equivalents and restricted cash:		
Beginning of period, including cash in disposal group	272	25,548
End of period	$ 2,090	$ 656
Supplemental cash flow information:		
Cash paid for interest	$ 965	$ 2,211
Supplemental schedule of non-cash investing and financing activities:		
Capitalization of interest to debt principal	$ 256	$ 555
Increase in loan payable	$ —	$ 1,103
Settlement of operating lease liability through offset with operating lease asset of terminated office lease	$ 3,805	$ —

See Notes to Unaudited Condensed Consolidated Financial Statements

NOTE 1. ORGANIZATION AND BUSINESS

Organization and Business

Remark Holdings, Inc. and subsidiaries (“Remark”, “we”, “us”, or “our”), which include its consolidated variable-interest entities (“VIEs”), are primarily technology-focused. Our KanKan data intelligence platform serves as the basis for our development and deployment of artificial-intelligence-based (“AI-based”) solutions for businesses in many industries and geographies. We also own and operate an e-commerce digital media property focused on a luxury beach lifestyle. Our common stock is listed on the Nasdaq Capital Market under the ticker symbol MARK.

We recognize revenue primarily from sales in the U.S. and China of AI-based products and services from our KanKan business.

Economic and political risks

Our operations in China are subject to special considerations and significant risks not typically associated with companies in North America, including risks associated with, among others, the political, economic and legal environment and foreign currency exchange. Our results may be adversely affected by changes in the political conditions in China, and by changes in governmental policies with respect to laws and regulations, anti-inflationary measures, currency conversion, remittances abroad, and rates and methods of taxation.

COVID-19

Our unaudited condensed consolidated interim financial statements for the three and nine months ended September 30, 2020 were impacted by the effects of the global outbreak of a novel strain of coronavirus, or COVID-19, as national and local governmental authorities in China and the U.S., where we operate, have placed significant restrictions on travel and other activities within their respective countries, leading to extended business closures. The restrictions and resulting business closures have limited our operational capabilities, which could have a material adverse impact on our business and which have created significant uncertainties, such as the potential adverse effect of the pandemic on the economy, our vendors, our employees and customers and customer sentiment in general.

The extent of the impact of the pandemic on our business and financial results will depend largely on future developments, including the duration and severity of the outbreak, the length of the travel restrictions and business closures imposed by domestic and foreign governments, the impact on capital and financial markets and the related impact on the financial circumstances of our customers, all of which are highly uncertain and cannot be predicted. The pandemic-related situation is changing rapidly, and additional impacts of which we are not currently aware may arise, as recently underscored by the surge in cases in the U.S. We are closely monitoring developments in the U.S. and in China and are continually assessing the potential impact on our business.

To mitigate the potential material negative effects that COVID-19 may have on our business and to do our part to provide customers with the means to limit the spread of COVID-19, we have repurposed and improved our existing urban life cycle solution that we were selling to make schools in China “smart” schools to build a new product line of high-quality, highly-effective thermal imaging solutions that leverage our innovative software to provide customers with the ability to scan crowds and areas of high foot traffic for indications that certain persons may require secondary screening. We have begun sales efforts primarily in the U.S., as well as in other countries.

Going Concern

During the nine months ended September 30, 2020, and in each fiscal year since our inception, we have incurred net losses which have resulted in an accumulated deficit of $354.7 million as of September 30, 2020. Additionally, our operations have historically used more cash than they have provided. Net cash used in continuing operating activities was $14.5 million during the nine months ended September 30, 2020. As of September 30, 2020, our cash and cash equivalents balance was $2.1 million, and we had a negative working capital balance of $5.8 million.

On March 3, 2020, we entered into a common stock purchase agreement, later amended on April 9, 2020 (as amended, the "2020 Aspire Purchase Agreement"), with Aspire Capital Fund, LLC ("Aspire Capital") under which Aspire Capital purchased $30.0 million of shares of our common stock. The 2020 Aspire Purchase Agreement, which we describe in more detail in Note 15, terminated and replaced the common stock purchase agreement we had entered into with Aspire Capital on March 29, 2019 (the "2019 Aspire Purchase Agreement").

Concurrently with entering into the 2020 Aspire Purchase Agreement, we also entered into a registration rights agreement with Aspire Capital, in which we agreed to file with the Securities and Exchange Commission (the "SEC") one or more registration statements, as necessary, and to the extent permissible and subject to certain exceptions, to register under the Securities Act of 1933, as amended, the sale of the shares of our common stock that may be issued to Aspire Capital under the 2020 Aspire Purchase Agreement. We have filed with the SEC a prospectus supplement to our effective shelf Registration Statement on Form S-3 (File No. 333-225448) registering all of the shares of common stock that may be offered to Aspire Capital from time to time under the 2020 Aspire Purchase Agreement.

During the nine months ended September 30, 2020, we issued a total of 48,238,893 shares of our common stock to Aspire Capital under the 2019 Aspire Purchase Agreement and the 2020 Aspire Purchase Agreement in exchange for approximately $32.0 million plus Aspire Capital's commitment to participate in the 2020 Aspire Purchase Agreement.

Our history of recurring operating losses, working capital deficiencies and negative cash flows from operating activities give rise to substantial doubt regarding our ability to continue as a going concern.

We intend to fund our future operations and meet our financial obligations through revenue growth from our AI offerings, as well as through sales of our thermal-imaging products. We cannot, however, provide assurance that revenue, income and cash flows generated from our businesses will be sufficient to sustain our operations in the twelve months following the filing of this Form 10-Q. As a result, we are actively evaluating strategic alternatives including debt and equity financings and potential sales of investment assets or operating businesses.

Conditions in the debt and equity markets, as well as the volatility of investor sentiment regarding macroeconomic and microeconomic conditions (in particular, in response to the COVID-19 pandemic), will play primary roles in determining whether we can successfully obtain additional capital. We cannot be certain that we will be successful at raising additional capital.

A variety of factors, many of which are outside of our control, affect our cash flow; those factors include the effects of the COVID-19 pandemic, regulatory issues, competition, financial markets and other general business conditions. Based on financial projections, we believe that we will be able to meet our ongoing requirements for at least the next 12 months with existing cash, cash equivalents and cash resources, and based on the probable success of one or more of the following plans:

- develop and grow new product line(s)
- monetize existing assets
- obtain additional capital through debt and/or equity issuances.

However, projections are inherently uncertain and the success of our plans is largely outside of our control. As a result, there is substantial doubt regarding our ability to continue as a going concern, and we may fully utilize our cash resources prior to November 23, 2021.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

We prepared the accompanying unaudited Condensed Consolidated Balance Sheet as of September 30, 2020, with the audited Consolidated Balance Sheet amounts as of December 31, 2019 presented for comparative purposes, and the related unaudited Condensed Consolidated Statements of Operations and Comprehensive Loss, the Condensed Consolidated Statements of Cash Flows and the Condensed Consolidated Statements of Stockholders' Deficit in accordance with the instructions for Form 10-Q. In compliance with those instructions, we have omitted certain information and footnote disclosures normally included in annual consolidated financial statements prepared in accordance with U.S. generally accepted accounting principles ("GAAP"), though management believes the disclosures made herein are sufficient to ensure that the information presented is not misleading.

Our results of operations and our cash flows as of the end of the interim periods reported herein do not necessarily indicate the results we may experience for the remainder of the year or for any other future period.

Management believes that we have included all adjustments (including those of a normal, recurring nature) considered necessary to fairly present our unaudited Condensed Consolidated Balance Sheet and our unaudited Condensed Consolidated Statement of Stockholders' Deficit, each as of September 30, 2020, as well as our unaudited Condensed Consolidated Statements of Operations and Comprehensive Loss and Condensed Consolidated Statements of Cash Flows for all periods presented. You should read our unaudited condensed consolidated interim financial statements and footnotes in conjunction with our consolidated financial statements and footnotes included within the Annual Report on Form 10-K (the "2019 Form 10-K").

Consolidation

We include all of our subsidiaries, including the VIEs for which we are the primary beneficiary, in our condensed consolidated financial statements, eliminating all significant intercompany balances and transactions during consolidation.

To comply with China's laws which restrict foreign ownership of entities that operate within industries deemed sensitive by the Chinese government, we employ what we believe is a commonly-used organizational structure consisting of a wholly-foreign owned enterprise ("WFOE") and the VIEs to operate our KanKan business. We own 100% of the equity of the WFOE, while the VIEs are companies formed in China under local laws which are owned by members of our management team. We funded the registered capital and operating expenses of the VIEs by extending loans to the VIEs' owners. We are the primary beneficiary of the VIEs because the relationships between the VIEs and our WFOE are governed by contractual agreements, including in each case an Exclusive Call Option Agreement, an Exclusive Business Cooperation Agreement, a Proxy Agreement and an Equity Pledge Agreement, which give us control over the operations of the VIEs.

We use the fair value method to account for equity investments in which we cannot exercise significant influence over the investee, such as with our investment in Sharecare, Inc. ("Sharecare"). With regard to our investment in Sharecare, GAAP allows us to continue to carry our investment at cost less impairment until such time as an observable price change in the underlying security occurs. Any gains or losses resulting from a change in fair value are recorded to the statement of operations. We use the equity method for equity investments in which we can exercise significant influence over the investee (see Note 6 for information on our investments in unconsolidated affiliates).

Use of Estimates

We prepare our consolidated financial statements in conformity with GAAP. While preparing our financial statements, we make estimates and assumptions that affect amounts reported and disclosed in the consolidated financial statements and accompanying notes. Accordingly, actual results could differ from those estimates. On an ongoing basis, we evaluate our estimates, including those related to accounts receivable, intangible assets, the useful lives of property and equipment, share-based compensation, the fair value of the warrant liability, deferred income taxes, inventory reserve and purchase price allocation, among other items.

