Overstock's brash CEO delivers 1st annual profit

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In this file photo of Thursday, March 25, 2010, OverStock.com Chairman and CEO Patrick Byrne is shown at one of the company's warehouses in Salt lake City. Internet retailer Overstock.com finally has its first annual profit in nearly eight years as a public company. It's vindication for CEO Patrick Byrne, who has been worried about more than selling designer merchandise at deep discounts. He's in a battle with short-selling investors who want to see him fail as he tries to position the company as a challenger to the Goliaths of Internet retail. (AP Photo/George Frey, File)

(AP) -- If Overstock.com's unconventional CEO had a defining moment, it might have been a conference call he had with investors five years ago.

For an hour, Patrick Byrne lashed out at what he called a conspiracy of short sellers and others plotting to destroy his company's share price so a "bottom feeder" could take over the Internet discounter. Byrne says his point was to expose "crooked" hedge funds and how federal regulators were powerless to stop them.

"We've got a group of parasites who have found a loophole that they can keep on using to just drain resources out of entrepreneurs in America, and in the process kill small companies," Byrne thundered on the call.

The jury is still out on many of these claims. Byrne has filed a lawsuit that he says will put major brokerage houses on trial next year to face allegations they abetted a questionable form of trading called naked short selling.

But Overstock.com Inc. reported its first annual profit Wednesday, giving Byrne a win in his personal crusade. Shares of the company rose more than 30 percent, almost passing their 52-week high of $17.99. The stock has traded as low as $8.94 in the past year.

The company's narrow 2009 gain of $7.7 million, Byrne said, proves that those who traded presuming Overstock's weaknesses were wrong and vindicates his tumultuous effort to position the company as a challenger to the Goliaths of Internet retail.

Overstock's challenge is to remain a price leader in an increasingly crowded market where practically anyone can make a sale from a consumer's Google search, said Nathaniel Schindler, an analyst at Merrill Lynch.

"You can find good inventory and deals on the Internet elsewhere. That just makes it tougher for them," he said.

Byrne says the company, which has 1,260 employees, recognizes that problem and is continually adjusting prices to meet the competition.

When explosive growth made the company appear promising, the stock hit a high of more than $77 in 2004, valuing the company at nearly $1.5 billion. Competing online retailer Amazon.com Inc.'s market capitalization is nearly 40 times larger.

Yet out-of-control costs, especially for marketing, bungled technology overhauls and Byrne's preoccupation with short sellers marked a decade where Overstock racked up about $250 million in losses, and the recession has helped drive the share price into the teens.

Overstock's business plan is to provide brand-name manufacturers a place to dump surplus inventory without "polluting" their traditional retail channels. This allows Overstock to sell designer merchandise such as Prada and Gucci at up to 40 percent discounts.

Byrne's company has gradually become more of an order-taker for other retailers' surplus inventories, cutting back on how much merchandise it buys outright and warehouses.

Now, the 47-year-old chairman and CEO believes Overstock is entering a period of sustained profitability and catching up to competitors. Yet Amazon has revenues nearly 30 times larger, while eBay Inc. focuses on auctions that broker the sale of 40 times as much merchandise.

Overstock's revenue, just $1.8 million in 1999, climbed to nearly $877 million in 2009. But growth has slowed since 2005, and sales rose 6 percent in the tough economy of 2009.

Other factors have also made it a rough ride for the Cottonwood Heights, Utah, company.

Since Byrne took Overstock public in 2002, he has derided Wall Street and faced a series of financial restatements as federal regulators opened a broader inquiry into the company's accounting problems. He's accused financial journalists of aiding the short-sellers that can profit from the company's decline, calling one blogger a "hedge fund towel boy."

Byrne, who owns nearly 30 percent of the company's shares, says Overstock's accounting errors were generally conservative. The latest involved 0.1 percent of revenue and gave the company no advantage, he said.

Byrne also wandered into other business lines, buying a travel company, and introducing an auction service and car and real-estate listings. He even tried to buy a diamond mine.

"He was trying to do too much, but think of it as experiments," said his father, Jack Byrne, a highly regarded former insurance executive who was Overstock's chairman for its first three years. "Every once in a while, one of those experiments hits."

One constant is that in the blogs and in the courts, Patrick Byrne has beat a drum over stock manipulation conspiracies that he says a "captured" media refuses to cover.

Legitimate short sellers borrow and sell shares of stock hoping the price declines so they can buy back shares at lower prices and return them to brokers, pocketing the difference. That's routine, but it can be a violation for brokers to "lend" shares they don't hold and have difficulty obtaining. That "failure to deliver" can drive down the price of a company's stock, Byrne said.

The industry-owned Depository Trust and Clearing Corp. has acknowledged that so-called naked shorting exists but says it's a trifling problem.

One of Byrne's loudest critics, Sam E. Antar, says the CEO is just diverting attention from the company's problems.

Antar, the 52-year-old former chief financial officer of the Crazy Eddie electronics chain, said he's flagged many material changes in Overstock's finances that the company didn't disclose to the Securities and Exchange Commission.

Antar, who writes for whitecollarfraud.com and lectures corporations and law enforcement groups on fraud, says it takes one to know one. He was convicted in 1991 of cooking Crazy Eddie's books.

Byrne responds that "it's like hearing Bernie Madoff say I'm a bad guy."

Byrne has won others over.

"Patrick talked about naked shorting years ago and was considered a nut-case for it. But he's been proven 100 percent right, and for that reason he has been vilified by Wall Street, which hates him," said Sam Mitchell, a managing director for Toronto-based insurer Fairfax Financial Holdings, a major Overstock shareholder.

On the eve of Byrne's infamous conference call, Overstock took aim in a lawsuit against well-known short seller David Rocker, accusing him of conspiring with stock-research firm Gradient Analytics to publish critical reports on Overstock. Rocker vigorously denied it.

Overstock received a $5 million settlement in December from a successor to Rocker's hedge fund, Copper River Partners, which admitted no wrongdoing and said it was cheaper than fighting Byrne's lawsuit. Phoenix-based Gradient Analytics settled earlier.

A larger case is pending. In 2007, Byrne filed a $3.4 billion lawsuit against brokers Morgan Stanley & Co., Goldman Sachs & Co., Bear Stearns Cos., Bank of America Securities LLC, The Bank of New York, Citigroup Inc., Credit Suisse (USA) Inc. and others. The firms say Byrne's allegations of a naked short selling conspiracy are without merit.

Trial is set for September 2011.