HERBALIFE LTD.
Form 8-K
July 07, 2005

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 5, 2005

HERBALIFE LTD.

(Exact name of registrant as specified in its charter)

Cayman Islands	**1-32381**	**98-0377871**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification Number)

PO Box 309 GT, Ugland House
South Church Street, Grand Cayman
Cayman Islands
(Address of principal executive offices)

Registrant s telephone number, including area code: c/o (310) 410-9600

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.

On July 5, 2005 Leslie Stanford, a member of Class I of the Board of Directors of Herbalife Ltd. (the Company), communicated to the Company her decision not to stand for re-election when the current term of the class of Directors of which she is a member expires at the Company s upcoming 2005 Annual General Meeting of Shareholders. The Company s Nominating and Corporate Governance Committee will be meeting in the near future to consider the slate of nominees for election to Class I of the Board of Directors in connection with the 2005 Annual General Meeting of Shareholders, including a nominee to fill the position currently held by Ms. Stanford.

SIGNATURES

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

Dated: July 7, 2005

HERBALIFE LTD.
By: /s/ BRETT R. CHAPMAN
Brett R. Chapman
General Counsel

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Our cost of revenues increased $0.3 million, or 9.6% to approximately $3.0 million in the first quarter of 2018 from $2.7 million in the comparable period in 2017. The gross profit rate increased to 40.2% in the first quarter of 2018 from 37.4% in the first quarter of 2017. Gross profit rates improved for both Quell and DPNCheck, partially offset by higher overhead costs and the effects of the declining legacy business.
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Operating Expenses

The following table summarizes our operating expenses:

	Quarters Ended March 31,			
	2018	2017	Change	% Change
	(in thousands)			
Operating expenses:				
Research and development	$1,279.6	$903.3	$376.3	41.7 %
Sales and marketing	2,504.7	2,597.7	(93.0)	(3.6)%
General and administrative	1,804.1	1,421.8	382.3	26.9 %
Total operating expenses	$5,588.4	$4,922.8	$665.6	13.5 %

Research and Development

Research and development expenses for the quarters ended March 31, 2018 and 2017 were approximately $1.3 million and $0.9 million, respectively. The increase of approximately $0.4 million relates primarily to a $0.3 million increase in Quell development spending, partially offset by a $0.1 million decrease in clinical study spending.

Sales and Marketing

Sales and marketing expenses were approximately $2.5 million and $2.6 million for the quarters ended March 31, 2018 and March 31, 2017, respectively. The spending reflected a $0.1 million decrease in promotional spending.

General and Administrative

General and administrative expenses were approximately $1.8 million and $1.4 million for the quarters ended March 31, 2018 and March 31, 2017, respectively. The increase of approximately $0.4 million primarily reflected an additional $0.2 million in professional services expense and an additional $0.2 million in stock-based compensation.

Collaboration income

	Quarters Ended March 31, 2018	2017	Change	% Change
	(in thousands)			
Collaboration income	$4,755.7	$ —	$4,755.7	100.0 %

In January 2018, we entered into agreements (the "Collaboration") with GlaxoSmithKline ("GSK") in which he Company sold to GSK rights to the Company's Quell technology for markets outside of the United States, including certain patents and related assets, and agreed to complete development milestones for the next-generation Quell technology. The Company retained exclusive ownership of Quell technology in the U.S. market. GSK agreed to payments totaling up to $26.5 million of which $5.0 million was paid at closing and the balance due upon achievement of defined development and commercialization milestones. In addition, the parties agreed to jointly fund future Quell technology development during an initial period starting in 2019. Upon closing, the Company recorded Collaboration income of $4.8 million, net of costs, for the quarter ended March 31, 2018.

Other income

	Quarters Ended March 31, 2018	2017	Change	% Change
	(in thousands)			
Other income	$11.3	$81.9	$(70.6)	(86.2)%

Other income includes interest income and warrant liability fair value changes. The change in fair value of warrant liability was zero and $77,601 for the quarters ended March 31, 2018 and 2017, respectively.

Net income (loss) per common share applicable to common stockholders, basic and diluted

The net income (loss) per common share applicable to common stockholders, basic and diluted, were $0.18 and $0.08, respectively, for the quarter ended March 31, 2018 and $(7.27), both basic and diluted for the quarter ended March 31, 2017. Weighted average shares outstanding used in computing per share amounts are included in Note 3 to the Financial Statements. In the quarter ended March 31, 2017, per share amounts reflected a deemed dividend attributable to preferred stockholders of $4.0 million, or $4.04 per share, related to our Q1 2017 equity offering; plus our net loss of $3.2 million, or $3.23 per share.