As of September 30, 2020, the impact of the COVID-19 pandemic continues to unfold. As a result, many of our estimates and assumptions required increased judgment and carry a higher degree of variability and volatility. As events continue to evolve and additional information becomes available, our estimates may change materially in future periods.

Cash and cash equivalents

Our cash and cash equivalents consist of funds held in bank accounts. Cash equivalents are highly-liquid investments with original maturities of three months or less, including money market funds.

We maintain cash balances in United States dollars ("USD"), Chinese Renminbi ("RMB"), and Hong Kong dollars ("HKD"). The following table, reported in USD, disaggregates our cash balances by currency denomination (in thousands):

	September 30, 2020	December 31, 2019
Cash denominated in:		
USD	$ 1,054	$ 216
HKD	712	2
RMB	324	54
Total cash	$ 2,090	$ 272

We maintain substantially all of our USD-denominated cash at a U.S financial institution where the balances are insured by the Federal Deposit Insurance Corporation up to $250,000. At times, however, our cash balances may exceed the FDIC-insured limit. As of September 30, 2020, we do not believe we have any significant concentrations of credit risk, although approximately $0.8 million of our USD-denominated cash balance exceeded the FDIC-insured limit. Cash held by our non-U.S. subsidiaries is subject to foreign currency fluctuations against the USD, although such risk is somewhat mitigated because we transfer U.S. funds to China to fund local operations. If, however, the USD is devalued significantly against the RMB, our cost to further develop our business in China could exceed original estimates.

Fair Value of Financial Instruments

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants (an exit price). When reporting the fair values of our financial instruments, we prioritize those fair value measurements into one of three levels based on the nature of the inputs, as follows:

Level 1: Valuations based on quoted prices in active markets for identical assets and liabilities;

Level 2: Valuations based on observable inputs that do not meet the criteria for Level 1, including quoted prices in inactive markets and observable market data for similar, but not identical instruments; and

Level 3: Valuations based on unobservable inputs, which are based upon the best available information when external market data is limited or unavailable.

The fair value hierarchy requires us to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. For some products or in certain market conditions, observable inputs may not be available.

We believe the reported carrying amounts for cash and cash equivalents, receivables, prepaids and other current assets, accounts payable, accrued expenses and other current liabilities, approximate their fair values because of the short-term nature of these financial instruments.

Foreign Currency Translation

We report all currency amounts in USD. Our China VIEs, however, maintain their books and records in their functional currency, which is RMB.

In general, when consolidating our subsidiaries or VIEs with non-USD functional currencies, we translate the amounts of assets and liabilities into USD using the exchange rate on the balance sheet date, and the amounts of revenue and expense are translated at the average exchange rate prevailing during the period. The gains and losses resulting from translation of financial statement amounts into USD are recorded as a separate component of accumulated other comprehensive loss within stockholders' deficit.

We used the exchange rates in the following table to translate amounts denominated in non-USD currencies as of and for the periods noted:

	2020	2019
Exchange rates at September 30th:		
RMB:USD	0.147	0.140
HKD:USD	0.129	0.128
Average exchange rate during the nine months ended September 30th:		
RMB:USD	0.143	0.146

Revenue Recognition

AI-Based Products

We generate revenue by developing AI-based products, including fully-integrated AI solutions which combine our proprietary technology with third-party hardware and software products to meet end-user specifications. Under one type of contract for our AI-based products, we provide a single, continuous service to clients who control the assets as we create them. Accordingly, we recognize the revenue over the period of time during which we provide the service. Under another type of contract, we have performance obligations to provide fully-integrated AI solutions to our customer and we recognize revenue at the point in time when each performance obligation is completed and delivered to, tested by and accepted by our customer.

We recognize revenue when we transfer control of the promised goods or services to our customers, and we recognize an amount that reflects the consideration to which we expect to be entitled in exchange for those goods or services. If there is uncertainty related to the timing of collections from our customer, which may be the case if our customer is not the ultimate end user of our goods, we consider this to be uncertainty of the customer's ability and intention to pay us when consideration is due. Accordingly, we recognize revenue only when we have transferred control of the goods or services and consideration received from the customer is nonrefundable.

When customers pay us prior to when we satisfy our obligation to transfer control of promised goods or services, we record the amount that reflects the consideration to which we expect to be entitled as a contract liability until such time as we satisfy our performance obligation.

For our contracts with customers, we generally extend short-term credit policies to our customers, typically up to one year for large-scale projects.

We record the incremental costs of obtaining contracts as an expense when incurred, because such costs would otherwise be amortized over a period of less than one year if capitalized.

Other

We generate revenue from other sources, such as from e-commerce activity in which we sell goods to our customers, or media production which involves the production of video or Internet-based content for our customers. We recognize the revenue from these contracts at the point in time when we transfer control of the good sold to the customer or when we deliver the promised media content. Substantially all of our contracts with customers that generate Other revenue are completed within one year or less.

Inventory

We use the first-in first-out method to determine the cost of our inventory, then we report inventory at the lower of cost or net realizable value. We regularly review our inventory quantities on hand and record a provision for excess and obsolete inventory based primarily on our estimated sales forecasts.

Net Loss per Share

We calculate basic net loss per share using the weighted-average number of common stock shares outstanding during the period. For the calculation of diluted net loss per share, we give effect to all the shares of common stock that were outstanding during the period plus the number of additional common shares that would have been outstanding if all dilutive potential common shares had been issued, using the treasury stock method. Potential common shares are excluded from the computation when their effect is anti-dilutive. Dilutive potential shares of common stock consist of incremental shares of common stock issuable upon exercise of stock options and warrants.

For the three and nine months ended September 30, 2020 and 2019, there were no reconciling items related to either the numerator or denominator of the loss per share calculation, as their effect would have been anti-dilutive.

Securities which would have been anti-dilutive to a calculation of diluted earnings per share for the three and nine months ended September 30, 2020 and 2019 include 10,123,215 and 11,469,732 outstanding stock options, respectively, and 40,000 and 3,848,423 outstanding stock warrants, respectively.

Segments

As a result of our disposal of the previously-reported Travel and Entertainment segment, we currently report one segment: our Technology & Data Intelligence segment, which provides services to our customers based upon the data collected and processed by our proprietary data intelligence software. We have identified our Chief Executive Officer as our chief operating decision maker, who reviews operating results to make decisions about allocating resources and assessing performance for the entire company. Existing guidance, which is based on a management approach to segment reporting, establishes requirements to report selected segment information about our products and services, our major customers, and the countries in which we hold material assets and in which we report revenue. All our material operating units qualify for aggregation due to their similar customer bases and similarities in economic characteristics; nature of products and services; and procurement, manufacturing and distribution processes. Since we operate in one segment, all required financial information can be found in the accompanying financial statements.

Liabilities Related to Warrants Issued

We record certain common stock warrants we issued (see Note 4 for more detailed information) at fair value and recognize the change in the fair value of such warrants as a gain or loss which we report in the Other income (expense) section in our consolidated statement of operations. We report the warrants that we record at fair value as liabilities because they contain a conditional promise to issue a variable number of our common stock shares upon the warrants' expiration, and the monetary amount of such obligation was fixed at the inception of the contract. We estimate the fair value of the warrants using an option pricing model.

Recently Issued Accounting Pronouncements

In August 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2020-06 ("ASU 2020-06"), *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. The ASU will simplify the accounting for convertible instruments by reducing the number of accounting models for convertible debt instruments and convertible preferred stock. Limiting the accounting models will result in fewer embedded conversion features being separately recognized from the host contract as compared with current GAAP. Convertible instruments that continue to be subject to separation models are (1) those with embedded conversion features that are not clearly and closely related to the host contract, that meet the definition of a derivative, and that do not qualify for a scope exception from derivative accounting and (2) convertible debt instruments issued with substantial premiums for which the premiums are recorded as paid-in capital. The ASU also amends the guidance for the derivatives scope exception for contracts in an entity's own equity to reduce form-over-substance-based accounting conclusions. With regard to our financial reporting, ASU 2020-06 will be effective January 1, 2024, and early adoption is permitted, but no earlier than January 1, 2021, including interim periods within that year. We are currently evaluating what effect(s) the adoption of ASU 2020-06 may have on our consolidated financial statements, but we do not believe the impact of the ASU will be material to our financial position, results of operations and cash flows. The effect will largely depend on the composition and terms of the financial instruments at the time of adoption.

In June 2016, the FASB issued ASU 2016-13, *Measurement of Credit Losses on Financial Instruments (Topic 326)*. The ASU requires entities to use a forward-looking approach based on current expected credit losses to estimate credit losses on certain types of financial instruments, including trade receivables, which may result in the earlier recognition of allowances for losses. With regard to our financial reporting, ASU 2016-13 will be effective beginning January 1, 2023, and early adoption is permitted. We do not believe the impact of the ASU will be material to our financial position, results of operations and cash flows.

We have reviewed all accounting pronouncements recently issued by the FASB and the Securities and Exchange Commission. The authoritative pronouncements that we have already adopted did not have a material effect on our financial condition, results of operations, cash flows or reporting thereof, and except as otherwise noted above, we do not believe that any of the authoritative pronouncements that we have not yet adopted will have a material effect upon our financial condition, results of operations, cash flows or reporting thereof.

NOTE 3. REVENUE

We sell AI-based products that include our Remark AI Thermal Kits, rPads and Thermal Helmets in the U.S., as well as the various customized products we sell in China based upon facial recognition, gesture recognition and other technologies.

