

Edgar Filing: BLUEFLY INC - Form 8-K

BLUEFLY INC  
Form 8-K  
October 20, 2006

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 and Exchange Act of 1934

Date of Report (Date of earliest event reported): October 16, 2006

Bluefly, Inc.

(Exact name of registrant as specified in its charter)

Delaware	001-14498	13-3612110
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(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

42 West 39th Street, New York, New York	10018
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(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (212) 944-8000

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

SECTION 5 - CORPORATE GOVERNANCE AND MANAGEMENT

ITEM 5.02. DEPARTURE OF DIRECTORS OR PRINCIPAL OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF PRINCIPAL OFFICERS.

On October 16, 2006, Riad Abrahams resigned as a member of the Board of Directors (the "Board") and the Option Plan/Compensation Committee (the

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"Compensation Committee") of Bluefly, Inc. (the "Company"). Mr. Abrahams had been designated to serve on the Board by private funds associated with Maverick Capital, Ltd. ("Maverick").

On October 17, 2006, the Board appointed Alex Rafal as a member of the Board and the Compensation Committee, to fill the vacancy created by Mr. Abrahams' resignation.

Mr. Rafal is a Managing Director in the Retail Group at Maverick, where he has worked since 2001. Prior to Maverick he was a Managing Director at Tiger Management in their Consumer Group. Mr. Rafal is a Member of the Tiger Foundation Education Committee. He received his B.A. from the University of Michigan.

Mr. Rafal has been designated to serve on the Board by Maverick. In June 2006, the Company entered into a Stock Purchase Agreement (the "Purchase Agreement") with Maverick, private funds associated with Prentice Capital Management, LP ("Prentice," and, together with Maverick, the "Investors") and affiliates of Soros Fund Management LLC ("Soros"), the Company's largest stockholder, pursuant to which, among other things, the Company agreed to sell to Maverick and Prentice 60,975,610 shares of its common stock, par value \$.01 per share (the "Common Stock"), at a price of \$0.82 per share, in a private placement (the "Private Placement") for an aggregate of \$50 million. The purchase price represented an 11% premium over the closing price of the Company's Common Stock as of the date that the definitive agreement was signed and announced. The Private Placement was consummated on June 15, 2006. At the closing, 203,016 shares were purchased by a holder of the Company's Series D Convertible Preferred Stock in connection with the exercise of its preemptive rights. This amount reduced on a pro rata basis the amount of shares Maverick and Prentice otherwise would have been entitled to purchase under the Purchase Agreement. Concurrent with the closing of the Private Placement, Soros converted all of its outstanding shares of Series A, Series B, Series C, Series D, Series E and Series F Convertible Preferred Stock into 44,729,960 shares of Common Stock.

Under the terms of the Purchase Agreement, the Company agreed to use its commercially reasonable efforts to (i) prepare and file with the Securities and Exchange Commission (the "SEC") a registration statement (the "Registration Statement") to register the resale of the shares of Common Stock sold in the Private Placement within 120 days of the closing date and (ii) cause the Registration Statement to be declared effective by the SEC within 180 days of the closing date. The Registration Statement has been filed and declared effective. The Investors also received certain "piggy-back" registration rights covering the Common Stock purchased in the Private Placement.

Pursuant to the Purchase Agreement, Soros, Maverick and Prentice each agreed that it will not, without the approval of a majority of the independent directors of the Company (i) for a period of three years from the closing date of the Private Placement, purchase or acquire, or agree to purchase or acquire, any shares of our capital stock, subject to certain exceptions, including exceptions for the (x) the purchase of shares pursuant to their Right of First Refusal (as defined below) and, (y) after eighteen months from the closing date, a purchase by any such selling stockholder of shares of capital stock up to a level which does not equal or exceed the lesser of (x) 30% of the outstanding shares of the Company's Common Stock at the time of such purchase, or (y) the ownership of Soros at the time of such purchase; or a purchase by Soros of shares of capital stock in an amount up to 15% of the outstanding shares of Common Stock on the closing date, (ii) for a period of five years from the closing date, except as provided in the Voting Agreement (as defined below) or the Purchase Agreement, join a partnership, limited partnership, syndicate or other group within the meaning of Section 13(d) of the Securities Exchange Act

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of 1934, as amended, including a group consisting of other Investors for the purpose of acquiring, holding or voting any shares of capital stock of the Company, or (iii) for a period of three years from the closing date, seek to commence a proxy contest or other proxy solicitation for the purposes of modifying the composition of the Board of Directors.

The Purchase Agreement further provides that, subject to certain limited exceptions, Soros, Maverick and Prentice will not, for a period of six (6) months after the closing date, sell, offer to sell, solicit offers to buy, dispose of, loan, pledge or grant any right with respect to, any shares of capital stock of the Company.

The Purchase Agreement also provides a right of first refusal (the "Right of First Refusal") to Soros, Maverick and Prentice to provide the financing in any private placement of the Company's Common Stock that it seeks to consummate within one year of the closing date. The Right of First Refusal is subject to certain maximum ownership restrictions and certain other exceptions set forth in the Purchase Agreement.

Pursuant to the Private Placement, the Company entered into a voting agreement with Soros, Maverick and Prentice (the "Voting Agreement"), pursuant to which Soros has the right to designate three designees to the Company's Board of Directors and each of Maverick and Prentice have the right to designate one designee, in each case subject to minimum ownership thresholds and subject to compliance with applicable Nasdaq rules. The Voting Agreement also provides that one designee of Soros and the designee of each of Maverick and Prentice will have the right to serve on the Compensation Committee and the Governance and Nominating Committee of the Board of Directors, subject to compliance with Nasdaq's rules regarding independent directors serving on such committees, or Nasdaq's transitional rules, to the extent applicable. If the Board establishes an Executive Committee, the designees of Soros, Maverick and Prentice will be entitled to also serve on such committee.

### SECTION 9 - FINANCIAL STATEMENTS AND EXHIBITS

#### ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

##### (c) EXHIBITS

None.

### 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.

BLUEFLY, INC.  
(Registrant)

Date: October 20, 2006

By: /s/ Patrick C. Barry  
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Name: Patrick C. Barry  
Title: Chief Operating Officer and  
Chief Financial Officer