Liquidity and Capital Resources

Our principal source of liquidity is our cash resources which, as of March 31, 2018, totaled $6.1 million. Funding for our operations largely depends on the success of our commercial products for chronic pain and neuropathy, and on milestone achievement under the GSK Collaboration. A low level of market interest in Quell or DPNCheck, a decline in our consumables sales, unanticipated increases in our operating costs, or unanticipated setbacks toward the achievement of the GSK milestones would have an adverse effect on our liquidity and cash. The following table sets forth information relating to our cash resources:

	March 31, 2018	December 31, 2017	Change	% Change
	($ in thousands)			
Cash and cash equivalents	$6,097.8	$4,043.7	$2,054.1	50.8 %

The Company is party to a Loan and Security Agreement with a bank. As of March 31, 2018 this credit facility permitted the Company to borrow up to $2.5 million on a revolving basis. Amounts borrowed under the credit facility will bear interest equal to the prime rate plus 0.5% and will be collateralized by our cash, accounts receivable, inventory, and equipment. The

credit facility also includes traditional lending and reporting covenants and, as of March 31, 2018, we were in compliance with these covenants.

During the three months ended March 31, 2018, cash and cash equivalents increased by $2.1 million reflecting proceeds from closing the GSK Collaboration offset by net cash usage from business operations.

In managing working capital, we focus on two important financial measurements as presented below:

	Quarters Ended March 31,		Year Ended December 31,
	2018	2017	2017
Days sales outstanding (days)	36	31	37
Inventory turnover rate (times per year)	5.9	8.9	6.5

Customer payment terms vary from payment-on-order for Quell e-commerce sales to 60 days from invoice date.

The following sets forth information relating to sources and uses of our cash:

	Three Months Ended March 31,	
	2018	2017
	(in thousands)	
Net cash used in operating activities (excluding collaboration income)	$(2,675.8)	$(3,354.0)
Net cash provided by collaboration income	4,755.7	—
Net cash provided by (used in) operating activities	$2,079.9	$(3,354.0)
Net cash used in investing activities	$(25.8)	$—
Net cash provided by financing activities	$—	$6,302.0

Our operating activities, excluding collaboration income, consumed $2.7 million of cash for the three months ended March 31, 2018, which reflected our operating net loss of $3.6 million. This operating loss included non-cash stock compensation expense of approximately $0.3 million. In addition, operating activities included decreases in accounts receivable of $0.8 million and in prepaid expenses and other current and long-term assets of $0.3 million, partially offset by decreases in accrued product returns of $0.6 million and in accounts payable of $0.4 million.

We held cash and cash equivalents of $6.1 million as of March 31, 2018. We believe that these resources, together with the cash to be generated from expected product sales and the potential achievement of development milestones under the Collaboration will be sufficient to meet our projected operating requirements into 2019. We continue to face significant challenges and uncertainties and, as a result, our available capital resources may be consumed more rapidly than currently expected due to (a) decreases in sales of our products; (b) delays in achieving Quell development milestones and related payments from GSK; (c) changes we may make to the business that affect ongoing operating expenses; (d) changes we may make in our business strategy; (e) regulatory developments or inquiries affecting our existing products and products under development; (f) changes we may make in our research and development spending plans; and (g) other items affecting our forecasted level of expenditures and use of cash resources. Accordingly, we may need to raise additional funds to support our operating and capital needs in 2019 and beyond. These factors raise substantial doubt about our ability to continue as a going concern for the one year period from the date of issuance of these financial statements. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. We may attempt to obtain additional funding through public or private financing, collaborative arrangements with strategic partners, or through additional credit lines or other debt financing sources. However, we may not be able to secure such financing in a timely manner or on favorable terms, if at all. We filed a shelf registration statement on Form S-3 with the U.S. Securities and Exchange Commission (the "SEC")

covering shares of our common stock and other securities for sale, giving us the opportunity to raise funding when needed or otherwise considered appropriate at prices and on terms to be determined at the time of any such offerings. However, pursuant to applicable SEC rules, we only have the ability to sell shares under the shelf registration statement, during any 12-month period, in an amount less than or equal to one-third of the aggregate market value of our common stock held by non-affiliates. If we raise additional funds by issuing equity or debt securities, either through the sale of securities pursuant to a registration statement or by other means, our existing stockholders may experience dilution, and the new equity or debt securities may have rights, preferences and privileges senior to those of our existing stockholders. If we raise additional funds through collaboration, licensing or other similar arrangements, it may be necessary to relinquish valuable rights to our potential

products or proprietary technologies, or grant licenses on terms that are not favorable to us. Without additional funds, we may be forced to delay, scale back or eliminate some of our sales and marketing efforts, research and development activities, or other operations and potentially delay product development in an effort to provide sufficient funds to continue our operations. If any of these events occurs, our ability to achieve our development and commercialization goals would be adversely affected.

Off-Balance Sheet Arrangements, Contractual Obligation and Contingent Liabilities and Commitments

As of March 31, 2018, we did not have any off-balance sheet financing arrangements.

See Note 6, Commitments and Contingencies, of our Notes to Unaudited Financial Statements for information regarding commitments and contingencies.

Recent Accounting Pronouncements

In February 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update No. 2016-2, Leases (Topic 842) (“ASU 2016-2”). ASU 2016-2 requires that lessees recognize virtually all of their leases on the balance sheet, by recording a right-of-use asset and lease liability. The provisions of this guidance are effective for annual periods beginning after December 31, 2018, and for interim periods therein. The Company is in the process of evaluating the new standard and assessing the impact, if any, ASU 2016-2 will have on the Company’s financial statements and which adoption method will be used.

