

FUNCTION (X) INC.

Form S-1/A

May 17, 2012

As filed with the Securities and Exchange Commission on May 16, 2012

Registration No. 333- 174481

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-1/A
(Amendment No. 7)

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

FUNCTION(X) INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

7370
(Primary Standard Industrial
Classification Code Number)

33-0637631
(I.R.S. Employer
Identification No.)

902 Broadway
11th Floor
New York, New York 10010
212-231-0092

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Robert F.X. Sillerman
Executive Chairman
902 Broadway
11th Floor
New York, New York 10010
212-231-0092

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Christopher S. Auguste, Esq.
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of Americas
New York, New York 10036
(212) 715-9100

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this
Registration Statement.

Edgar Filing: FUNCTION (X) INC. - Form S-1/A

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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	<input type="checkbox"/>	Accelerated Filer	<input type="checkbox"/>
Non-Accelerated Filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be offered	Amount of shares to be registered(1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price(3)	Amount of registration fee
Common stock, par value \$0.001 per share	13,232,597	\$ 11.00	(2) \$ 145,558,567.00	\$ 16,899.35
Common stock, par value \$0.001 per share	940,000	\$ 11.00	(2) \$ 10,340,000.00	\$ 1,200.47
Common stock, par value \$0.001 per share	250,000	\$ 11.00	(2) \$ 2,750,000.00	\$ 319.28
Common stock, par value \$0.001 per share	100,000	\$ 11.00	(2) \$ 1,100,000.00	\$ 127.71
Total	14,522,597	\$ 11.00	\$ 159,748,567.00	\$ 18,546.81 (4)

(1) In accordance with Rule 416(a), the Registrant is also registering hereunder an indeterminate number of shares that may be issued and resold resulting from stock splits, stock dividends or similar transactions.

(2) Calculated in accordance with Rule 457(g) based upon the price at which the warrants were exercised.

(3) Estimated solely for the purpose of computing the amount of the registration fee in accordance with Rule 457(a) of the Securities Act of 1933, as amended.

(4) Previously paid.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall hereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

PROSPECTUS

Subject to completion, dated May 16, 2012

FUNCTION(X) INC.

14,522,597 Shares of Common Stock

This prospectus relates to an aggregate of 14,522,597 shares of common stock, par value \$0.001 per share, of Function(x) Inc., a Delaware corporation, that may be sold from time to time by one of the selling stockholders named in this prospectus.

None of the selling stockholders named in this prospectus are members of management or employees of the Company. We will not receive any proceeds from the sales of any shares of common stock by the selling stockholders.

Our common stock currently trades in the over-the-counter market and is quoted on the Pink Sheets Electronic Quotation Service under the symbol "FNCX". The closing price for our common stock on May 15, 2012 was \$2.70 per share. The shares will be offered at a fixed price of \$3.00 per share until such time as the shares are quoted on the OTC Bulletin Board or listed for trading or quoted on any other exchange or public market and thereafter at prevailing market price or privately negotiated prices.

As of May 16, 2012, Robert F.X. Sillerman, our Executive Chairman, together with the other directors, executive officers and affiliates own 112,539,909 of the outstanding shares of our common stock, representing approximately 73.6% of the voting power of the outstanding shares of our common stock.

Investing in our common stock involves a high degree of risk. See the section entitled "Risk Factors" beginning on page 5 to read about factors you should consider before buying shares of our common stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The information in this prospectus is not complete and may be changed. No person may sell the securities described in this document until the registration statement filed with the Securities and Exchange Commission is declared effective. This prospectus is not an offer to sell these securities and no person named in this prospectus is soliciting offers to buy these securities in any state where the offer or sale is not permitted.

The date of this prospectus is May 16, 2012

TABLE OF CONTENTS

Prospectus Summary	1
Risk Factors	6
Cautionary Note Regarding Forward-Looking Statements	12
Use of Proceeds	12
Dividend Policy	13
Market for Our Common Stock	13
Dilution	13
Management's Discussion and Analysis of Financial Condition and Results of Operations	14
Our Business	25
Management	32
Executive Compensation	36
Corporate Governance	42
Certain Relationships and Related Transactions	45
Change of Fiscal Year	48
Selling Stockholders	48
Security Ownership of Certain Beneficial Owners and Management	50
Description of Capital Stock	53
Shares Eligible for Future Sale	54
Plan of Distribution	55
Legal Matters	56
Experts	56
Where You Can Find More Information	56
Index to Financial Statements	F-1

PROSPECTUS SUMMARY

The following summary highlights some of the information contained in this prospectus, and it may not contain all of the information that is important to you in making an investment decision. You should read the following summary together with the more detailed information regarding our company and the common stock being sold by the selling stockholders in this offering, including the “Risk Factors” and our financial statements and related notes, included elsewhere in this prospectus.