We do not include disclosures related to remaining performance obligations because substantially all our contracts with customers have an original expected duration of one year or less or, with regard to our stand-ready obligations, the amounts involved are not material.

Disaggregation of Revenue

The following table presents a disaggregation of our revenue by major category (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
AI-based products	$ 2,496	$ 549	$ 4,873	$ 3,439
Other	150	137	503	1,321
Revenue	$ 2,646	$ 686	$ 5,376	$ 4,760

The following table presents a disaggregation of our revenue by country (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
China	$ 2,051	$ 552	$ 3,383	$ 4,319
United States	590	134	1,852	441
Other countries	5	—	141	—
Revenue	$ 2,646	$ 686	$ 5,376	$ 4,760

Significant Judgments

When accounting for revenue we make certain judgments, such as whether we act as a principal or as an agent in transactions or whether our contracts with customers fall within the scope of current GAAP regarding revenue, that affect the determination of the amount and timing of our revenue from contracts with customers. Based on the current facts and circumstances related to our contracts with customers, none of the judgments we make involve an elevated degree of qualitative significance or complexity such that further disclosure is warranted in terms of their potential impact on the amount and timing of our revenue.

Contract Assets and Contract Liabilities

We do not currently generate material contract assets. During the nine months ended September 30, 2020, our contract liability changed only as a result of routine business activity.

During the nine months ended September 30, 2020, we recognized approximately $0.2 million of revenue which was included in the beginning balance of Contract liability at January 1, 2020, while during the comparable period of 2019, we did not recognize a material amount of revenue which was included in the beginning balance of Contract liability at January 1, 2019.

During the nine months ended September 30, 2020 and 2019, we did not recognize revenue from performance obligations within the scope of ASC 606 that were satisfied in previous periods.

Certain Agreements Related to AI-Based Product Sales

In December 2018, we completed two fully-integrated AI solutions for which we fully performed under the agreement and title to the product passed to our customer, so we recognized cost of revenue of $4.0 million; however, we did not recognize the $4.6 million of revenue from such projects due to uncertainty regarding the timing of collection of amounts payable to us under the agreement. The uncertainty regarding the timing of collection prevented us from determining that collectibility of all amounts payable to us under the agreements was probable, resulting in a timing difference between recognition of cost and recognition of revenue. Though we cannot recognize the revenue until collectibility is deemed probable, we expect to fully collect the amounts payable to us under our legally-enforceable agreements and, therefore, we recorded a receivable of $4.6 million in Prepaid expense and other current assets, and a liability in Accrued expense and other current liabilities on our 2018 Consolidated Balance Sheet.

During the year ended December 31, 2019, we recorded approximately $1.1 million of revenue on the projects described above or which we did not recognize revenue in 2018 due to uncertainty regarding the timing of collection of the amounts due, and as of December 31, 2019, the total balances of Prepaid expense and other current assets and of Accrued expense and other current liabilities contained $3.4 million related to such projects. During the nine months ended September 30, 2020, we recognized approximately $0.2 million of revenue on the projects described above. As a result, the total balances of Prepaid expense and other current assets and of Accrued expense and other current liabilities contained $3.2 million as of September 30, 2020.

NOTE 4. FAIR VALUE MEASUREMENTS OF CERTAIN LIABILITIES

Liabilities Related to Warrants to Purchase Common Stock

At the end of each reporting period, until expiry, we use an option pricing model to estimate and report the fair value of liabilities related to certain outstanding warrants to purchase common stock. As of September 30, 2020, our outstanding liability-classified warrants include the warrants we issued or that we are obligated to issue as part of the consideration for our acquisition (the “CBG Acquisition”) of assets of China Branding Group Limited (“CBG”) in September 2016 (the “CBG Acquisition Warrants”). The warrants we issued in connection with the financing we obtained for the CBG Acquisition (referred to in our prior reports as the CBG Financing Warrants) expired on September 24, 2020 without being exercised; therefore, the balance of $0.7 million as of September 30, 2020 represents the liability associated with the CBG Acquisition Warrants.

The following table presents the quantitative inputs, which we classify in Level 3 of the fair value hierarchy, used in estimating the fair value of the CBG Acquisition Warrants:

	September 30, 2020	December 31, 2019
Expected volatility	85.00 %	75.00 %
Risk-free interest rate	0.16 %	1.65 %
Expected remaining term (years)	2.98	3.72

The following table presents the change in the liability balance associated with our liability-classified warrants (in thousands):

	Nine Months Ended September 30, 2020	Year Ended December 31, 2019
Balance at beginning of period	$ 115	$ 1,383
Increase (decrease) in fair value	633	(1,268)
Balance at end of period	$ 748	$ 115

As of September 30, 2020 and 2019, warrants outstanding included CBG Acquisition Warrants which may be exercised to purchase 40,000 shares of our common stock at a per-share exercise price of $10.00 (we are also committed to the future issuance of additional CBG Acquisition Warrants to purchase up to 5,710,000 of the Company’s common shares at the same per-share exercise price as the CBG Acquisition Warrant that has already been issued) and, as of September 30, 2019, the CBG Financing Warrants, which could have been exercised to purchase 3,808,423 shares of our common stock at an exercise price of $3.86 per share.

Contingent Consideration Issued in Business Acquisition

Through December 31, 2019, we used the discounted cash flow valuation technique to estimate the fair value of the liability related to certain cash payments that we were obligated make related to our acquisition of Vegas.com, LLC (“Vegas.com”) in September 2015 that were contingent upon the performance of Vegas.com in the years ended December 31, 2016, 2017, and 2018 (the “Earnout Payments”). The significant unobservable inputs that we used, which we classify in Level 3 of the fair value hierarchy, were projected earnings before interest, taxes, depreciation and amortization (“EBITDA”), the probability of achieving certain amounts of EBITDA, and the rate used to discount the liability. On August 19, 2020, we paid all amounts that had remained outstanding related to the Earnout Payments and extinguished this liability.

The following table presents the change during the nine months ended September 30, 2020 and the year ended December 31, 2019 in the balance of the liability associated with the Earnout Payments (in thousands):

	Nine Months Ended September 30, 2020	Year Ended December 31, 2019
Balance at beginning of period	$ 1,086	$ 990
Payments	(1,132)	(8)
Change in fair value of contingent consideration	—	10
Interest accrued on unpaid balance	46	94
Balance at end of period	$ —	$ 1,086

On the Condensed Consolidated Balance Sheets, we had included the liability for contingent consideration as a component of Accrued expense and other current liabilities.

NOTE 5. TRADE ACCOUNTS RECEIVABLE

	September 30, 2020	December 31, 2019
Gross accounts receivable balance	$ 5,114	$ 4,171
Allowance for bad debt	(2,264)	(2,207)
Accounts receivable, net	$ 2,850	$ 1,964

Generally, it is not unusual for Chinese entities to pay their vendors on longer timelines than the timelines typically observed in U.S. commerce. Trade receivables related to our China-based AI projects (exclusive of certain financial technology ("FinTech") services we provided) represent 63% of our gross trade receivables.

NOTE 6. INVESTMENT IN UNCONSOLIDATED AFFILIATES

In 2009, we co-founded a U.S.-based venture, Sharecare, to build a web-based platform that simplifies the search for health and wellness information. The other co-founders of Sharecare were Dr. Mehmet Oz, HARPO Productions, Discovery Communications, Jeff Arnold and Sony Pictures Television. As of September 30, 2020 and December 31, 2019, we owned approximately 4.4% of Sharecare's issued stock, the value of which was $1.0 million, and maintained representation on its Board of Directors.

During June 2018, one of our consolidated VIEs acquired a 20% interest in Beijing All-in-one Cloud Net Technology, Co. Ltd. ("AIO"), a Chinese technology company which provided consulting and data services to the Chinese film industry, in exchange for $1.0 million, a portion of which was paid as of September 30, 2020, and a license to use our proprietary KanKan data intelligence platform in China. Based on additional information we obtained during the third quarter of 2020, we determined that the COVID-19 outbreak in China had permanently ended AIO's ability to conduct its business and we wrote off our remaining investment of $0.9 million in that entity, which, when netted against the remaining $0.5 million we owed to AIO for the equity interest, resulted in a loss on impairment of $0.4 million.

NOTE 7. PREPAID EXPENSE AND OTHER CURRENT ASSETS

The following table presents the components of prepaid expense and other current assets (in thousands):

	September 30, 2020	December 31, 2019
Other receivables	$ 3,387	$ 3,712
Prepaid expense	2,207	633
Deposits	53	7
Other current assets	184	271
Total	$ 5,831	$ 4,623

NOTE 8. PROPERTY AND EQUIPMENT

Property and equipment consist of the following (in thousands, except estimated lives):

	Estimated Life (Years)	September 30, 2020	December 31, 2019
Computers and equipment	3	1,020	989
Furniture and fixtures	3	46	23
Software	3	4,940	4,896
Leasehold improvements	3	139	114
Total property, equipment and software		$ 6,145	$ 6,022
Less accumulated depreciation		(5,878)	(5,681)
Total property, equipment and software, net		$ 267	$ 341

For the nine months ended September 30, 2020 and 2019, depreciation (and amortization of software) expense was $0.2 million and $0.6 million, respectively.

NOTE 9. LEASES

We lease office space and a vehicle under contracts we classify as operating leases. None of our leases are financing leases.

The following table presents the detail of our lease expense, net of sublease income, which is reported in General and administrative expense (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Operating lease expense	$ 72	$ 492	$ 544	$ 1,195
Short-term lease expense	54	67	159	231
Less: Sublease income	—	(94)	—	(172)
Lease expense	$ 126	$ 465	$ 703	$ 1,254

We reported within continuing operating cash flows for the nine months ended September 30, 2020 and 2019, $0.2 million and $1.5 million, respectively, of cash paid for amounts included in the measurement of operating lease liabilities.

