

COLUMBIA SPORTSWEAR CO

Form S-8

February 28, 2013

As filed with the Securities and Exchange Commission on February 28, 2013

Registration No. 333-

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

FORM S-8
REGISTRATION STATEMENT

UNDER
THE SECURITIES ACT OF 1933

COLUMBIA SPORTSWEAR COMPANY

(Exact name of Registrant as specified in its charter)

Oregon
(State or other jurisdiction of
incorporation or organization)
14375 NW Science Park Drive

93-0498284
(I.R.S. Employer
Identification No.)
97229

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Portland, Oregon
(Address of Principal Executive Offices)

(Zip Code)

COLUMBIA SPORTSWEAR COMPANY

1997 STOCK INCENTIVE PLAN, AS AMENDED

(Full title of the plan)

Peter J. Bragdon

Senior Vice President, General Counsel and Secretary

Columbia Sportswear Company

14375 NW Science Park Drive

Portland, Oregon 97229

(Name and address of agent for service)

503-985-4000

(Telephone number, including area code, of agent for service)

Copy to:

John R. Thomas

Perkins Coie LLP

1120 N.W. Couch Street, Tenth Floor

Portland, Oregon 97209-4128

503-727-2000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐

Smaller reporting company ☐

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Securities to Be Registered	Amount to Be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee(2)
Common Stock under the Columbia Sportswear Company 1997 Stock Incentive Plan, as Amended	1,500,000	\$56.29	\$84,435,000.00	\$11,516.93

- (1) Plus an indeterminate number of additional shares that may be issued as a result of an adjustment to the number of shares to be issued pursuant to the plan resulting from any future stock split, stock dividend or similar adjustment of the Registrant's outstanding Common Stock.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457 under the Securities Act of 1933, as amended. The Proposed Maximum Offering Price Per Share is estimated to be \$56.29 based on the average of the high sales price (\$58.63) and the low sales price (\$53.95) for the Registrant's Common Stock as reported by the Nasdaq Stock Market on February 21, 2013.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed with the Securities and Exchange Commission (the "Commission") are hereby incorporated by reference in this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, filed on February 28, 2013, which contains audited financial statements for the most recent fiscal year for which such statements have been filed; and
- (b) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A filed on March 24, 1998, including any amendments or reports filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date hereof, and prior to the filing of a post-effective amendment which indicates that the securities offered hereby have been sold or which deregisters the securities covered hereby then remaining unsold, shall also be deemed to be incorporated by reference into this Registration Statement and to be a part hereof commencing on the respective dates on which such documents are filed.

Item 4. DESCRIPTION OF SECURITIES

Not applicable.

Item 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

None.

Item 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 60.394 of the Oregon Business Corporation Act (the "OBCA") provides that unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. Section 60.407 of the OBCA provides that unless limited by its articles of incorporation, an officer of the corporation is entitled to mandatory indemnification under Section 60.394 to the same extent as a director.

Section 60.391 of the OBCA authorizes a corporation to indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if: (a) the conduct of the individual was in good faith; (b) the individual reasonably believed that the individual's conduct was in the best interests of the corporation, or at least not opposed to its best interests; and (c) in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of (b) above. Furthermore, the termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described herein. Indemnification permitted under Section 60.391 of the OBCA in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding. Indemnification is not permitted under Section 60.391 (i) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation or (ii) in connection with any other proceeding charging improper personal benefit to the director in which the director was adjudged liable on the basis that personal benefit was improperly received by the director. Section 60.407 of the OBCA provides that unless limited by its articles of incorporation, the corporation may indemnify an officer of the corporation under ORS Section 60.391 to the same extent as to a director.