The Company

Overview of Transition in the Company’s Business

The fiscal year ended June 30, 2011 was a transition year for Function(x). On October 24, 2010 the Company disposed of its remaining interest in Oaktree Systems, Inc (“Oaktree”) and was not active and had no operating business. After the disposition of Oaktree, the Company began exploring the possibility of identifying and merging with or investing in one or more operating businesses. Then, on February 15, 2011, we completed a recapitalization (the “Recapitalization”) with Sillerman Investment Company, LLC, a Delaware limited liability company (“Sillerman”) and EMH Howard LLC, a New York limited liability company (“EMH Howard”) and changed our name to Function(x) Inc. With the Recapitalization, the Company changed course and, under new management, began moving in a new direction, which is to provide a platform for investments in media and entertainment, with a particular emphasis on digital and mobile technology.

Our Business

General

Our business is built on a simple concept: Watch TV. Earn Rewards. The business, which operates under the name ‘Viggle,’ is a loyalty program that rewards our users for watching television. Users receive points for checking in to and interacting with their favorite TV shows and can then redeem these points for real items such as movie tickets, music and gift cards. We plan to generate revenue through advertising and the sale of merchandise related to the TV shows and other entertainment viewed by users that would appear in users’ mobile devices through the use of the application. We currently do not have any agreements in place with advertisers or vendors whereby the advertisers or vendors issue rewards to our users when the users redeem their points. We have purchased and will continue to purchase gift cards from vendors that we will issue to users upon the redemption of their points. The Company has only generated nominal revenue to date, and there is no guarantee that we will be able to generate sufficient revenue in the future to continue to purchase gift cards from vendors.

Overview of our Business

Our Loyalty Program

Our loyalty program will be delivered to consumers in the form of a free application, or app, that works on multiple device types, including mobile phones, tablets and laptops. The user experience is simple. The consumer downloads the app, creates an account and while watching TV, taps the check in button. Using the device's microphone, the application collects an audio sample of what the user is watching on television and uses proprietary technology to convert that sample into a digital fingerprint. Within seconds, that proprietary digital fingerprint is matched against a database of reference fingerprints that are collected from over 100 English and Spanish television channels within the United States. We are able to verify TV check-ins across broadcast, cable, online, satellite, time-shifted and on-demand content. The ability to verify check-ins is critical because users are rewarded points for each check in. Users can redeem the points within the app's rewards catalogue for items that have a monetary value such as movie tickets, music and gift cards.

In addition to television show check-in points, users can earn additional points by engaging with brand or network sponsored games, videos, polls or quizzes related to the show that they are watching and by inviting friends or sharing their activities via social media. In addition to rewards, there will also be sweepstakes opportunities and instant win games for higher value prizes or unique experiences. Our product will be limited to participants who are 13 years of age or older.

Since our launch on January 25, 2012, and through April 30, 2012, we have accumulated 550,397 registered active users. Our members have checked-in to 24,245,337 TV programs, spent an average of 93 minutes of active time within Viggle per session, completed an average of 29 engagements per day and have redeemed a total of 335,195 rewards.

Registered active users are computed by determining those users that are both registered on Viggle and have earned points within the preceding 90 days. It is not possible to earn points on the Viggle app without registering. In order to avoid double-counting and limit the instances of fraud, the app is limited to five accounts per device (so as to allow for use by family members sharing a device), users are limited to a maximum of 6,000 points per day and users are not able to share or combine points with different users or devices.

Our Technology

We have completed a first version of the application, which has been approved by Apple. We launched the app to the public in the Apple iTunes App Store on January 25, 2012. The approved version of the app works on Apple iOS devices such as the iPhone, iPad and iPod Touch. We have been successfully testing the app with employees of the Company as well as friends and family of our employees for several months, and although we have launched the app to the public, there is no guarantee how successful the launch will be or how effectively the technology will perform. We will continuously test and update the application with a goal of improving overall performance and usability.

