

ACTIVE NETWORK INC
Form SC 14D9/A
October 16, 2013

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

SCHEDULE 14D-9
(Rule 14d-101)
Solicitation/Recommendation Statement
under Section 14(d)(4) of the Securities Exchange Act of 1934
(Amendment No. 2)

THE ACTIVE NETWORK, INC.
(Name of Subject Company)

THE ACTIVE NETWORK, INC.
(Name of Person Filing Statement)

Common Stock, \$0.001 par value per share
(Title of Class of Securities)

00506D100

(CUSIP Number of Class of Securities)

David M. Eisler, Esq.

Senior Vice President, General Counsel and Corporate Secretary

The Active Network, Inc.

10182 Telesis Court

San Diego, California 92121

(858) 964-3800

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications

on Behalf of the Person(s) Filing Statement)

With copies to:

Michael S. Kagnoff, Esq.

DLA Piper LLP (US)

4365 Executive Drive, Suite 1100

San Diego, California 92121

(858) 638-6722

.. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

This Amendment No. 2 (this **Amendment No. 2**) to Schedule 14D-9 amends and supplements the Schedule 14D-9 (as amended and supplemented from time to time, the **Schedule 14D-9**) previously filed by The Active Network, Inc., a Delaware corporation (the **Company**), with the Securities and Exchange Commission on October 8, 2013, relating to the offer by (i) Athlaction Holdings, LLC, a Delaware limited liability company (**Parent**), (ii) Athlaction Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Parent (**Purchaser**), and (iii) Vista Equity Partners Fund III, L.P. and Vista Equity Partners Fund IV, L.P., affiliates of each of Parent and Purchaser, to purchase all of the outstanding shares of common stock, par value \$0.001 per share, of the Company (the **Shares**), for a purchase price of \$14.50 per Share, net to the seller in cash, without interest, subject to any applicable withholding taxes, if any, upon the terms and conditions set forth in the offer to purchase dated October 8, 2013, and in the related letter of transmittal, each of which may be amended or supplemented from time to time.

Except as set forth below, the information set forth in the Schedule 14D-9 remains unchanged and is incorporated herein by reference as relevant to the items in this Amendment No. 2.

Item 8. Additional Information.

Item 8 of the Schedule 14D-9 is hereby amended and supplemented as follows:

By inserting after the second paragraph under the section entitled **Legal Proceedings** on page 47 of the Schedule 14D-9 the following:

On October 11, 2013, the complaint in the *Bushansky* action was amended to, among other things, add allegations that the members of the Company Board breached their fiduciary duties to stockholders of the Company because the Schedule 14D-9 purportedly fails to provide the Company's stockholders with all material information necessary to make an informed decision whether to tender their Shares.

On October 15, 2013, a putative stockholder class action was filed in the Superior Court of the State of California, County of San Diego captioned *Gupta v. The Active Networks, Inc., et al.*, Case No. 37-2013-00071122-CU-SL-CTL, seeking to enjoin the Transactions, including the Offer and the Merger. The complaint names the Company and the members of the Company Board as defendants. The complaint also names Vista Equity Partners, Parent, and Purchaser as defendants. The complaint generally alleges, among other things, that the members of the Company Board breached their fiduciary duties to the Company's stockholders by agreeing to sell the Company to Vista for an unfair price and pursuant to an unfair process, agreeing to certain provisions in the Merger Agreement that purportedly deter alternative bids for the Company, putting their personal interests ahead of the interests the Company's stockholders, and failing to fully disclose to the Company's stockholders all material information necessary to make an informed decision regarding whether to tender their Shares. The complaint also alleges that the Company, Vista Equity Partners, Parent, and Purchaser aided and abetted the alleged breaches of fiduciary duty by the members of the Company Board. The complaint seeks injunctive relief, rescission, an award of attorneys' fees and other fees and costs, in addition to other relief.

By amending and restating the last paragraph under the section entitled **Legal Proceedings** on page 47 of the Schedule 14D-9 in its entirety as follows:

The foregoing description is qualified in its entirety by reference to the complaints which are attached to the Schedule TO as Exhibit (a)(5)(B), Exhibit (a)(5)(A), Exhibit (a)(5)(C) and Exhibit (a)(5)(D), respectively.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

THE ACTIVE NETWORK, INC.

By: /s/ Jon Belmonte

Name: Jon Belmonte

Title: Interim Chief Executive Officer

Dated: October 16, 2013