

Edgar Filing: TAG IT PACIFIC INC - Form 10-K/A

TAG IT PACIFIC INC  
Form 10-K/A  
December 06, 2005

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

FORM 10-K/A  
AMENDMENT NO. 1

Annual Report Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

For the fiscal year ended December 31, 2004

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission file number 1-13669

TAG-IT PACIFIC, INC.  
(Exact Name of Registrant as Specified in Its Charter)

DELAWARE  
(State or Other Jurisdiction of Incorporation or Organization)

95-4654481  
(I.R.S. Employer Identification No.)

21900 BURBANK BLVD., SUITE 270  
WOODLAND HILLS, CALIFORNIA  
(Address of Principal Executive Offices)

91367  
(Zip Code)

(818) 444-4100  
(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

TITLE OF EACH CLASS	NAME OF EACH EXCHANGE ON WHICH REGISTERED
COMMON STOCK, \$.001 PAR VALUE	AMERICAN STOCK EXCHANGE

Securities registered pursuant to Section 12(g) of the Act:

NONE

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for past 90 days.

Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K

Indicate by check mark whether the registrant is an accelerated filer

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(as defined in Exchange Act Rule 12b-2) Yes [ ] No [X]

At June 30, 2004 the aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant was \$65,632,028. At March 31, 2005 the issuer had 18,241,045 shares of Common Stock, \$.001 par value, issued and outstanding.

### DOCUMENTS INCORPORATED BY REFERENCE

Portions of the issuer's proxy statement with respect to its 2005 annual meeting of stockholders are incorporated by reference into Part III of this report.

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### EXPLANATORY NOTE

We are filing this Annual Report on Form 10-K/A for the year ended December 31, 2004 (the "Amended Annual Report"), to amend our Annual Report on Form 10-K for the year ended December 31, 2004 (the "Original Annual Report"), which was originally filed with the Securities and Exchange Commission (the "SEC") on April 7, 2005. The Company is filing this Amended Annual Report in response to comments received from the SEC. The following Items amend the Original Annual Report, as permitted by the rules and regulations of the SEC. Unless otherwise stated, all information contained in this Amended Annual Report is as of March 31, 2005. All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Original Annual Report.

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### PART I

#### ITEM 9A. CONTROLS AND PROCEDURES.

We maintain disclosure controls and procedures, which we have designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding disclosure. In response to recent legislation and proposed regulations, we reviewed our internal control structure and our disclosure controls and procedures.

In the course of conducting its audit of our financial statements for the fiscal year ended December 31, 2004, our independent auditors, BDO Seidman LLP informed members of our senior management and the Audit Committee of our Board of Directors that they had discovered significant deficiencies in our internal control over financial reporting that alone and in the aggregate constituted a "material weakness", which is defined under standards established by the Public Company Accounting Oversight Board as a deficiency that could result in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The deficiencies identified consisted of the following:

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- o A deficiency related to the identification of approximately \$1.0 million of our inventory located in a third party warehouse. We have taken steps and will continue to take additional steps to remedy this deficiency and believe that this deficiency was limited to the third party warehouse at which the inventory was located.
- o We recorded post-closing adjustments in our financial statements for the year ended December 31, 2004 related to the allowance for doubtful accounts and deferred tax asset, which were identified by BDO Seidman LLP in connection with their audit of the financial statements. In order to address this deficiency, we will implement additional review procedures over the selection and monitoring of appropriate assumptions and estimates affecting these accounting practices.

Members of management, including the Company's Chief Executive Officer, Colin Dyne, and Chief Financial Officer, Ronda Ferguson, have evaluated the effectiveness of the design and operation of the Company's disclosure controls and procedures as of December 31, 2004, the end of the period covered by this report. Based upon that evaluation, because of the material weakness described above, Mr. Dyne and Ms. Ferguson were unable to conclude that the Company's disclosure controls and procedures were effective as of December 31, 2004. Management has identified the steps necessary to address the material weakness as described above, and has begun to implement remediation plans. We believe these corrective actions, taken as a whole, have mitigated the control deficiencies with respect to our preparation of this Annual Report and that these measures have been effective to ensure that the information required to be disclosed in this Annual Report has been recorded, processed, summarized and reported correctly.