The iOS release will be followed by a version of the application for use on Android smartphones and tablets which we anticipate to be within the second calendar quarter of 2012. In order to complete the Android version of the application, we must complete the conversion and testing of our existing software used for the Apple application on Android smartphones and tablets. We will consider adding versions for other mainstream mobile operating systems such as Windows Phone and Blackberry based on demand and other business factors. Distribution of the product will occur via regular online marketplaces for content and applications used by such mobile operating systems, and will include iTunes for iOS devices or the Android marketplace for devices using the Android operating system.

The back-end technology for the application has been designed to accommodate the significant numbers of simultaneous check-ins required to support primetime television audiences. This back-end technology is currently operational and there are no material steps required prior to the launch of our mobile applications. Our plan is to expand our capacity to support simultaneous check-ins around major television events such as the Super Bowl. In addition to our own dedicated co-location facilities on the east and west coasts, we are using third-party cloud computing services from Amazon Web Services to help us scale our technical capacity as efficiently as possible.

The technology supporting our unique feature of digital fingerprinting and our matching technology is subject to a currently unissued but pending patent.

Revenue

The application became available to the public on January 25, 2012. We have begun to generate nominal revenues. Advertising will be sold primarily direct to brand marketers and television networks by our dedicated sales team. Our focus is on brand marketers that are most relevant to our target demographic of consumers between the ages of 18-49, and are active in television, digital and retail marketing. Our sales team is also briefing large advertising and media agencies on our capabilities so that they might recommend integration of our application into their client proposals. We have and plan to generate revenue from standard mobile media advertising sales and affiliate programs: (i) when our users click and view advertisements in our application, (ii) when our users complete an engagement (defined as a poll or quiz or game or slide show) appearing in our application that is created by an advertising agency or the Company's brand partners or by our team ; and or (iii) through affiliate or bounty commissions to third parties if our users purchase items or subscribe to services after clicking from our application to other applications and/or websites. With the exception of one-time sponsorships with advertisers (which are charged a separate and specific fee), all advertising is serviced via a third-party advertising server for billing and verification purposes. Revenues are generated by measuring delivered impressions on a cost per thousand (CPM) basis and completed engagements on a cost per engagement (CPE) basis. Therefore, our sales team contracts with brand advertisers to deliver a specific number of impressions and/or engagements for a specific price per thousand impressions (CPM) and/or per completed engagement. The third-party ad server then serves the ads and/or engagements within the application during the course of using Viggle. As impressions and engagements are delivered and completed, we will bill brand partners or advertising agencies on a monthly basis for the media delivered at our contracted rates.

Initially, we anticipate revenues to be generated substantially in the United States.

Target Consumer

While most people watch television, we are targeting male and female consumers between the ages of 18-49. This target audience was selected due to the amount of television they consume on a weekly basis as well as the likelihood that they will have smartphones and other wireless devices such as tablets and laptops with them while viewing television. To build our user base, we will target this audience using traditional media techniques such as direct response, banner, and mobile advertising, public relations, search engine optimization and search engine marketing

across online, broadcast and print media outlets.

When a user signs up for and downloads our app, we collect the user's email, zip code and television provider. The email enables us to verify the user and reduces the chance of fraud. The zip code allows us to present a relevant list of cable and satellite providers to the user to deliver the correct channel listing data. Knowing the television provider in turn helps us to increase the rate of success for television show matching. We encourage the user to provide additional information such as their birthday and physical mailing address. The user's birthday information helps us verify that a user is at least 13 years old. The physical mailing address is required for the delivery of physical goods selected by the user in the application rewards catalogue. This information also helps us better target relevant advertising to the user. We manage this information in adherence with standard privacy policies and regulations.

Competition

The market for digital and social media applications is intensely competitive and subject to rapid change. New competitors may be able to launch new businesses at relatively low cost. Many consumers maintain simultaneous relationships with multiple digital brands and products and can easily shift consumption from one provider to another. Additionally, the “Social TV” category is nascent and has yet to attract the attention of the mainstream consumer and marketers. Many of our competitors are larger, more established and well-funded and have a history of successful operations. Although the Company launched its first version of the application on January 25, 2012, there can be no guarantee of how successful the launch will be or how effectively the technology will perform.

