

AMERICAN APPAREL, INC
Form NT 10-Q
August 11, 2009

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

FORM 12b-25

NOTIFICATION OF LATE FILING

SEC File Number: 001-32697

CUSIP Number: 023850100

(Check One): ☐ Form 10-K ☐ Form 20-F ☐ Form 11-K ☒ Form 10-Q ☐ Form 10-D
☐ Form N-SAR ☐ Form N-CSR

For Period Ended: June 30, 2009

☐ Transition Report on Form 10-K
☐ Transition Report on Form 20-F
☐ Transition Report on Form 11-K
☐ Transition Report on Form 10-Q
☐ Transition Report on Form N-SAR

For the Transition Period Ended: _____

Read Instruction (on back page) Before Preparing Form. Please Print or Type.
Nothing in this form shall be construed to imply that the Commission has verified any
information contained herein.

If the notification relates to a portion of the filing checked above, identify the Item(s) to which the notification relates:

PART I - REGISTRANT INFORMATION

American Apparel, Inc.
Full Name of Registrant

Former Name if Applicable

747 Warehouse Street
Address of Principal Executive Office (Street and Number)

Los Angeles, California 90021
City, State and Zip Code

PART II - RULE 12b-25(b) AND (c)

If the subject report could not be filed without unreasonable effort or expense and the registrant seeks relief pursuant to Rule 12b-25(b), the following should be completed. (Check box if appropriate)

- [X] (a) The reason described in reasonable detail in Part III of this form could not be eliminated without unreasonable effort or expense;
- (b) The subject annual report, semi-annual report, transition report on Form 10-K, Form 20-F, Form 11-K, Form N-SAR or Form N-CSR, or portion thereof, will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10-Q, or subject distribution report on Form 10-D, or portion thereof, will be filed on or before the fifth calendar day following the prescribed due date; and
- (c) The accountant's statement or other exhibit required by Rule 12b-25(c) has been attached if applicable.

PART III - NARRATIVE

State below in reasonable detail the reasons why Forms 10-K, 20-F, 11-K, 10-Q, 10-D, N-SAR, N-CSR, or the transition report or portion thereof could not be filed within the prescribed time period.

On July 23, 2009, American Apparel, Inc. (the "Company") issued a press release announcing that the Company's management and the Audit Committee of the Board of Directors determined that the Company will need to restate its previously issued consolidated financial statements for the year ended December 31, 2008 in order to reclassify its revolving credit facility as a current liability. In addition, the Company also announced that it is completing its evaluation of certain other balance sheet and cash flow presentation matters identified since the original filing of the Annual Report on Form 10-K on March 16, 2009, none of which are expected to be material either individually or taken in the aggregate. Additional information about these matters is contained in the Current Report on Form 8-K filed on July 23, 2009 and are incorporated by reference herein.

The Company has devoted significant resources and efforts to these matters, as well as the preparation of Amendment No. 1 to the Annual Report on Form 10-K/A for the year ended December 31, 2008 ("Form 10-K/A") and the Quarterly Report on Form 10-Q for the quarter ended March 31, 2009 ("First Quarter Form 10-Q"). As a result of the additional efforts required to complete these filings, the Company was unable, without unreasonable effort and expense, to timely file its Quarterly Report on Form 10-Q for the quarter ended June 30, 2009 ("Second Quarter Form 10-Q"). The Company is working diligently to finalize its Form 10-K/A, First Quarter Form 10-Q and Second Quarter Form 10-Q, and the Company expects to file each of these documents on or before the fifth calendar day following the prescribed due date for the Second Quarter Form 10-Q, although no assurance can be given in this regard.

PART IV - OTHER INFORMATION

- (1) Name and telephone number of person to contact in regard to this notification

Adrian Kowalewski

(213)

488-0226

(Name)

(Area Code)

(Telephone
Number)

(2) Have all other periodic reports required under Section 13 or 15(d) of the Securities Exchange Act of 1934 or Section 30 of the Investment Company Act of 1940 during the preceding 12 months or for such shorter period that the registrant was required to file such report(s) been filed? If the answer is no, identify report(s).

[] Yes [X] No

The Company has not filed its Amendment No. 1 to the Annual Report on Form 10-K/A for the year ended December 31, 2008 or its Quarterly Report on Form 10-Q for the quarter ended March 31, 2009.

(3) Is it anticipated that any significant change in results of operations from the corresponding period for the last fiscal year will be reflected by the earnings statements to be included in the subject report or portion thereof?☒ Yes
☐ No

If so, attach an explanation of the anticipated change, both narratively and quantitatively, and, if appropriate, state the reasons why a reasonable estimate of the results cannot be made.