### CHANGES IN INTERNAL CONTROLS OVER FINANCIAL REPORTING

There were no significant changes in our internal controls over financial reporting that occurred during the fourth quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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### SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

TAG-IT PACIFIC, INC.

/S/ AUGUST DELUCA

-----  
By: August DeLuca  
Its: Chief Financial Officer

### POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Stephen Forte and August DeLuca, and each of them, as his true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for him and his name, place and stead, in any and all capacities, to sign any or

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all amendments to this Annual Report on Form 10-K and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the foregoing, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, or their substitutes, may lawfully do or cause to be done by virtue hereof.

### SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

SIGNATURE -----	TITLE -----	DATE -----
/S/ STEPHEN FORTE ----- Stephen Forte	Chief Executive Officer (Principal Executive Officer)	December 6, 2005
/S/ AUGUST DELUCA ----- August DeLuca	Chief Financial Officer (Principal Accounting and Financial Officer)	December 6, 2005
/S/ MARK DYNE ----- Mark Dyne	Chairman of the Board of Directors	December 6, 2005
----- Colin Dyne	Director	
----- Kevin Bermeister	Director	
/S/MICHAEL KATZ ----- Michael Katz	Director	December 6, 2005
/S/JONATHAN BURSTEIN ----- Jonathan Burstein	Director, Vice President of Operations and Secretary	December 6, 2005
/S/ BRENT COHEN ----- Brent Cohen	Director	December 6, 2005
/S/ JOSEPH MILLER ----- Joseph Miller	Director	December 6, 2005

SIGNATURE -----	TITLE -----	DATE -----
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Director

-----  
Susan White

/S/ RAY MUSCI

Director

December 6, 2005

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Ray Musci

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EXHIBIT INDEX

EXHIBIT NUMBER	EXHIBIT DESCRIPTION
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3.1	Certificate of Incorporation of Registrant. Incorporated by reference to Exhibit 3.1 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
3.2	Bylaws of Registrant. Incorporated by reference to Exhibit 3.2 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
3.3	Certificate of Designation of Rights, Preferences and Privileges of Series A Preferred Stock. Incorporated by reference to Exhibit A to the Rights Agreement filed as Exhibit 4.1 to Current Report on Form 8-K filed as of November 4, 1998.
3.4	Certificate of Amendment of Certificate of Incorporation of Registrant. Incorporated by reference to Exhibit 3.4 to Annual Report on Form 10-KSB, filed March 28, 2000.
4.1	Specimen Stock Certificate of Common Stock of Registrant. Incorporated by reference to Exhibit 4.1 to Form SB-2 filed on October 21, 1997, and the amendments thereto. 4.2 Rights Agreement, dated as of November 4, 1998, between Registrant and American Stock Transfer and Trust Company as Rights Agent. Incorporated by reference to Exhibit 4.1 to Current Report on Form 8-K filed as of November 4, 1998.
4.3	Form of Rights Certificate. Incorporated by reference to Exhibit B to the Rights Agreement filed as Exhibit 4.1 to Current Report on Form 8-K filed as of November 4, 1998. 10.1 Form of Indemnification Agreement. Incorporated by reference to Exhibit 10.1 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
10.2	Promissory Note, dated September 30, 1996, provided by Tag-It, Inc. to Harold Dyne. Incorporated by reference to Exhibit 10.21 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
10.3	Promissory Note, dated June 30, 1991, provided by Tag-It, Inc. to Harold Dyne. Incorporated by reference to Exhibit 10.23 to Form SB-2 filed on October 21, 1997, and the amendments thereto.

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- 10.4 Promissory Note, dated January 31, 1997, provided by Tag-It Inc. to Mark Dyne. Incorporated by reference to Exhibit 10.24 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
- 10.5 Promissory Note, dated February 29, 1996, provided by A.G.S. Stationary, Inc. to Monto Holdings Pty. Ltd. Incorporated by reference to Exhibit 10.25 of Form SB-2 filed on October 21, 1997, and the amendments thereto.
- 10.6 Promissory Note, dated January 19, 1995, provided by Pacific Trim & Belt, Inc. to Monto Holdings Pty. Ltd. Incorporated by reference to Exhibit 10.26 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
- 10.7 Registrant's 1997 Stock Incentive Plan, as amended. (2) Incorporated by reference to Exhibit 10.1 to Form 10-Q filed on August 16, 2004.