While there are a variety of companies currently in the market that offer either manual check-in or audio verification, we believe our application, if it performs as expected, will differ significantly because (a) we offer users real, as opposed to virtual, rewards such as movie tickets, music and gift cards, (b) other companies do not currently position themselves as a loyalty program for television, and (c) we offer a comprehensive range of features and functionality, such as automatic check-ins using audio verification, in-app digital advertising engagements (such as games or videos, real-time polls and quizzes) and full social media integration. Such integration makes it easy for users to share what they are doing within the application with their social network and to follow show-specific commentary on Twitter and Facebook. We also offer the user a listing of current or upcoming shows for which they can set reminders, learn more information and indicate their support of the show by “liking” it.

Other companies in the “Social TV” market focus on the simple ability of a user to communicate their television viewing activity to others in the user’s social media circles. Instead of real rewards, these other companies offer their users virtual points, leader board status, digital badges or stickers. We believe that our target market will be motivated by the ability to earn real rewards on a frequent basis and to interact in real time via show-specific polls, quizzes, videos and games.

Our principal competitors can be grouped into the following categories:

Companies that do not offer audio sampling or matching technology. With these products, users have to manually enter information into the app about what they are watching or doing. Users are primarily incentivized with status and/or virtual goods, such as digital badges or stickers. Companies in this category include: Get Glue, Miso, Kiip, ScreenTribe, Tuner Fish, Yap, Zee Box, Nielsen’s RewardTV.com and CrowdTwist. Except for ScreenTribe and Nielsen’s RewardTV.com, none of these companies provide real rewards.

Companies that deliver many of the same social sharing features as those listed above and also utilize audio sampling and matching so users can identify and share what they are doing automatically. Companies in this category include: Shazam, IntoNow and Umami. None of these companies provide a continuous real rewards program. Their offers are made on a limited one-off basis.

Companies that offer non-branded or white label features and functionality as components of a third party brand’s products. Companies in this category include: Ex-Machina, BunchBall, Zeitera, Audible Magic and GraceNote. None of these companies offer a cohesive product with the breadth and focus of our application, nor do they directly offer real rewards.

Since we have only recently launched our application, we have limited experience in its actual performance and there is no assurance it will perform as we expect or that users will prefer our application over the applications of our competitors.

Risk Factors

Our ability to successfully operate our business and achieve our goals and strategies is subject to numerous risks as discussed more fully below in the section entitled “Risk Factors,” including, but not limited to, the following:

Currently generating nominal revenue;

Fluctuation in the price of our common stock;

Thinly traded market for purchases and sales of our common stock;

Potential inability to achieve business objective;

Potential inability to obtain financing for Company operations or of any particular product;

Increased competition;

Larger, more established and well-funded competitors;

Highly competitive industry;

Potential loss of key members of our senior management; and

Ability to obtain and enforce proprietary rights.

Any of the above risks could materially and adversely affect our business, financial position and results of operations. An investment in our common stock involves risks. You should read and consider the information set forth below in the section entitled "Risk Factors" and all other information set forth in this prospectus before investing in our common stock.

Corporate Information

The address of our principal executive office is 902 Broadway, 11th Floor, New York, New York 10010, and our telephone number is 212-231-0092.

Summary of the Offering

Common stock offered by selling stockholders	An aggregate of 14,522,597 shares of our common stock, par value \$0.001 per share, consisting of 14,522,597 shares of our common stock owned by the selling stockholders. This number represents in the aggregate approximately 9.5% of the outstanding shares of our common stock as of the date of this prospectus. (1) None of the selling stockholders named in this prospectus are members of management or employees of the Company.
Common stock to be outstanding immediately after this offering	152,835,244 shares
Proceeds to us	We will not receive any of the proceeds from the sale of shares of our common stock by the selling stockholders.

(1) Based on 152,835,244 shares of common stock outstanding as of May 16, 2012.