As of September 30, 2020, our operating leases had a weighted-average remaining lease term of approximately 22 months, and we used a weighted-average discount rate of approximately 13% to measure our operating lease liabilities.

As of December 31, 2019 we reported right of use assets of $4.4 million and lease liabilities of $7.5 million. During August 2020, we entered into a settlement agreement relating to the lease for our former office space in Las Vegas which we vacated during March 2020. During the nine months ended September 30, 2020, we reduced right of use assets and operating lease liabilities relating to this lease by $3.8 million and $5.3 million, respectively, which resulted in a gain on lease termination of $1.5 million. In addition, we recognized a further gain of $2.0 million during August 2020, when we entered into a settlement with our former landlord, which is described in more detail in Note 9. As of September 30, 2020, our right of use assets were $0.4 million and our remaining lease obligations were $0.5 million.

Maturity of Lease Liabilities

The following table presents information regarding the maturities of our undiscounted remaining operating lease payments, with a reconciliation to the amount of the liabilities representing such payments as presented in our September 30, 2020 unaudited Condensed Consolidated Balance Sheet (in thousands):

Operating lease liabilities maturing during the next:		
One year	$	343
Two years		122
Three years		50
Total undiscounted cash flows	$	515
Present value of cash flows	$	466
Lease liabilities on balance sheet:		
Short-term	$	308
Long-term		158
Total lease liabilities	$	466

Termination of Lease and Related Landlord Actions

Beginning approximately July 2019, we were not able to pay our obligations under the office lease for our former office located at 3960 Howard Hughes Parkway in Las Vegas, Nevada. On March 5, 2020, our former landlord, BRE/HC Las Vegas Property Holdings, L.L.C (the “Hughes Center Landlord”), exercised its right to terminate the lease as of such date as a result of the ongoing payment default.

On April 9, 2020, the Hughes Center Landlord filed suit against us in Nevada to recover the approximately $1.1 million of rent owed through March 5, 2020, plus damages resulting from the early termination of the lease.

On August 3, 2020, we entered into a settlement agreement with the Hughes Center Landlord (the “Hughes Center Lease Settlement”), pursuant to which we immediately paid $0.45 million to the Hughes Center Landlord and agreed to pay another $0.15 million in three equal installments on each of September 1, 2020, October 1, 2020 and November 1, 2020 (an aggregate payment of $0.6 million), in full settlement of our obligations with respect to such office lease.

As of December 31, 2019, we had accrued approximately $2.3 million for settlement of this matter. During the period ended September 30, 2020, we accrued an additional $0.3 million related to this matter. See Note 18 for additional information regarding the Hughes Center Lease Settlement and the Hughes Center Landlord’s legal actions against us.

Other

In September 2020, we prepaid the lease expense for a short-term lease on a property in the Los Angeles, California area. The $0.3 million we paid remained in the balance of Prepaid expense and other current assets as of September 30, 2020.

Significant Judgments

When accounting for our leases, we make certain judgments, such as whether a contract contains a lease or what discount rate to use, that affect the determination of the amount of our lease assets and liabilities. Based on the current facts and circumstances related to our contracts, none of the judgments we make involve an elevated degree of qualitative significance or complexity such that further disclosure is warranted.

NOTE 10. INTANGIBLE ASSETS

The following table summarizes intangible assets by category (in thousands):

	September 30, 2020			December 31, 2019		
	Gross Amount	Accumulated Amortization	Net Amount	Gross Amount	Accumulated Amortization	Net Amount
Finite-lived intangible assets						
Domain names	$ 1,256	$ (929)	$ 327	$ 1,256	$ (874)	$ 382
Other intangible assets	—	—	—	68	(68)	—
	$ 1,256	$ (929)	$ 327	$ 1,324	$ (942)	$ 382
Indefinite-lived intangible assets						
License to operate in China	28		28	127		127
Total intangible assets	$ 1,284		$ 355	$ 1,451		$ 509

Total amortization expense was de minimis and $0.3 million for the nine months ended September 30, 2020 and 2019, respectively.

NOTE 11. OTHER LONG-TERM ASSETS

Included in Other long-term assets as of September 30, 2020 is an advance of $1.5 million we made to an unrelated entity (our “China Business Partner”) pursuant to an agreement we entered into with the China Business Partner. We are in the process of negotiating a separate contract with the China Business Partner setting out the terms pursuant to which the China

Business Partner will assist us in obtaining contracts from some of the largest companies in China. Under the executed agreement with the China Business Partner, upon receipt of a borrowing request from the China Business Partner, we have an obligation to advance up to an aggregate amount of $5.1 million over the loan term of five years, though we do have the option to terminate the loan agreement at any time prior to converting the outstanding principal and accrued interest into equity interests of our China Business Partner. The initial $1.5 million that we have advanced allowed our China Business Partner to purchase and modify hardware to integrate with our AI software and meet the needs of potential customers such that the resulting integrated solutions could be demonstrated to the potential customers while bidding on large contracts. Any advances we make under the agreement will bear a simple interest rate of 10% per annum, payable before each December 31st during the term of the agreement, and will be convertible at our election into equity of the China Business Partner upon any equity financing our China Business Partner undertakes during the term of the agreement.

NOTE 12. ACCRUED EXPENSE AND OTHER CURRENT LIABILITIES

The following table presents the components of Accrued expense and other current liabilities (in thousands):

	September 30, 2020	December 31, 2019
Accrued compensation and benefit-related expense	$ 1,195	$ 1,210
Accrued interest	439	302
Other accrued expense	369	1,037
Other payables	3,339	3,780
Operating lease liability - current	308	2,877
Other current liabilities	3,337	5,120
Total	$ 8,987	$ 14,326

NOTE 13. DEBT

Short-Term Debt

On April 12, 2017, we issued a short-term note payable in the principal amount of $3.0 million to a private lender in exchange for cash in the same amount. The agreement, which does not have a stated interest rate, required us to repay the note plus a fee of $115 thousand on the maturity date of June 30, 2017. The note is accruing interest at $500 per day on the unpaid principal until we repay the note in full. As of December 31, 2019, we owed $3.0 million in principal and $0.3 million in accrued interest. During the nine months ended September 30, 2020, we repaid $1.5 million of the principal, meaning that as of September 30, 2020, we owed $1.5 million in principal and $0.4 million in accrued interest.

Other Debt

The following table presents debt (in thousands) as of:

	September 30, 2020	December 31, 2019
MGG loan due May 2020	$ —	$ 12,025
Loans payable, current	—	12,025
PPP loan due April 2022	425	—
Loans payable, long-term	$ 425	$ —

Loan due May 2020

We were a party to a financing agreement dated as of September 24, 2015 (as amended, the “Financing Agreement”) with certain of our subsidiaries as borrowers (together with Remark, the “Borrowers”), certain of our subsidiaries as guarantors, the lenders from time to time party thereto (the “Lenders”) and MGG Investment Group LP, in its capacity as collateral agent and administrative agent for the Lenders (“MGG”), pursuant to which the Lenders extended credit to the Borrowers consisting of a term loan in the aggregate principal amount of $35.5 million (the “MGG Loan”).

On May 15, 2019, we completed the sale of all of the issued and outstanding membership interests of Vegas.com (the “VDC Transaction”) and used the cash proceeds of $30 million to pay amounts due under the Financing Agreement, of which approximately $10 million remained outstanding after giving effect to the application of such cash proceeds.

On May 28, 2020, we repaid in full all outstanding obligations under, and terminated, the Financing Agreement.

Loan due April 2022

On April 15, 2020, we entered into a loan agreement (the “PPP Loan”) with our bank under the U.S. Small Business Administration’s Paycheck Protection Program. Under the PPP Loan, we borrowed $0.4 million with a stated interest rate of one percent for a term of two years from the initial disbursement date of April 15, 2020. The PPP Loan is eligible for forgiveness as part of the CARES Act if certain requirements are met. We continue to evaluate and monitor the requirements of the CARES Act that allow for forgiveness. The accrued interest expense relating these loans for three and nine months ended September 30, 2020 was not material. As of September 30, 2020, the SBA loan had an outstanding principal balance of $0.4 million included in loans payable.

NOTE 14. COMMITMENTS AND CONTINGENCIES

At September 30, 2020, we had no material commitments outside the normal course of business.

Contingencies

As of September 30, 2020, we were neither a defendant in any material pending legal proceeding nor are we aware of any material threatened claims against us and, therefore, we have not accrued any contingent liabilities.

On February 21, 2018, we initiated a legal proceeding (the “CBG Litigation”) against CBG, Adam Roseman, and CBG’s Joint Official Liquidators (the “JOLs”) arising from the CBG Acquisition. The CBG Litigation was filed in the United States District Court for the District of Nevada and is captioned as *Remark Holdings, Inc.*, *et al. v. China Branding Group, Limited (In Official Liquidation), et al.*, Case No. 2:18-cv-00322. In the CBG Litigation, we sought a declaration from the court that we are entitled to rescission of the purchase agreement relating to the CBG Acquisition and all transactions related to the CBG Acquisition, a declaration that such purchase agreement and the transactions consummated pursuant thereto be rescinded and void ab initio, a declaration that we are not required to deliver the remaining CBG Acquisition Warrants allowing for the purchase of 5,710,000 shares of common stock at a per-share exercise price of $10.00, an order directing release to us of any consideration held in escrow in connection with the CBG Acquisition, and disgorgement of all consideration paid by us in connection with the CBG Acquisition. We alleged that the defendants fraudulently mispresented and concealed material information regarding the companies we acquired in the CBG Acquisition.