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EXHIBIT NUMBER	EXHIBIT DESCRIPTION
10.8	Form of Non-statutory Stock Option Agreement. (2) Incorporated by reference to Exhibit 10.30 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
10.9	Promissory Note, dated August 31, 1997, provided by Harold Dyne to Pacific Trim & Belt, Inc. Incorporated by reference to Exhibit 10.32 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
10.10	Promissory Note, dated October 15, 1997, provided by Harold Dyne to Pacific Trim & Belt, Inc. Incorporated by reference to Exhibit 10.34 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
10.11	Warrant Agreement, dated June 1, 1994, between Jonathan Markiles and Tag-It, Inc. Incorporated by reference to Exhibit 10.39 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
10.12	Contract for Manufacturing Services between USA and Mexico, between Tag-It, Inc. and Tagit de Mexico, S.A. de C.V. Incorporated by reference to Exhibit 10.44 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
10.13	Promissory Note, dated October 15, 1997, provided by A.G.S. Stationary Inc. to Monto Holdings Pty. Ltd. Incorporated by reference to Exhibit 10.48 to Form SB-2 filed on October 21, 1997, and the amendments thereto.
10.14	Promissory Note, dated November 4, 1997, provided by Pacific Trim & Belt, Inc. to Monto Holdings Pty. Ltd. Incorporated by reference to Exhibit 10.49 to Form SB-2 filed on October 21, 1997, and the amendments thereto.

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- 10.15 Binding Letter of Understanding, dated October 14, 1998. Incorporated by reference to Exhibit 99.3 to Current Report on Form 8-K filed as of October 29, 1998.
- 10.16 Side Letter Agreement, dated October 14, 1998. Incorporated by reference to Exhibit 99.4 to Current Report Form 8-K filed as of October 29, 1998.
- 10.17 Guaranty, dated as of October 4, 2000, by A.G.S. Stationery, Inc. in favor of Mark I. Dyne. Incorporated by reference to Exhibit 10.40 to Form 10-K filed on April 4, 2001.
- 10.18 Guaranty, dated as of October 4, 2000, by Tag-It, Inc. in favor of Mark I. Dyne. Incorporated by reference to Exhibit 10.41 to Form 10-K filed on April 4, 2001.
- 10.19 Guaranty, dated as of October 4, 2000, by Talon International, Inc. in favor of Mark I. Dyne. Incorporated by reference to Exhibit 10.42 to Form 10-K filed on April 4, 2001.
- 10.20 Intercreditor Agreement, dated as of October 4, 2000, by and among Mark I. Dyne, Sanwa Bank California, the Registrant, Tag-It, Inc., Talon International, Inc. and A.G.S. Stationery, Inc. Incorporated by reference to Exhibit 10.43 to Form 10-K filed on April 4, 2001.
- 10.21 Security Agreement, dated as of October 4, 2000, between A.G.S. Stationery, Inc. and Mark I. Dyne. Incorporated by reference to Exhibit 10.44 to Form 10-K filed on April 4, 2001. Incorporated by reference to Exhibit 10.44 to Form 10-K filed on April 4, 2001.
- 10.22 Security Agreement, dated as of October 4, 2000, between Tag-It, Inc. and Mark I. Dyne. Incorporated by reference to Exhibit 10.45 to Form 10-K filed on April 4, 2001.

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EXHIBIT NUMBER	EXHIBIT DESCRIPTION
10.23	Security Agreement, dated as of October 4, 2000, between Talon International Inc. and Mark I. Dyne. Incorporated by reference to Exhibit 10.46 to Form 10-K filed on April 4, 2001.
10.24	Security Agreement, dated as of October 4, 2000, between Tag-It Pacific, Inc. and Mark I. Dyne. Incorporated by reference to Exhibit 10.47 to Form 10-K filed on April 4, 2001.
10.25	Convertible Secured Subordinated Promissory Note, dated October 4, 2000, provided by Mark I. Dyne to the Registrant. Incorporated by reference to Exhibit 10.48 to Form 10-K filed on April 4, 2001.