RISK FACTORS

The shares of our common stock being offered for resale by the selling stockholders are highly speculative in nature, involve a high degree of risk and should be purchased only by persons who can afford to lose their entire investment in our common stock. Before purchasing any of the shares of our common stock, you should carefully consider the following factors relating to our business and prospects. If any of the following risks actually occur, our business, financial condition or operating results may suffer, the trading price of our common stock could decline, and you may lose all or part of your investment. You should also refer to the other information about us contained in this prospectus, including our financial statements and related notes.

Since we have a limited operating history and no revenues to date, we may be unable to achieve or maintain profitability. The likelihood of our success must be considered in light of the problems, expenses, difficulties, complications and delays frequently encountered by a small developing company.

We have limited financial resources and no revenues to date. The likelihood of our success must be considered in light of the problems, expenses, difficulties, complications and delays frequently encountered by a small developing company starting a new business enterprise and the highly competitive environment in which we will operate. Since we have a limited operating history, we cannot assure you that our business will be profitable or that we will ever generate sufficient revenues to fully meet our expenses and totally support our anticipated activities.

Our ability to continue as a business and implement our business plan will depend on our ability to raise sufficient debt or equity. There is no assurance such debt and/or equity offerings will be successful or that we will remain in business or be able to implement our business plan if the offerings are not successful.

If we are unable to successfully develop and market our products or our products do not perform as expected, our business and financial condition will be adversely affected.

With the release of any new product release, we are subject to the risks generally associated with new product introductions and applications, including lack of market acceptance, delays in development and implementation, and failure of products to perform as expected. In order to introduce and market new or enhanced products successfully with minimal disruption in customer purchasing patterns, we must manage the transition from existing products in the market. There can be no assurance that we will be successful in developing and marketing, on a timely basis, product enhancements or products that respond to technological advances by others, that our new products will adequately address the changing needs of the market or that we will successfully manage product transitions. Further, failure to generate sufficient cash from operations or financing activities to develop or obtain improved products and technologies could have a material adverse effect on our results of operations and financial condition.

In addition, our technology is currently undergoing testing and is still under development. While certain aspects of the product may currently be functioning on a basic level, we must perform more testing to ensure that the different components work together effectively and the audio sampling and matching technology being developed by us is accurate, performs well and integrates with metadata and points systems. Although the product has been approved by Apple for the Apple iOS devices and has been launched, there is no assurance if and when we may follow this release with versions for use on the Android smartphones or tablets, as currently planned. Further, even if we are successful in bringing the product into the market, there can be no assurance that the product will generate sufficient income from brand and network advertisers, which could have a material adverse effect on our results of operations and financial condition.

Since there is doubt as to the Company's ability to continue as a going concern, it may be difficult for the Company to effectuate its business plan.

The Company has incurred losses since its inception and has not yet been successful in establishing profitable operations. Our financial statements have been prepared on a going concern basis. Unanticipated costs and expenses, or the inability to generate revenues, could require additional financing; which would be sought through equity or debt financing, or asset sales. The fact that there are going concern considerations may make raising additional funds or obtaining loans more difficult. To the extent financing is not available, the Company may not be able to, or may be delayed in, implementing its business plan, developing its property and/or meeting its obligations. This could result in the entire loss of any investment in shares of the Company's common stock. The Company will continue to evaluate its projected expenditures relative to its available cash and to evaluate additional means of financing in order to satisfy its working capital and other cash requirements. Details regarding these concerns are included in the notes to the most recent Financial Statements included in this filing (for the fiscal quarter ended March 31, 2012).

We may seek to raise additional funds, finance acquisitions or develop strategic relationships by issuing capital stock that would dilute your ownership.

We have financed our operations, and we expect to continue to finance our operations, acquisitions and develop strategic relationships, by issuing equity or convertible debt securities, which could significantly reduce the percentage ownership of our existing stockholders. Furthermore, any newly issued securities could have rights, preferences and privileges senior to those of our existing stock. Moreover, any issuances by us of equity securities may be at or below the prevailing market price of our common stock and in any event may have a dilutive impact on your ownership interest, which could cause the market price of stock to decline. We may also raise additional funds through the incurrence of debt or the issuance or sale of other securities or instruments senior to our shares of common stock. The holders of any debt securities or instruments we may issue would have rights superior to the rights of our common stockholders.

Our common stock price may fluctuate significantly and you may lose all or part of your investment.

Because we are a newly operating company, there are few objective metrics by which our progress may be measured. Consequently, we expect that the m