We entered into a settlement agreement with Mr. Roseman to settle all claims against him, and we dismissed those claims on May 13, 2019. We entered into a Stipulation for Settlement dated January 15, 2019 with CBG and the JOLs, which sets forth the binding terms of their settlement agreement (the “Stipulation for Settlement”). Pursuant to the Stipulation for Settlement, we will issue fully-transferable warrants on a non-diluted basis allowing for the purchase of 5,710,000 shares of our common stock at a per-share exercise price of $6.00, which warrants are exercisable for a period of 5 years from the date of the Stipulation for Settlement, and which we have the right to cause the warrant holders to exercise if the closing price of our common stock is $8.00 or greater on any 5 non-consecutive days in any consecutive 30-day trading window. The parties to the Stipulation for Settlement also agreed to negotiate anti-dilution provisions for the warrants. In exchange for the foregoing consideration, the parties to the Stipulation for Settlement agreed to release their claims against each other and enter into a written definitive settlement agreement. After entering into the Stipulation for Settlement, the JOLs demanded the warrants also include an exchange right. We rejected this request and filed a motion to enforce the Stipulation for Settlement on March 12, 2019. The Nevada court issued a report and recommendation on August 2, 2019, which was affirmed on September 24, 2019, requiring the JOLs to submit the written definitive settlement agreement (without an exchange right) to the Grand Court of the Cayman Islands overseeing CBG's liquidation for approval. An application for sanction to enter the settlement agreement was filed with the Grand Court on December 3, 2019. One month later, on or about January 2, 2020, the Grand Court approved the application, authorizing CBG and the JOLs to enter into the settlement. Counsel for the parties are currently finalizing the settlement agreement.

NOTE 15. STOCKHOLDERS' EQUITY, SHARE-BASED COMPENSATION AND NET LOSS PER SHARE

Common Shares Authorized

Our Amended and Restated Certificate of Incorporation authorizes us to issue up to 100,000,000 shares of our common stock, of which 99,505,041 shares were outstanding as of November 20, 2020. In addition, as of November 20, 2020, we had outstanding stock options allowing for the purchase of as many as approximately 15.7 million shares of common stock and we had outstanding warrants to purchase 40,000 shares of common stock. If all of our outstanding stock options and warrants were exercised, the total number of shares of our common stock that we would be required to issue would greatly exceed the number of our remaining authorized but unissued shares of common stock.

As a result of such potential shortfall in the number of our authorized shares of common stock, we will have insufficient shares of common stock available to issue in connection with the exercise of our outstanding stock options and warrants or any future equity financing transaction we may seek to undertake. Accordingly, we intend to seek approval of an increase in the number of our authorized shares of common stock at a 2020 special meeting of stockholders.

Equity Issuances

On March 3, 2020, we entered into the 2020 Aspire Purchase Agreement with Aspire Capital which provided that, upon the terms and subject to the conditions and limitations set forth therein, we had the right to direct Aspire Capital to purchase up to an aggregate of $30.0 million of shares of our common stock over the 30-month term of the 2020 Aspire Purchase Agreement. The 2020 Aspire Purchase Agreement replaced the 2019 Aspire Purchase Agreement, which terminated under the terms of the 2020 Aspire Purchase Agreement. In consideration for entering into the 2020 Aspire Purchase Agreement, we issued to Aspire Capital 2,374,545 shares of our common stock.

As of September 30, 2020, we have issued to Aspire Capital a total of 44,227,890 shares of our common stock under the 2020 Aspire Purchase Agreement. During the nine months ended September 30, 2020, we issued a total of 48,238,893 shares of our common stock to Aspire Capital under the 2019 Aspire Purchase Agreement and the 2020 Aspire Purchase Agreement in exchange for $32.0 million plus Aspire Capital's commitment to participate in the 2020 Aspire Purchase Agreement.

Share-Based Compensation

We are authorized to issue equity-based awards under our 2010 Equity Incentive Plan, our 2014 Incentive Plan, and our 2017 Incentive Plan, each of which our stockholders have approved. We also award cash bonuses ("China Cash Bonuses") to our employees in China, which grants are not subject to a formal incentive plan and which can only be settled in cash. We grant such awards to attract, retain and motivate eligible officers, directors, employees and consultants. Under each of the plans, we have granted shares of restricted stock and options to purchase common stock to our officers and employees with exercise prices equal to or greater than the fair value of the underlying shares on the grant date.

Stock options and China Cash Bonuses generally expire 10 years from the grant date. All forms of equity awards and China Cash Bonuses vest upon the passage of time, the attainment of performance criteria, or both. When participants exercise stock options, we issue any shares of our common stock resulting from such exercise from new authorized and unallocated shares available at the time of exercise.

The following table summarizes activity under our equity incentive plans related to equity-classified stock option grants as of September 30, 2020, and changes during the nine months then ended:

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at January 1, 2020	10,359,079	$ 4.20		
Exercised	(148,364)	0.87		
Forfeited, cancelled or expired	(87,500)	2.63		
Outstanding at September 30, 2020	10,123,215	$ 4.26	5.9	$ —
Options exercisable at September 30, 2020	9,959,528	$ 4.32	5.9	$ —

The following table summarizes activity under our equity incentive plans related to the China Cash Bonuses as of September 30, 2020, and changes during the nine months then ended:

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at January 1, 2020	1,087,500	$ 5.20		
Granted	300,000	1.37		
Forfeited, cancelled or expired	(313,500)	5.44		
Outstanding at September 30, 2020	1,074,000	$ 4.07	6.6	$ —
Options exercisable at September 30, 2020	752,250	$ 5.21	5.2	$ —

During the three months ended September 30, 2020, we granted to employees and directors, excluding our CEO, options to purchase approximately 5.6 million shares of our common stock. The option agreements governing the grants contain a stipulation that, regardless of vesting, such options do not become exercisable unless and until stockholders approve an amendment to our Amended and Restated Certificate of Incorporation to increase in the number of authorized shares of our common stock in an amount sufficient to allow for the exercise of the options and we have filed a corresponding Certificate of Amendment to our Amended and Restated Certificate of Incorporation reflecting such increase in the number of authorized shares of our common stock. Given the requirement for stockholder approval of additional authorized shares to make the stock options exercisable, a grant date for accounting purposes has not yet occurred.

During the three months ended September 30, 2020 and 2019, we incurred share-based compensation expense (benefit) of $(0.4) million and $0.1 million, respectively. During the nine months ended September 30, 2020 and 2019, we incurred share-based compensation expense of $0.3 million and $0.3 million, respectively.

NOTE 16. RELATED PARTY TRANSACTIONS

On July 27, 2020, we collected approximately $0.5 million of receivables from related parties. The receivables represented cash advances in excess of expense reimbursements to senior management. The cash received from these receivables was subsequently injected as additional capital into our VIEs in China.

NOTE 17. DISCONTINUED OPERATIONS

On May 15, 2019, we completed the VDC Transaction for an aggregate purchase price of $30.0 million. The business we sold in the VDC Transaction formerly comprised our Travel and Entertainment segment.

The following table presents the major classes of line items constituting the pretax profit or loss of the disposed Travel and Entertainment segment (in thousands):

	Nine Months Ended September 30, 2019
Revenue	$ 27,432
Cost of revenue (excluding depreciation and amortization)	4,016
Selling, general and administrative	18,383
Technology and development	3,280
Depreciation, amortization and impairments	8,007
Other operating expense	384
Other expense (income) and loss (gain), net	(3,814)
Loss from discontinued operations before income taxes	(2,824)
Benefit from income taxes	214
Loss from discontinued operations	$ (2,610)

NOTE 18. SUBSEQUENT EVENTS

On each of September 1, 2020, October 1, 2020 and November 1, 2020, we paid a cumulative total of $150,000 to the Hughes Center Landlord representing, in addition to the $0.45 million we initially paid under the Hughes Center Lease Settlement in August 2020, full settlement of our obligations with respect to the office lease for our former office located at 3960 Howard Hughes Parkway in Las Vegas, Nevada. On November 5, 2020, the Hughes Center Landlord filed a Notice of Voluntary Dismissal with Prejudice with the District Court of Clark County, Nevada dismissing their legal action against us.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read our discussion and analysis of our financial condition and results of operations for the three and nine months ended September 30, 2020 in conjunction with our unaudited condensed consolidated financial statements and notes thereto set forth in Part I, Item 1 of this Quarterly Report on Form 10-Q. Such discussion and analysis includes forward-looking statements that involve risks and uncertainties and that are not historical facts, including statements about our beliefs and expectations. You should also read "Special Note Regarding Forward-Looking Statements" in the section following the table of contents of this report.

OVERVIEW

We are a diversified global technology company with leading artificial intelligence ("AI") and data-analytics solutions, as well as a portfolio of digital media properties.

Our AI Business

Through our proprietary data and AI platform, our Remark AI business (currently known in the Asia-Pacific region as KanKan) generates revenue by delivering AI-based vision products, computing devices and software-as-a-service solutions for businesses in many industries. In addition to the other work that we have ramped up, we continue partnering with top universities on research projects targeting algorithm, artificial neural network and computing architectures which we believe keeps us among the leaders in technology development. During 2019, our research team participated in a series of computer vision competitions at the Conference on Computer Vision and Pattern Recognition and the International Conference on Computer Vision (considered the top two computer vision conferences in the world) and was ranked first or second in many of such competitions.

We continue to market Remark AI's innovative AI-based solutions to customers in the retail, urban life cycle and workplace and food safety markets.