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- 10.26 Trim Handling Agreement, dated as of December 29, 1999, among the Registrant, Tarrant Apparel Group, Inc. & Tagmex and Tag-It de Mexico S.A. Incorporated by reference to Exhibit 10.51 to Form 10-K filed on April 4, 2001.
- 10.27 Supply Agreement entered into on December 22, 2000, by and between the Company, Hubert Guez, Paul Guez and Azteca Production International, Inc., AZT International SA D RL, and Commerce Investment Group, LLC. (1) Incorporated by reference to Exhibit 10.53 to Form 10-K filed on April 4, 2001.
- 10.28 Investor Rights Agreement entered into on December 22, 2000, by and between the Company and Commerce Investment Group, LLC. Incorporated by reference to Exhibit 10.54 to Form 10-K filed on April 4, 2001.
- 10.29 Voting Agreement entered into on December 22, 2000, by and between the Company, Hubert Guez, Paul Guez and Azteca Production International, Inc., AZT International SA D RL, Commerce Investment Group, LLC, and Colin Dyne. Incorporated by reference to Exhibit 10.55 to Form 10-K filed on April 4, 2001.
- 10.30 Right of First Refusal and Sale Agreement entered into on December 22, 2000, by and between the Company, Hubert Guez, Paul Guez and Azteca Production International, Inc., AZT International SA D RL, Commerce Investment Group, LLC, and Colin Dyne. Incorporated by reference to Exhibit 10.56 to Form 10-K filed on April 4, 2001.
- 10.31 Co-Marketing and Supply Agreement, dated as of September 20, 2001, between Tag-It Pacific, Inc. and Coats America, Inc. Incorporated by reference to Exhibit 99.3 to Form 8-K filed on October 15, 2001.
- 10.32 Purchase Money Security Agreement, dated as of September 20, 2001, between Tag-It Pacific, Inc. and Coats America, Inc. Incorporated by reference to Exhibit 99.4 to Form 8-K filed on October 15, 2001.
- 10.33 Promissory Note, dated as of December 21, 2001, by Tag-It Pacific, Inc. for the benefit of Talon, Inc. Incorporated by reference to Exhibit 99.2 to Form 8-K filed on January 7, 2002.
- 10.34 Form of Warrant to Purchase Common Stock Agreements dated December 28, 2001. Incorporated by reference to Exhibit 99.2 to Form 8-K filed on January 23, 2002.
- 10.35 Form of Stockholders Agreements dated December 28, 2001. Incorporated by reference to Exhibit 99.3 to Form 8-K filed on January 23, 2002.

