

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

FORM S-8
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

FLUENT, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

77-0688094

(I.R.S. Employer
Identification No.)

300 Vesey Street, 9th Floor
New York, New York

(Address of Principal Executive Offices)

10282

(Zip Code)

Fluent, Inc. 2022 Omnibus Equity Incentive Plan

(Full title of the plan)

Daniel J Barsky, Esq.
General Counsel and Corporate Secretary
Fluent, Inc.

300 Vesey Street, 9th Floor
New York, New York 10282

(Name and address of agent for service)

(646) 669-7272

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

With a copy to:
John Tishler, Esq.
Sheppard, Mullin, Richter & Hampton LLP
12275 El Camino Real
San Diego, CA 92130
Phone: (858) 720-8943

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

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Fluent, Inc. (the “Company”) will provide each recipient (the “Recipients”) of a grant under the Fluent, Inc. 2022 Omnibus Equity Incentive Plan (the “Plan”) with documents that contain information related to the Plan, and other information including, but not limited to, the disclosure required by Item 1 of Form S-8, which information is not required to be and is not being filed as a part of this Registration Statement on Form S-8 (the “Registration Statement”) or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act of 1933, as amended (the “Securities Act”). The foregoing information and the documents incorporated by reference in response to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. A Section 10(a) prospectus will be given to each Recipient who receives common stock covered by this Registration Statement, in accordance with Rule 428(b)(1) under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Securities and Exchange Commission (the “SEC”) allows us to provide information about our business and other important information to you by “incorporating by reference” the information we file with the SEC, which means that we can disclose the information to you by referring in this prospectus to the documents we file with the SEC. Under the SEC’s regulations, any statement contained in a document incorporated by reference in this prospectus is automatically updated and superseded by any information contained in this prospectus, or in any subsequently filed document of the types described below.

We incorporate into this prospectus by reference the following documents we filed with the SEC, each of which should be considered an important part of this prospectus:

- [our Annual Report on Form 10-K for the year ended December 31, 2021, filed with the SEC on March 9, 2022;](#)
- [our Quarterly Report on Form 10-Q for the quarter ended March 31, 2022, filed with the SEC on May 10, 2022;](#)
- [our Quarterly Report on Form 10-Q for the quarter ended June 30, 2022, filed with the SEC on August 9, 2022;](#)
- [our Definitive Proxy Statement on Schedule 14A for our 2022 Annual Meeting of Stockholders, filed with the SEC on May 2, 2022;](#)
- [our Current Report on Form 8-K filed with the SEC on June 10, 2022;](#) and
- the description of our common stock contained in our [Registration Statement on Form 8-A filed with the SEC on September 26, 2016](#), including any amendments and reports filed for the purpose of updating such description.

In addition, all documents we subsequently file pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items), after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

We will provide to you, upon request, a copy of each of our filings at no cost. Please make your request by writing or telephoning us at the following address or telephone number:

Fluent, Inc.
Attn: Legal Department
300 Vesey Street, 9th Floor
New York, NY 10282
Tel: (646) 669-7272

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145(a) of the Delaware General Corporation Law (the “DGCL”), which the Company is subject to, provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action 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 is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful. Section 145(b) of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper. To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145 of the DGCL, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith.

Any indemnification under subsections (a) and (b) of Section 145 of the DGCL (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of Section 145. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders. Expenses (including attorneys’ fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys’ fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate. The indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office.

Section 145 of the DGCL also empowers a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under Section 145.

Article 6 of the Company's Amended and Restated Bylaws provide that directors, officers, employees and agents shall be indemnified to the fullest extent permitted by the DGCL. Article 10 of the Company's Certificate of Incorporation also provides that directors shall be indemnified to the fullest extent permitted by the DGCL.

The Company carries directors and officers liability coverages designed to insure its officers and directors and those of its subsidiaries against certain liabilities incurred by them in the performance of their duties, and also providing for reimbursement in certain cases to the Company and its subsidiaries for sums paid to directors and officers as indemnification for similar liability. In addition, the Company has entered into indemnification agreements with its executive officers and directors providing for advancement of expenses and indemnification to the fullest extent permissible under DGCL.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to the Company's directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, the Company 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 Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

<u>Exhibit Number</u>	<u>Exhibit Description</u>
4.1	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K filed with the SEC on April 16, 2018)
5.1*	Opinion of Daniel J. Barsky
10.1	Fluent, Inc. 2022 Omnibus Equity Incentive Plan (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed with the SEC on June 10, 2022)
23.1*	Consent of Grant Thornton LLP
23.2*	Consent of Daniel J. Barsky (included in Exhibit 5.1)
24.1*	Power of Attorney (included on signature page)
107*	Filing Fee Table

*Filed herewith.