Retail Solutions. Utilizing a client's existing cameras and strategic sensors placed throughout the store, Remark AI's retail solutions swiftly analyze real-time customer shopping behavior, such as time of store entry and shelf-browsing habits, and provide managers with a customer heatmap that reflects traffic patterns. Purchase history is also analyzed, leading to relevant offers for future purchase conversions, and customers for their continued loyalty through a special VIP status that brings customized promotions and coupons along with attentive customer service. Remark AI's retail solutions allow retailers and store managers to make better data-driven decisions regarding store layout, item placement, and pricing strategy, all while anonymizing customers' identities to protect their privacy.

Urban Life Cycle Solutions. We offer and have installed several solutions in what we call the urban life cycle category. Our urban life cycle solutions include our AI community system which assists in building "smart" communities by enhancing community security and safety. We also have AI solutions that help to make schools "smart" by (i) providing an accurate and convenient method for student check-in and check-out, (ii) providing an autonomous method of campus monitoring that enhances students' safety by, for example, monitoring students for elevated body temperatures that could indicate viral infections such as influenza or COVID-19, detecting trespassers, detecting dangerous behaviors or physical accidents that could result in injury, and (iii) monitoring the school kitchen for safety violations.

In traffic management, our solutions assist in monitoring traffic for various violations by automatically detecting, capturing, and obtaining evidence regarding violations such as speeding, running red lights, driving against the flow of traffic and even using counterfeit registration plates. Additionally, our solutions provide constant road-condition monitoring, providing control centers with real-time information on traffic conditions such as areas of congestion or other traffic anomalies.

Workplace and Food Safety Solutions. The monitoring and detection capabilities of our solutions ensure that workers are practicing established food safety protocols, wearing the proper personal protective equipment, and complying with local health codes. From commercial kitchens to factories to construction work zones, our safety-compliance algorithms manage regulatory functions, review hygienic and equipment status while checking and alerting management regarding violations.

Our Biosafety Business

The first half of 2020 was one of renewed focus for us as we repurposed and improved our existing urban life cycle solution that we were selling to make schools in China "smart" schools to build a new product line of high-quality, highly-effective thermal imaging solutions that leverage our innovative software. We currently focus our efforts predominantly in the U.S. market.

Remark AI Thermal Kits. We sell our Remark AI Thermal Kits to customers needing the ability to scan crowds and areas of high foot traffic for indications that certain persons with elevated temperatures may require secondary screening. Though the kits are semi-customizable, they generally consist primarily of a thermal imaging camera, a calibrating device, a computer to monitor the video feed, supporting equipment and our AI software. Once set up and calibrated, the kits scan a large number of people each minute, providing both thermally enhanced and standard video feeds that allow our customers to evaluate high volumes of people at large gatherings.

Remark AI Thermal Pads. Our Remark AI rPad thermal imaging devices, usually mounted on a wall or a single-post stand, are designed for customers needing the ability to scan individuals on a one-by-one basis in situations where rapid, high-volume scanning is not necessary, such as at a customer's office entrances where employees can be scanned as they enter for indications of an elevated temperature that may require secondary screening. In addition to thermal scanning, we can customize our AI software embedded in the rPad to perform additional safety and security functions including identifying persons for authorized entry.

We have also developed the Remark AI Thermal Helmet which can, for example, be worn by security personnel at large gatherings allowing for a mobile thermal scanning ability.

Other Businesses

We also maintain a digital media portfolio which, in addition to operating businesses, includes an approximately 4.4% ownership in the issued stock of Sharecare, Inc., an established health and wellness platform with more than 100 million users, which has now raised in excess of $425 million of total capital. We continue to evaluate opportunities to monetize and maximize the value of this asset for our shareholders. In addition to AI-based products revenue from our Remark AI business, activities such as online merchandise sales generated from Bikini.com, our e-commerce website selling swimwear and accessories in the latest styles, also contributed to our consolidated revenue in the current-year and prior-year periods, while advertising also contributed to revenue in prior-year periods.

Overall Business Outlook

Our innovative AI-based solutions continue to gain worldwide awareness and recognition through media exposure, comparative testing, product demonstrations and word of mouth resulting from positive responses and increased acceptance. We intend to expand our business not only in the Asia-Pacific region, where we believe there still are fast-growth AI market opportunities for our solutions, but also in the United States and other countries where we see a tremendous number of requests for AI products and solutions in the workplace and public safety markets, especially in response to the COVID-19 pandemic. However, the COVID-19 pandemic may also continue to present challenges to our business, as could economic and geopolitical conditions in some international regions, and we do not yet know what will be the ultimate effects on our business. We continue to pursue large business opportunities, but anticipating when, or if, we can close these opportunities is difficult. Quickly deploying our software solutions in the market segments we have identified, in which we may face a number of large, well-known competitors, is also difficult.

Business Developments During 2020

After spending most of the first quarter of 2020 on product development and relationship building, we were able to launch our biosafety business in the second quarter of 2020 and begin recognizing revenue from sales of the new products. Our expectation is that the U.S. will be the primary market for this new product line, though we will continue to work to develop other markets as well. The third quarter of 2020 saw us ramp up execution of our larger contracts in China, such as that with China Mobile and contracts with several school districts. We expect to continue completing projects under those contracts and under other contracts to continue to increase revenue from our China AI. Our work to build on the initial success of our biosafety business continues. Not all businesses across the U.S. have re-opened after COVID-19 lockdowns and not all of those that have re-opened have done so completely, which, in addition to the uncertainty of whether new closures will be implemented, somewhat slowed our biosafety business sales during the third quarter of 2020. Customers and potential customers, however, continue to show strong interest in our products, so we expect that revenue from the biosafety business will increase as more businesses can begin to make their plans to re-open.

Though Chinese New Year celebrations, working capital constraints and the U.S.-China trade war had some adverse impact, our business has also been significantly impacted by the COVID-19 pandemic, which has resulted in national and local governmental authorities across the world implementing numerous preventative measures in an effort to control the spread of the virus, including travel restrictions, shelter-in-place orders, school closings, closure of non-essential businesses and other quarantine measures. The pandemic and the related preventative measures have limited our operational capabilities by preventing our employees from working for long periods of time and causing many of our customers to delay implementation of contracts we already signed with them, all of which has adversely impacted our business and results of operations. Our business and financial results may be materially and adversely impacted by the COVID-19 pandemic for the duration of 2020 or longer, and we are unable to predict the duration or degree of such impact with any certainty. For example, health officials have predicted a surge in COVID-19 infections during the fall and winter of 2020, which could lead to additional preventative measures including a reintroduction of quarantines in places that have relaxed such quarantines after the initial outbreak.

The following table presents our revenue categories as a percentage of total consolidated revenue during the nine months ended September 30, 2020.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
AI-based products and services	94 %	80 %	91 %	72 %
Advertising and other	6 %	20 %	9 %	28 %

CRITICAL ACCOUNTING POLICIES

During the three and nine months ended September 30, 2020, we made no material changes to our critical accounting policies as we disclosed them in Part II, Item 7 of our 2019 Form 10-K.

RESULTS OF OPERATIONS

The following tables summarize our operating results for the three and nine months ended September 30, 2020, and the discussion following the tables explains material changes in the operating results for the three and nine months ended September 30, 2020 compared to the three and nine months ended September 30, 2019.

(dollars in thousands)	Three Months Ended September 30,		Change	
	2020	2019	Dollars	Percentage
Revenue	$ 2,646	$ 686	$ 1,960	286 %
Cost of revenue	1,679	189	1,490	788 %
Sales and marketing	417	736	(319)	(43)%
Technology and development	738	752	(14)	(2)%
General and administrative	2,380	3,052	(672)	(22)%
Depreciation and amortization	72	229	(157)	(69)%
Impairments	463	—	463	
Interest expense	(60)	(457)	397	(87)%
Other income	(58)	(24)	(34)	142 %
Gain on lease termination	2,044	—	2,044	
Change in FV of warrant liability	5,570	(160)	5,730	(3,581)%
Other gain (loss)	21	(28)	49	(175)%

(dollars in thousands)	Nine Months Ended September 30,		Change	
	2020	2019	Dollars	Percentage
Revenue	$ 5,376	$ 4,760	$ 616	13 %
Cost of revenue	2,910	3,323	(413)	(12)%
Sales and marketing	1,319	2,282	(963)	(42)%
Technology and development	2,863	2,910	(47)	(2)%
General and administrative	7,018	8,483	(1,465)	(17)%
Depreciation and amortization	228	814	(586)	(72)%
Impairments	463	—	463	
Other operating expense	—	6	(6)	(100)%
Interest expense	(1,296)	(1,397)	101	(7)%
Other income	(1)	23	(24)	(104)%
Gain on lease termination	3,582	—	3,582	
Change in FV of warrant liability	(633)	502	(1,135)	(226)%
Other gain (loss)	(52)	(27)	(25)	93 %

Revenue and Cost of Revenue. During the three months ended September 30, 2020, we ramped up execution of our larger contracts in China, such as that with China Mobile and the contracts with several school districts, such that we were able to complete more projects than we did in the comparable period of 2019 and earn $1.3 million more revenue. Also, we collected $0.2 million more from customers related to projects we completed in prior years but for which we could not immediately recognize revenue due to uncertainty regarding collections. Lastly, our new biosafety business contributed $0.4 million to the overall increase in revenue during the three months ended September 30, 2020 as we launched our thermal imaging product line primarily in the U.S beginning in 2020.

Cost of revenue during the three months ended September 30, 2020 primarily increased in conjunction with the ramping up of work on our larger contracts in China, while the new biosafety business added another $0.3 million to cost of revenue.