Net sales are expected to increase during the second quarter of 2009 compared to the same period in the prior year, primarily as a result of the increased number of retail stores the Company operated at the end of the second quarter of 2009, compared to the same period in the prior year. The Company expects to report net income for the second quarter of 2009, but lower net income than for the second quarter of 2008. This is primarily a result of higher operating costs related to the expansion of new stores opened in the last twelve months, higher fixed production costs, an increase in interest expense from higher borrowings and amortization of debt discount, offset partly by a foreign currency transaction gain realized in the period. From April 1, 2008 through June 30, 2009, the Company increased the number of retail stores in operation from 186 stores to 272 stores.

Operating expenses also are expected to increase during the second quarter of 2009 compared to the same period in the prior year. This increase is primarily a result of the increase in the number retail store locations, which resulted in, among other things, higher rent and occupancy, payroll, general and administrative and other store related costs.

The Company is not able to definitively quantify the changes in net sales, net income, gross profit or operating expenses until the Company's preparation and review of the financial statements to be included in the First Quarter Form 10-Q and Second Quarter Form 10-Q are completed.

Safe Harbor Statement

This Form 12b-25, and other statements that American Apparel, Inc. may make, may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements that are not historical facts and include statements regarding, among other things, the Company's future financial condition and results of operations and the Company's prospects and strategies for future growth. In some cases, you can identify forward-looking statements by words or phrases such as "trend," "potential," "opportunity," "believe," "comfortable," "expect," "anticipate," "current," "intention," "estimate," "position," "assume," "outlook," "continue," "remain," "sustain," "seek," "achieve," and similar expressions, or future or conditional verbs such as "will," "would," "should," "could," and similar expressions.

Such forward-looking statements are based upon the current beliefs and expectations of the Company's management, but are subject to risks and uncertainties, which could cause actual results and/or the timing of events to differ materially from those set forth in the forward-looking statements, including, among others: ability to regain compliance with the stock exchange rules; completion of the restatement of financial statements; changes in the level of consumer spending or preferences or demand for the Company's products; increasing competition; the Company's ability to hire and retain key personnel and the Company's relationship with the Company's employees; suitable store locations and the Company's ability to attract customers to the Company's stores; effectively carrying out and managing the Company's growth strategy; failure to maintain the value and image of the Company's brand and protect the Company's intellectual property rights; declines in comparable store sales; seasonality; consequences of the Company's significant indebtedness, including the Company's ability to comply with the Company's debt agreements, generate cash flow to service the Company's debt; costs of materials and labor; location of the Company's facilities in the same geographic area; manufacturing, supply or distribution difficulties or disruptions; risks of financial nonperformance by customers; investigations, enforcement actions and litigation; compliance with or changes in laws and regulations; costs as a result of operating as a public company; material weaknesses in internal controls; interest rate and foreign currency risks; loss of U.S. import protections or changes in duties, tariffs and quotas and other risks associated with international business; the Company's ability to upgrade the Company's information technology infrastructure and other risks associated with the systems that operate the Company's online retail operations; general economic and industry conditions, including worsening U.S. and foreign economic conditions and turmoil in the financial markets; and other risks detailed in the Company's filings with the Securities and Exchange Commission, including the Company's 2008 Annual Report on Form 10-K. The Company's filings with the SEC are available at www.sec.gov. You are urged to consider these factors carefully in evaluating the forward-looking statements herein and are cautioned not to place undue reliance on such forward-looking statements, which are qualified in their entirety by this cautionary statement. The forward-looking statements speak only as of the date on which they are made and the Company undertakes no obligation to publicly update such forward-looking statements to reflect subsequent events or circumstances.

American Apparel, Inc.

(Name of Registrant as Specified in Charter)

has caused this notification to be signed on its behalf by the undersigned hereunto duly authorized.

Date August 11, 2009

By /s/ Adrian Kowalewski

Name: Adrian Kowalewski

Title: Executive Vice President and
Chief Financial Officer

INSTRUCTION: The form may be signed by an executive officer of the registrant or by any other duly authorized representative. The name and title of the person signing the form shall be typed or printed beneath the signature. If the statement is signed on behalf of the registrant by an authorized representative (other than an executive officer), evidence of the representative's authority to sign on behalf of the registrant shall be filed with the form.

ATTENTION

Intentional misstatements or omissions of fact constitute Federal Criminal Violations (See 18 U.S.C. 1001).