Item 9. Undertakings.

The undersigned Registrant hereby undertakes:

- (A) (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
- i To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
 - ii. To reflect in the prospectus any facts or events arising after the effective date of the 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 the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;
 - iii. To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;
- provided, however, that paragraphs (A)(1)(i) and (A)(1)(ii) 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 Section 15(d) of the Exchange Act of 1934 that are incorporated by reference in the Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the 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 of 1933 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.
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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 of 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 New York, New York on August 10, 2022.

Fluent, Inc.

By: /s/ Donald Patrick
Donald Patrick
Chief Executive Officer

KNOW ALL MEN BY THESE PRESENT, that each person whose signature appears below constitutes and appoints his true and lawful attorney-in-fact and agent, Daniel J. Barsky, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Registration Statement, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act or things requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as he might or could do in person hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Donald Patrick</u> Donald Patrick	Chief Executive Officer (Principal Executive Officer)	August 10, 2022
<u>/s/ Sugandha Khandelwal</u> Sugandha Khandelwal	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	August 10, 2022
<u>/s/Ryan Schulke</u> Ryan Schulke	Chief Strategy Officer, Chairman of the Board and Director	August 10, 2022
<u>/s/ Matthew Conlin</u> Matthew Conlin	Chief Customer Officer and Director	August 10, 2022
<u>/s/ Carla Newell</u> Carla Newell	Director	August 10, 2022
<u>/s/ Donald Mathis</u> Donald Mathis	Director	August 10, 2022
<u>/s/ Barbara Shattuck Kohn</u> Barbara Shattuck Kohn	Director	August 10, 2022

Daniel J. Barsky*General Counsel and Corporate Secretary*

Fluent, Inc.
300 Vesey Street, 9th Floor
New York, NY 10282
Tel: (646) 669-7272

August 10, 2022

Fluent, Inc.
300 Vesey Street, 9th Floor
New York, NY 10282

RE: Registration Statement on Form S-8

Ladies and Gentlemen:

I am General Counsel and Corporate Secretary of Fluent, Inc., a Delaware corporation (the "Company") and, in such capacity, have acted as counsel for the Company in connection with the Company's filing of a registration statement on Form S-8 (the "Registration Statement") to be filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), relating to the offer and sale of 15,422,523 shares (the "Shares") of common stock, par value \$0.00005 per share (the "Common Stock"), of the Company, issuable under the Fluent, Inc. 2022 Omnibus Equity Incentive Plan (the "2022 Plan") including (i) 10,000,000 shares of Common Stock issuable under the 2022 Plan, (ii) 909,251 shares of Common Stock reserved, but unissued under the Fluent, Inc. 2018 Stock Incentive Plan (the "Prior Plan") that are now issuable under the 2022 Plan, (iii) 4,180,321 shares of Common Stock underlying outstanding awards granted under the Prior Plan, which if cancelled, forfeited or terminated for any reason prior to exercise, delivery or becoming vested in full, would otherwise have been returned to the share reserve under the Prior Plan, but which instead will now be available for future grant under the 2022 Plan; and (v) 332,951 shares of Common Stock that were reserved for future issuance under the Prior Plan as a result of forfeited awards that are now issuable under the 2022 Plan.

This opinion is being furnished in accordance with the requirements of Item 8 of Form S-8 and Item 601(b)(5) of Regulation S-K under the Act. In rendering the opinion set forth herein, I have examined originals or copies, certified or otherwise identified to my satisfaction, of the Registration Statement and such corporate records, documents, agreements, instruments and certificates of public officials and of officers of the Company as I have deemed necessary or appropriate as a basis for the opinion hereinafter set forth.

In my examination, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, including endorsements, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as facsimile, electronic, certified, conformed, or photostatic copies and the authenticity of the originals of such copies. In making my examination of executed documents or documents to be executed, I have assumed that the parties thereto, other than the Company, had or will have the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and execution and delivery by such parties of such documents, and the validity and binding effect on such parties. As to any facts material to the opinion expressed herein which I have not independently established or verified, I have relied upon statements and representations of officers and other representatives of the Company and others and of public officials.

The opinion set forth herein is limited to the laws of the State of Delaware. I do not express any opinion with respect to matters governed by any laws other than the Delaware General Corporation Law and reported decisions of the Delaware courts interpreting such law.