During the nine months ended September 30, 2020, the $1.5 million increase in revenue from our biosafety business was partially offset as revenue from our Remark Entertainment business decreased $0.5 million due to contracts that ended in the prior year that we did not renew, while e-commerce revenue decreased about $0.3 million due to the combined effects of our decision to sell portions of our inventory at lower costs as well as reduced orders as the COVID-19 pandemic set in and changed consumer behavior.

Though revenue related to our China AI projects remained relatively unchanged during the nine months ended September 30, 2020 from the comparable period of 2019, the cost of revenue decreased by $0.8 million. One project that we completed during the first quarter of 2019 was a larger project for which we recognized approximately $0.9 million in cost of revenue despite not being able to recognize the associated revenue due to uncertainty of collection of contract amounts due to us. Cost of revenue also decreased by $0.6 million during the nine months ended September 30, 2020 because we had recognized a full reserve against our e-commerce inventory in the prior year. The decreases in cost of revenue were offset by the increase in cost of revenue associated with our biosafety business which began in 2020.

Sales and marketing. The decrease in sales and marketing expense for the three and nine months ended September 30, 2020 primarily resulted from a decrease in headcount.

General and administrative. During the three and nine months ended September 30, 2020, bad debt expense decreased by $0.7 million because collection patterns have not indicated a need to record a significant allowance in the current year periods. We also entered into a less-costly lease on our current office space in Las Vegas, which caused decreases of $0.3 million and $0.6 million, respectively, in rent expense. Also, a decrease in headcount contributed to the overall decrease in general and administrative expense in both periods of 2020.

Depreciation and amortization. The decrease in depreciation and amortization was the result of long-lived assets which were being depreciated or amortized in the prior-year periods which were no longer being depreciated in the current year periods because such assets became fully depreciated or amortized before, or during the early part of, the current year periods.

Impairments. During third quarter of 2020, we impaired our investment in AIO, resulting in an impairment charge of $0.4 million. No impairments were recorded during 2019.

Interest expense. Our prepayment of a large portion of our debt when we completed the sale of Vegas.com resulted in the decrease in interest expense for the three and nine months ended September 30, 2020.

Gain on lease termination. During August 2020, we entered into a settlement agreement relating to the lease for our former office space in Las Vegas which we vacated during March 2020. During March 2020, we reduced right of use assets and operating lease liabilities relating to this lease, which resulted in a gain on lease termination of $1.5 million. In addition, we recognized a further gain of $2.0 million during August 2020, when we entered into the Hughes Center Lease Settlement. The comparable period of the prior year reflected no comparable activity.

Change in fair value of warrant liability. The fair value of our warrant liability maintains a direct relationship with the price of our common stock. The decrease in our common stock price between June 30, 2020 and September 30, 2020 caused the decrease in the fair value of our warrant liability during such period, while the increase in our common stock price between

December 31, 2019 and September 30, 2020 resulted in a corresponding increase in the fair value of our warrant liability during nine months ended September 30, 2020. The increase in our common stock price between June 30, 2019 and September 30, 2019 caused the decrease in the fair value of our warrant liability during such period, but our common stock price decreased to a lesser extent between December 31, 2018 and September 30, 2019. The increase in the fair value of our warrant liability during the nine months ended September 30, 2020 was due to an increase in our estimate of the expected volatility of our stock price that we use as an input to the model used to estimate the fair value of the warrants, the effect of which was only slightly offset by the decrease in our common stock price during the nine months ended September 30, 2020.

LIQUIDITY AND CAPITAL RESOURCES

Overview

During the nine months ended September 30, 2020, and in each fiscal year since our inception, we have incurred net losses which have resulted in an accumulated deficit of $354.7 million as of September 30, 2020. Additionally, our operations have historically used more cash than they have provided. Net cash used in continuing operating activities was $14.5 million during the nine months ended September 30, 2020. As of September 30, 2020, our cash and cash equivalents balance was $2.1 million, and we had a negative working capital balance of $5.8 million.

We were a party to the Financing Agreement with the Lenders pursuant to which the Lenders extended credit to us consisting of a term loan in the aggregate principal amount of $35.5 million.

On May 15, 2019, we completed the sale of all of the issued and outstanding membership interests of Vegas.com and used the cash proceeds of $30.0 million to pay amounts due under the Financing Agreement, of which approximately $10.0 million remained outstanding after giving effect to the application of such cash proceeds.

On May 28, 2020, we repaid in full all outstanding obligations under, and terminated, the Financing Agreement in an amount equal to approximately $12.7 million.

On April 12, 2017, we issued a short-term note payable in the principal amount of $3.0 million to a private lender in exchange for cash in the same amount. The agreement, which does not have a stated interest rate, required us to repay the note plus a fee of $115 thousand on the maturity date of June 30, 2017. The note is accruing interest at $500 per day on the unpaid principal until we repay the note in full. As of September 30, 2020, we owed $1.5 million in principal and $0.4 million in accrued interest on such note.

Pursuant to the terms of the purchase agreement we entered into in connection with our acquisition of Vegas.com in 2015, we were obligated to make an Earnout Payment of $1.0 million based upon the performance of Vegas.com in the year ended December 31, 2018. We made the payment during August 2020.

On March 3, 2020, we entered into the 2020 Aspire Purchase Agreement, later amended on April 9, 2020, with Aspire Capital under which Aspire Capital purchased $30.0 million of shares of our common stock. The 2020 Aspire Purchase Agreement terminated and replaced the 2019 Aspire Purchase Agreement.

Included in Other long-term assets as of September 30, 2020 is a loan of $1.5 million we made to an unrelated entity (our “China Business Partner”) pursuant to a loan agreement we entered into with the China Business Partner. We are in the process of negotiating a separate contract with the China Business Partner setting out the terms pursuant to which the China Business Partner will assist us in obtaining contracts from some of the largest companies in China. Under the loan agreement with the China Business Partner, upon receipt of a borrowing request from the China Business Partner, we have an obligation to advance up to an aggregate amount of $5.1 million over the loan term of five years. The initial $1.5 million that we have advanced allowed our China Business Partner to purchase and modify hardware to integrate with our AI software and meet the needs of potential customers such that the resulting integrated solutions could be demonstrated to the potential customers while bidding on large contracts. Any loans we make under the loan agreement will bear a simple interest rate of 10% per annum payable before each December 31st during the loan term and will be convertible at our election into equity of the China Business Partner upon the China Business Partner’s next equity financing.

Our history of recurring operating losses, working capital deficiencies and negative cash flows from operating activities, in conjunction with the ongoing events of default under the Financing Agreement, give rise to substantial doubt regarding our ability to continue as a going concern.

We intend to fund our future operations and meet our financial obligations through revenue growth as well as through sales of our thermal-imaging products. We cannot, however, provide assurance that revenue, income and cash flows generated from our businesses will be sufficient to sustain our operations in the twelve months following the filing of this Form 10-Q. As a result, we are actively evaluating strategic alternatives including debt and equity financings and potential sales of investment assets or operating businesses.

Conditions in the debt and equity markets, as well as the volatility of investor sentiment regarding macroeconomic and microeconomic conditions (in particular, in response to the COVID-19 pandemic), will play primary roles in determining whether we can successfully obtain additional capital. We cannot be certain that we will be successful at raising additional capital.

A variety of factors, many of which are outside of our control, affect our cash flow; those factors include the effects of the COVID-19 pandemic, regulatory issues, competition, financial markets and other general business conditions. Based on financial projections, we believe that we will be able to meet our ongoing requirements for at least the next 12 months with existing cash, cash equivalents and cash resources, and based on the probable success of one or more of the following plans:

- develop and grow new product line(s)
- monetize existing assets
- obtain additional capital through equity issuances.

However, projections are inherently uncertain and the success of our plans is largely outside of our control. As a result, there is substantial doubt regarding our ability to continue as a going concern, and we may fully utilize our cash resources prior to November 23, 2021.

Cash Flows - Continuing Operating Activities

During the nine months ended September 30, 2020, we used $3.8 million more cash in continuing operating activities than we did during the same period of the prior year. The increase in cash used in continuing operating activities is a result of the timing of payments related to elements of working capital.

Cash Flows - Continuing Investing Activities

We engaged in an immaterial amount of investing activities during the nine months ended September 30, 2020, and the change in investing activities from the comparable period of the prior year was not material, exclusive of the proceeds from the sale of Vegas.com in the prior year period.

Cash Flows - Financing Activities

During the nine months ended September 30, 2020, we received $32.0 million from sales of shares of our common stock reflecting more activity under our agreements with Aspire Capital, whereas the same period of 2019 included stock sale proceeds of only $9.3 million. We also received debt proceeds of $0.4 million and repaid $13.3 million of debt during the nine months ended September 30, 2020, while the same period of the prior year included debt repayment of $25.5 million plus loan fee and debt issuance cost payments of $2.3 million. Finally, in the third quarter of 2020, we paid the final Earnout Payment related to our acquisition of Vegas.com in 2015; $0.9 million of the payment was reflected as a financing activity.

Off-Balance Sheet Arrangements

We currently have no off-balance sheet arrangements.