Cautionary Note Regarding Forward-Looking Statements

The statements contained in this Quarterly Report on Form 10-Q, including under the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and other sections of this Quarterly Report, include forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, including, without limitation, statements regarding our or our management's expectations, hopes, beliefs, intentions or strategies regarding the future, such as our estimates regarding anticipated operating losses, future revenues and projected expenses; our expectations regarding achievement of milestones under the GSK Collaboration; our future liquidity and our expectations regarding our needs for and ability to raise additional capital; our ability to manage our expenses effectively; our belief that there are unmet needs for the management of chronic pain and in the diagnosis and treatment of diabetic neuropathy; our expectations surrounding Quell and DPNCheck; our expected timing and our plans to develop and commercialize our products; our ability to meet our proposed timelines for the commercial availability of our products; our ability to obtain and maintain regulatory approval of our existing products and any future products we may develop; regulatory and legislative developments in the United States and foreign countries; the performance of our third-party manufacturers; our ability to obtain and maintain intellectual property protection for our products; the successful development of our sales and marketing capabilities; the size and growth of the potential markets for our products and our ability to serve those markets; our estimate of our customer returns of our products; the rate and degree of market acceptance of any future products; our reliance on key scientific management or personnel; and other factors discussed elsewhere in this Quarterly Report on Form 10-Q. The words "believe," "may," "will," "estimate," "continue," "anticipate," "intend," "expect," "plan" and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. The forward-looking statements contained in this quarterly report are based on our current expectations and beliefs concerning future developments and their potential effects on us. There can be no assurance that future developments affecting us will be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described in the section titled "Risk Factors" in our Annual Report on Form 10-K. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We do not use derivative financial instruments in our investment portfolio and have no foreign exchange contracts. Our financial instruments consist of cash and cash equivalents. We consider investments that, when purchased, have a remaining maturity of 90 days or less to be cash equivalents. The primary objectives of our investment strategy are to preserve principal, maintain proper liquidity to meet operating needs, and maximize yields. To minimize our exposure to an adverse shift in interest rates, we invest mainly in cash equivalents and short-term investments with a maturity of twelve months or less and maintain an average maturity of twelve months or less. We do not believe that a notional or hypothetical 10% change in interest rate percentages would have a material impact on the fair value of our investment portfolio or our interest income.

Item 4. Controls and Procedures

(a) Evaluation of Disclosure Controls and Procedures. Our principal executive officer and principal financial officer, after evaluating the effectiveness of our disclosure controls and procedures (as defined in Exchange Act

Rules 13a-15(e) and 15d-15(e)) as of March 31, 2018, have concluded that, based on such evaluation, our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms, and is accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(b) Changes in Internal Controls. There were no changes in our internal control over financial reporting, identified in connection with the evaluation of such internal control that occurred during the quarter ended March 31, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings

While we are not currently a party to any material legal proceedings, we could become subject to legal proceedings in the ordinary course of business. We do not expect any such potential items to have a significant impact on our financial position.

Item 1A. Risk Factors

There have been no material changes in the risk factors described in “Item 1A. Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2017.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds
None.
Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

In 2017 the Company received a Civil Investigative Demand (“CID”) from the United States Federal Trade Commission (“FTC”). The CID requests information in connection with an FTC review for compliance of the Company’s representations about Quell with Sections 5 and 12 of the FTC Act. The Company is in the process of producing documents and information in response to the CID. To the knowledge of the Company, no complaint has been filed against the Company; however, no assurance can be given as to the timing or outcome of the investigation.

The Company intends to repurchase, from time to time, warrants to purchase its common stock that are traded on Nasdaq under the symbol NUROW. The Company may expend up to $25,000 in making these purchases on Nasdaq from time to time. Through March 31, 2018, the Company spent $2,237 to repurchase 36,006 warrants to purchase its common stock.

Item 6. Exhibits

See the Exhibit Index on the page immediately preceding the exhibits for a list of exhibits filed as part of this quarterly report, which Exhibit Index is incorporated herein by this reference.

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.

NEUROMETRIX, INC.

April 20, 2018 /s/ SHAI N. GOZANI, M.D., PH. D.
Shai N. Gozani, M.D., Ph. D.
Chairman, President and Chief Executive Officer

April 20, 2018 /s/ THOMAS T. HIGGINS
Thomas T. Higgins
Senior Vice President, Chief Financial Officer and Treasurer

EXHIBIT INDEX

Exhibit No.	Description
31.1	Certification of Principal Executive Officer Under Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended, and pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002. Filed herewith.
31.2	Certification of Principal Financial Officer Required Under Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, and pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. Filed herewith.
32	Certification of Principal Executive Officer and Principal Financial Officer Required Under Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. Section 1350. Furnished herewith.
101	The following materials from the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2018, formatted in XBRL (eXtensible Business Reporting Language): (i) Balance Sheets at March 31, 2018 and December 31, 2017, (ii) Statements of Operations for the quarters ended March 31, 2018 and 2017, (iii) Statements of Cash Flows for the three months ended March 31, 2018 and 2017, and (iv) Notes to Financial Statements.