Based upon and subject to the foregoing, and subject to the limitations, qualifications, exceptions, and assumptions set forth herein, I am of the opinion that, upon the issuance and the delivery of the Shares in accordance with the terms of the Plan, and upon the Company's receipt of the consideration therefor, as determined by the Board of Directors of the Company, and pursuant to the agreements that accompany the Plan, the Shares will be legally and validly issued, fully paid, and nonassessable.

I hereby consent to the use of this opinion as Exhibit 5.1 to the Registration Statement. In giving such opinion, I do not thereby admit that I am acting within the category of persons whose consent is required under Section 7 of the Act or the rules or regulations of the Commission thereunder.

Very truly yours,

/s/ Daniel J. Barsky

Daniel J. Barsky, Esq.
General Counsel and Corporate Secretary
Fluent, Inc.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated March 9, 2022 with respect to the consolidated financial statements and internal control over financial reporting of Fluent, Inc. included in the Annual Report on Form 10-K for the year ended December 31, 2021, which are incorporated by reference in this Registration Statement. We consent to the incorporation by reference of the aforementioned reports in this Registration Statement.

/s/ Grant Thornton LLP

New York, New York

August 10, 2022

Calculation of Filing Fee Tables

Form S-8
(Form Type)**Fluent, Inc.**

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation Rule (1)	Amount Registered (2)	Proposed Maximum Offering Price Per Share	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
	Equity	Common Stock, par value \$0.0005 per share	Other	15,422,523 (3)	\$1.215 (1)	\$18,738,366	\$0.0000927	\$1,738
	Total Offering Amounts					\$18,738,366		\$1,738
	Total Fee Offsets (4)							\$283
	Net Fee Due							\$1,455

Table 2: Fee Offset Claims and Sources

	Registrant or Filer Name	Form or Filing Type	File Number	Initial Filing Date	Fee Offset Claimed Rule 457(p)	Security Type Associated with Fee Offset Claimed	Security Title Associated with Fee Offset Claimed	Unsold Securities Associated with Fee Offset Claimed	Unsold Aggregate Offering Amount Associated with Fee Offset Claimed	Fee Paid with Fee Offset Source
Fee Offset Claims	Fluent, Inc.	S-8	333-226170 (3)	July 13, 2018	\$283	Equity	Common Stock, par value \$0.0005 per share	909,251	\$2,273,128	
Fee Offset Sources	Fluent, Inc.	S-8	333-226170	July 13, 2018						\$2,342

- (1) Estimated solely for purposes of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended (the "Securities Act"), by averaging the high and low sales prices of Fluent, Inc.'s (the "Registrant's") common stock, par value \$0.0005 per share ("Common Stock"), as reported on The Nasdaq Global Market on August 5, 2022, which date is within five business days prior to the filing of this Registration Statement.
- (2) Pursuant to Rule 416(a) of the Securities Act, this Registration Statement shall also cover any additional shares of Common Stock of the Registrant that become issuable under the Registrant's 2022 Omnibus Equity Incentive Plan (the "2022 Plan") by reason of any stock dividend, stock split, recapitalization or other similar transaction that increases the number of outstanding shares of Common Stock. In addition, pursuant to Rule 416(c) under the Securities Act, this Registration Statement shall also cover an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.
- (3) Includes (i) 10,000,000 shares of Common Stock issuable under the 2022 Plan, (ii) 909,251 shares (the "Carried-Over Shares") of Common Stock reserved, but unissued under the Fluent, Inc. 2018 Stock Incentive Plan (the "Prior Plan") that are now issuable under the 2022 Plan, (iii) 4,180,321 shares of Common Stock underlying outstanding awards granted under the Prior Plan, which if cancelled, forfeited or terminated for any reason prior to exercise, delivery or becoming vested in full, would otherwise have been returned to the share reserve under the Prior Plan, but which instead will now be available for future grant under the 2022 Plan; and (v) 332,951 shares of Common Stock that were reserved for future issuance under the Prior Plan as a result of forfeited awards that are now issuable under the 2022 Plan. No further grants will be made under the Prior Plan.
- (4) Represents 909,251 Carried-Over Shares that were registered pursuant to the Registration Statement on Form S-8 (No. 333-226170) filed by the Registrant on July 13, 2018 under the Prior Plan. Pursuant to Rule 457(p) under the Securities Act, a portion of the registration fee is offset by the registration fees previously paid with respect to such Registration Statement and the Registrant has terminated or completed any offering that included the unsold securities associated with the claimed offset under such Registration Statement.