Article IV of the Company's Third Restated Articles of Incorporation, as amended (the "Articles") provides that we shall indemnify to the fullest extent not prohibited by law any current or former director who is made, or threatened to be made, a party to an action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (including an action, suit or proceeding by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation or a fiduciary within the meaning of the Employee Retirement Income Security Act of 1974 with respect to any employee benefit plan of the corporation, or serves or served at the request of the corporation as a director, officer, employee or agent, or as a fiduciary of an employee benefit plan, of another corporation, partnership, joint venture, trust or other enterprise. Our Articles also provide that we shall pay for or reimburse the reasonable expenses incurred by such current or former director in any proceeding, in advance of the final disposition of the proceeding if the director sets forth in writing: (i) the person's good faith belief that such person is entitled to be indemnified by the corporation under the Articles; and (ii) an undertaking to repay all advances if it is ultimately determined that such person is not entitled to be indemnified under the Articles. No amendment to the Articles that limits the Company's obligation to indemnify any person shall have any effect on such obligation for any act or omission that occurs prior to the later of effective date of the amendment or the date notice of the amendment is given to the person.

In addition, Section 60.411 of the OBCA provides that a corporation (i) may purchase and maintain insurance on behalf of an individual against liability asserted against or incurred by the individual who is or was a director, officer, employee or agent of the corporation or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise and (ii) may purchase and maintain the insurance even if the corporation has no power to indemnify the individual against the same liability under Section 60.391 or Section 60.394. We maintain insurance for the protection of our directors and officers against any liability asserted against such individuals in their official capacities.

In addition to the indemnification provided for in our Articles, we have entered into, and intend to enter into in the future, indemnification agreements with each of our directors and executive officers pursuant to which we have agreed to indemnify each director or executive officer to the maximum extent available under the OBCA, provided that the board of directors determines that the director seeking indemnification has met the applicable standards of conduct. The rights of indemnification described in our Articles are not exclusive of any other provisions for indemnification or advancement of expenses of directors, officers, employees, agents and fiduciaries that may be included in any statute, bylaw, agreement, general or specific action of the board of directors, vote of the shareholders or other document or arrangement.

Item 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

Item 8. EXHIBITS

Exhibit Number	Description
5.1	Opinion of Perkins Coie LLP regarding legality of the Common Stock being registered
23.1	Consent of Deloitte & Touche LLP
23.2	Consent of Perkins Coie LLP (included in Exhibit 5.1)
24.1	Power of Attorney (see signature page)

**Exhibit
Number**

Description

99.1	Columbia Sportswear Company's 1997 Stock Incentive Plan, as amended (incorporated by reference to Appendix A to the Registrant's Definitive Proxy Statement on Schedule 14A for the 2012 Annual Meeting of Shareholders filed on April 16, 2012 (File No. 000-23939))
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Item 9. UNDERTAKINGS

A. The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (a) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");
 - (b) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and
 - (c) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;
- provided, however, that paragraphs (1)(a) and (1)(b) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefits plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Portland, State of Oregon, on February 28, 2013.

Columbia Sportswear Company

/s/ Thomas B. Cusick

By: Thomas B. Cusick

Senior Vice President of Finance and Chief
Financial Officer

POWER OF ATTORNEY

Each person whose signature appears below authorizes Thomas B. Cusick and Peter J. Bragdon, or either of them, as attorneys-in-fact with full power of substitution, to execute in the name and on the behalf of each person, individually and in each capacity stated below, and to file, any and all amendments to this Registration Statement, including any and all post-effective amendments.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated below on February 28, 2013.

Signature	Title
/s/ Timothy P. Boyle Timothy P. Boyle	President, Chief Executive Officer and Director (Principal Executive Officer)
/s/ Thomas B. Cusick Thomas B. Cusick	Senior Vice President of Finance and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ Gertrude Boyle Gertrude Boyle	Chairman of the Board of Directors
Sarah A. Bany	Director
/s/ Murrey R. Albers Murrey R. Albers	Director
/s/ Stephen E. Babson Stephen E. Babson	Director
/s/ Andy D. Bryant Andy D. Bryant	Director
/s/ Edward S. George Edward S. George	Director
/s/ Walter T. Klenz Walter T. Klenz	Director
/s/ Ronald E. Nelson Ronald E. Nelson	Director
/s/ John W. Stanton John W. Stanton	Director

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