EXHIBIT NUMBER

EXHIBIT DESCRIPTION

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- 10.36 Form of Investor Rights Agreements dated December 28, 2001. Incorporated by reference to Exhibit 99.4 to Form 8-K filed on January 23, 2002.
- 10.37 Exclusive Supply Agreement dated July 12, 2002, among Tag-It Pacific, Inc. and Levi Strauss & Co. (1) Incorporated by reference to Exhibit 10.68 to Form 10-Q filed on November 15, 2002.
- 10.37.1 Amendment to Exclusive Supply Agreement, dated July 12, 2002, between Tag-It Pacific, Inc. and Levi Strauss & Co. (1) Incorporated by reference to Exhibit 10.70 to Form 10-K filed on March 28, 2003.
- 10.37.2 Amendment, dated June 29, 2004, to Exclusive Supply Agreement, dated July 12, 2002, between Tag-It Pacific, Inc. and Levi Strauss & Co. (3)
- 10.38 Intellectual Property Rights Agreement, dated April 2, 2002, between the Company and Pro-Fit Holdings, Ltd. (1) Incorporated by reference to Exhibit 10.69 to Form 10-K/A filed on October 1, 2003.
- 10.39 Securities Purchase Agreement dated May 23, 2003, by and among the Company and the Purchasers identified on the signature pages thereto. Incorporated by reference to Exhibit 99.2 to Form 8-K filed on June 4, 2003.
- 10.40 Registration Rights Agreement dated May 23, 2003, by and among the Company and the Purchasers identified on the signature pages thereto. Incorporated by reference to Exhibit 99.3 to Form 8-K filed on June 4, 2003.
- 10.41 Common Stock Purchase Warrant dated May 30, 2003 between the Company and Roth Capital Partners LLC. Incorporated by reference to Exhibit 10.15 to Form S-3 Registration Statement filed on June 25, 2003.
- 10.42 Form of Subscription Agreement between the Company and the Purchaser to be identified therein dated December 18, 2003. Incorporated by reference to Exhibit 99.1 to Form 8-K filed on December 22, 2003.
- 10.43 Form of Registration Rights Agreement dated December 18, 2003 among the Company and the Purchasers identified therein. Incorporated by reference to Exhibit 99.2 to Form 8-K filed on December 22, 2003.
- 10.44 Placement Agent Agreement dated December 18, 2003 between the Company and Sanders Morris Harris Inc. Incorporated by reference to Exhibit 99.3 to Form 8-K filed on December 22, 2003.
- 10.45 Common Stock Purchase Warrant dated December 18, 2003 between the Company and Sanders Morris Harris Inc. Incorporated by reference to Exhibit 99.4 to Form 8-K filed on December 22, 2003.
- 10.46 Form of Subscription Agreement, dated as of November 9, 2004, between the Company and the Purchaser identified therein. Incorporated by reference to Exhibit 10.1 to Form S-3 filed on December 9, 2004.

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EXHIBIT NUMBER -----	EXHIBIT DESCRIPTION -----
10.47	Form of Secured Convertible Promissory Note, dated as of November 9, 2004. Incorporated by reference to Exhibit 10.2 to Form S-3 filed on December 9, 2004.
10.48	Form of Common Stock Purchase Warrant, dated as of November 9, 2004. Incorporated by reference to Exhibit 10.3 to Form S-3 filed on December 9, 2004.
10.49	Trademark Security Agreement, dated as of November 9, 2004, among the Registrant and the Secured Parties identified on the signature page thereto. Incorporated by reference to Exhibit 10.4 to Form S-3 filed on December 9, 2004.
10.50	Registration Rights Agreement, dated as of November 9, 2004, among the Registrant, Sanders Morris Harris Inc. and the Purchasers identified therein. Incorporated by reference to Exhibit 10.5 to Form S-3 filed on December 9, 2004.
10.51	Placement Agent Agreement, dated as of November 9, 2004, between the Registrant and Sanders Morris Harris Inc. Incorporated by reference to Exhibit 10.6 to Form S-3 filed on December 9, 2004.
10.52	Common Stock Purchase Warrant dated as of November 9, 2004, issued by the Registrant in favor of Sanders Morris Harris Inc. Incorporated by reference to Exhibit 10.7 to Form S-3 filed on December 9, 2004.
14.1	Code of Ethics. Incorporated by reference to Exhibit 14.1 to Form 10-K filed on March 30, 2004.
21.1	Subsidiaries. Incorporated by reference to Exhibit 14.1 to Form 10-K filed on March 30, 2004.
23.1	Consent of BDO Seidman, LLP. (3)
24.1	Power of Attorney (included on signature page).
31.1	Certificate of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities and Exchange Act of 1934, as amended
31.2	Certificate of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities and Exchange Act of 1934, as amended
32.1	Certificate of Chief Executive Officer and Chief Financial Officer pursuant to Rule 13a-14(b) under the Securities and Exchange Act of 1934, as amended.

(1) Certain portions of this agreement have been omitted and filed separately

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with the Securities and Exchange Commission pursuant to a request for an order granting confidential treatment pursuant to Rule 406 of the General Rules and Regulations under the Securities Act of 1933, as amended.

- (2) Indicates a management contract or compensatory plan.
- (3) Previously filed on Form 10-K for the year ended December 31, 2004.