Recently Issued Accounting Pronouncements

Please refer to Note 2 in the Notes to Unaudited Condensed Consolidated Financial Statements included in this report for a discussion regarding recently issued accounting pronouncements which may affect us.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain a set of disclosure controls and procedures designed to provide reasonable assurance that the information we must disclose in reports we file or submit under the Securities Exchange Act of 1934, as amended (the "Exchange Act") is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. We designed our disclosure controls with the objective of ensuring we accumulate and communicate this information to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of the design and operations of our disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) under Exchange Act, as of the end of the period covered by this report. Based upon that evaluation, our management, including our principal executive officer and principal financial officer, concluded that, because of the material weaknesses in our internal control over financial reporting related to: (i) insufficient documentary evidence that we had reviewed information underlying manual journal entries at a sufficient level of detail, (ii) insufficient documentation of our consideration of appropriate revenue recognition criteria for certain contracts arising from our Technology and Data Intelligence segment, (iii) an aggregation of deficiencies in our monitoring and activity-level controls related to processes in our Technology and Data Intelligence segment including accounts payable, accrued liabilities, payroll and fixed assets, and (iv) failure to retain documentary evidence of all inventory purchases and the insufficient evaluation of the impact of discounted sales transactions on the valuation of our inventory, all of which we described in our 2019 Form 10-K, our disclosure controls and procedures were not effective at a reasonable assurance level as of September 30, 2020.

Changes in Internal Control over Financial Reporting

In our 2019 Form 10-K, we disclosed that management had determined that material weaknesses in our internal control over financial reporting (described above) existed. As of the date of this report, we are implementing procedural changes that we believe will remediate the material weaknesses, but not all such changes are complete and those changes that have been implemented have not operated for a sufficient time to be evaluated for their effectiveness; therefore, there was no change in our internal control over financial reporting during such period that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

CBG Litigation

On February 21, 2018, we initiated a legal proceeding (the “CBG Litigation”) against CBG, Adam Roseman, and CBG’s Joint Official Liquidators (the “JOLs”) arising from the CBG Acquisition. The CBG Litigation was filed in the United States District Court for the District of Nevada and is captioned as *Remark Holdings, Inc., et al. v. China Branding Group, Limited (In Official Liquidation), et al.*, Case No. 2:18-cv-00322. In the CBG Litigation, we sought a declaration from the court that we are entitled to rescission of the purchase agreement relating to the CBG Acquisition and all transactions related to the CBG Acquisition, a declaration that such purchase agreement and the transactions consummated pursuant thereto be rescinded and void ab initio, a declaration that we are not required to deliver the remaining CBG Acquisition Warrants allowing for the purchase of 5,710,000 shares of common stock at a per-share exercise price of $10.00, an order directing release to us of any consideration held in escrow in connection with the CBG Acquisition, and disgorgement of all consideration paid by us in connection with the CBG Acquisition. We alleged that the defendants fraudulently mispresented and concealed material information regarding the companies we acquired in the CBG Acquisition.

We entered into a settlement agreement with Mr. Roseman to settle all claims against him, and we dismissed those claims on May 13, 2019. We entered into a Stipulation for Settlement dated January 15, 2019 with CBG and the JOLs, which sets forth the binding terms of their settlement agreement (the “Stipulation for Settlement”). Pursuant to the Stipulation for Settlement, we will issue fully-transferable warrants on a non-diluted basis allowing for the purchase of 5,710,000 shares of our common stock at a per-share exercise price of $6.00, which warrants are exercisable for a period of 5 years from the date of the Stipulation for Settlement, and which we have the right to cause the warrant holders to exercise if the closing price of our common stock is $8.00 or greater on any 5 non-consecutive days in any consecutive 30-day trading window. The parties to the Stipulation for Settlement also agreed to negotiate anti-dilution provisions for the warrants. In exchange for the foregoing consideration, the parties to the Stipulation for Settlement agreed to release their claims against each other and enter into a written definitive settlement agreement. After entering into the Stipulation for Settlement, the JOLs demanded the warrants also include an exchange right. We rejected this request and filed a motion to enforce the Stipulation for Settlement on March 12, 2019. The Nevada court issued a report and recommendation on August 2, 2019, which was affirmed on September 24, 2019, requiring the JOLs to submit the written definitive settlement agreement (without an exchange right) to the Grand Court of the Cayman Islands overseeing CBG’s liquidation for approval. An application for sanction to enter the settlement agreement was filed with the Grand Court on December 3, 2019. One month later, on or about January 2, 2020, the Grand Court approved the application, authorizing CBG and the JOLs to enter into the settlement. Counsel for the parties are currently finalizing the settlement agreement.

Greenspun Litigation

On May 21, 2019, James B. Gibson, in his capacity as the designated representative of the Amy Greenspun Arenson 2010 Legacy Trust, James Adam Greenspun 2010 Legacy Trust, Moira Greenspun Tarmy 2010 Legacy Trust, Jeffrey Aaron Fine 2010 Legacy Trust, Alyson Fine Marmur 2010 Legacy Trust, Jonathan M. Fine 2010 Legacy Trust, Kathryn A. Fine 2010 Legacy Trust, DRG Holdings, LP, DRG Legacy Limited Partnership, LLP and GC Investments, LLC, filed a Complaint against us in the District Court for Clark County, Nevada alleging that we breached the purchase agreement we entered into in connection with our acquisition of Vegas.com from the plaintiffs in 2015 by failing to make the final earnout payment under such purchase agreement. On July 12, 2019, the Nevada court entered a judgment against us in the total amount of $1,050,000. On August 19, 2020, we paid in full all amounts owed to the plaintiffs in satisfaction of such judgment.

Landlord Litigation

On April 9, 2020, the Hughes Center Landlord filed a Complaint against us in the District Court for Clark County, Nevada alleging that we breached the office lease we entered into with the Hughes Center Landlord for our former office located at 3960 Howard Hughes Parkway in Las Vegas, Nevada by failing to pay rent and other required charges under such lease and seeking monetary damages in the amount of past due rent and other charges, plus attorneys’ fees and costs and interest and certain declaratory relief. On August 3, 2020, we entered into a settlement agreement with the plaintiff, pursuant to which we immediately paid $0.45 million and agreed to pay another $0.15 million in three equal installments on each of September 1, 2020, October 1, 2020 and November 1, 2020, to the plaintiff in full settlement of our obligations with respect to such office lease. We made such payments in full and on November 5, 2020, the Hughes Center Landlord filed a Notice of Voluntary Dismissal with Prejudice with the District Court of Clark County, Nevada dismissing their legal action against us.

ITEM 1A. RISK FACTORS

The continuing impacts of COVID-19 are highly unpredictable and could be significant, and may have an adverse effect on our business and financial results.

The global outbreak of COVID-19 has impacted our business and could continue to have a significant impact on our business for the duration of 2020 or longer. The impact of the COVID-19 on our business and future financial results could include, but may not be limited to:

- lack of revenue growth or decreases in revenue due to a lack of, or at least a decline in, customer demand and (or) deterioration in the credit quality of our customers;
- a significant increase in our need for external financing to maintain operations as a result of decreased revenue;
- significant decline in the debt and equity markets, thus impacting our ability to conduct financings on terms acceptable to us; and
- the rapid and broad-based shift to a remote working environment creates inherent productivity, connectivity, and oversight challenges. Preventative measures implemented by governmental authorities, such as travel restrictions, shelter-in-place orders and business closures, could significantly impact the ability of our employees and vendors to work productively. Governmental restrictions have been globally inconsistent and it is not clear when a return to worksite locations or travel will be permitted or what restrictions will be in place in those environments. In addition, the changed environment under which we are operating could have an impact on our internal controls over financial reporting as well as our ability to meet a number of our compliance requirements in a timely or quality manner.

The extent of the impact of the pandemic on our business and financial results will depend largely on future developments, including the duration and severity of the outbreak, the length of the travel restrictions and business closures imposed by domestic and foreign governments, the impact on capital and financial markets and the related impact on the financial circumstances of our customers, all of which are highly uncertain and cannot be predicted. The situation is changing rapidly, and additional impacts may arise that we are not aware of currently.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Not applicable.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None

ITEM 6. EXHIBITS

Exhibit Number	Description	Incorporated Herein By Reference To		
		Document	Filed On	Exhibit Number
3.1	Certificate of Elimination filed with the Secretary of State of Delaware on July 20, 2020.	8-K	7/20/20	3.1
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation.	8-K	7/24/20	3.1
3.3	Certificate of Correction of the Certificate of Amendment to the Amended and Restated Certificate of Incorporation.	8-K	7/31/20	3.1
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes Oxley Act of 2002.			
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes Oxley Act of 2002.			
32	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes Oxley Act of 2002.			
101.INS	XBRL Instance Document - the instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.			
101.SCH	XBRL Taxonomy Extension Schema Document			
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document			
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document			
101.LAB	XBRL Taxonomy Extension Label Linkbase Document			
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document			

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, thereunto duly authorized.

REMARK HOLDINGS, INC.

Date: November 23, 2020	**By:** */s/ Kai-Shing Tao*
	Kai-Shing Tao
	Chairman and Chief Executive Officer
	(principal executive, financial and accounting officer)

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kai-Shing Tao (the registrant's principal executive officer), certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Remark Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 23, 2020

By: */s/ Kai-Shing Tao*
Kai-Shing Tao
Chief Executive Officer and Chairman

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kai-Shing Tao (the registrant's principal financial officer and principal accounting officer), certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Remark Holdings, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 23, 2020

By *_/s/ Kai-Shing Tao_*
Kai-Shing Tao
Chief Executive Officer and Chairman

EXHIBIT 32

CERTIFICATIONS OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Kai-Shing Tao, the registrant's principal executive, financial and accounting officer, certify that, to my knowledge:

1. the accompanying Quarterly Report on Form 10-Q for the period ended September 30, 2020 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Remark Holdings, Inc. at the dates and for the periods indicated.

Date: November 23, 2020

/s/ Kai-Shing Tao
Kai-Shing Tao
Chief Executive Officer and Chairman