

NexCen Brands, Inc.  
Form 10-K  
October 06, 2009

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934  
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2008

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

COMMISSION FILE NUMBER: 000-27707

NEXCEN BRANDS, INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE

(State or other jurisdiction of  
incorporation or organization)

1330 Avenue of the Americas, New York, N.Y.

(Address of principal executive offices)

20-2783217

(IRS Employer

Identification Number)

10019-5400

(Zip Code)

(Registrant's telephone number, including area code): (212) 277-1100

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT: NONE

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:

Title of Each Class  
Common Stock, par value \$.01

Name of Each Exchange on Which Registered  
Pink OTC Markets, Inc.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.  
Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.  
Yes  No

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 the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).  
Yes  No

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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 the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of the Form 10-K or any amendment of this Form 10-K.

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 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 checked="" type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the voting stock held by nonaffiliates of the registrant was \$28,157,525 (\$0.56 per share) as of June 30, 2008.

As of September 30, 2009, 56,951,730 shares of the registrant's common stock, \$.01 par value per share, were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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NEXCEN BRANDS, INC.  
ANNUAL REPORT ON FORM 10-K  
FOR THE YEAR ENDED DECEMBER 31, 2008

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## Explanatory Note

The terms “NexCen,” “we,” “us,” “our,” and the “Company” refer to NexCen Brands, Inc. and our subsidiaries, unless otherwise indicated by context. We also use the term NexCen Brands to refer to NexCen Brands, Inc. alone whenever a distinction between NexCen Brands, Inc. and our subsidiaries is required or aids in the understanding of this filing.

This Annual Report for the fiscal year ended December 31, 2008 is our first periodic report since we filed our Amendment No. 2 to the Annual Report on Form 10-K/A for the fiscal year ended December 31, 2007 (“Amended 2007 10-K”), which contained our restatement of our previously issued consolidated financial statements and related notes for the fiscal year ended December 31, 2007. This Annual Report contains our consolidated financial statements and related notes for the fiscal year ended December 31, 2008 and consolidated financial statements for the quarters ended March 31, 2008, June 30, 2008 and September 30, 2008. We have not filed our Quarterly Reports on Form 10-Q for the quarters ended March 31, June 30, or September 30, 2008. Because of the delay in our periodic reporting and the changes that have occurred in our business, in lieu of filing these Quarterly Reports, we have included in this Report substantially all of the information required to be included in such Quarterly Reports.

## FORWARD-LOOKING STATEMENTS

In this Annual Report, we make statements that are considered forward-looking statements within the meaning of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The words “anticipate,” “believe,” “estimate,” “intend,” “may,” “will,” “expect,” and similar expressions often indicate that a statement is a “forward-looking statement.” Statements about non-historic results also are considered to be forward-looking statements. None of these forward-looking statements are guarantees of future performance or events, and they are subject to numerous risks, uncertainties and other factors. Given the risks, uncertainties and other factors, you should not place undue reliance on any forward-looking statements. Our actual results, performance or achievements could differ materially from those expressed in, or implied by, these forward-looking statements. Factors that could cause or contribute to such differences include those discussed in Item 1A of this Report under the heading “Risk Factors,” as well as elsewhere in this Report. Forward-looking statements reflect our reasonable beliefs and expectations as of the time we make them, and we have no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

## PART I

### ITEM 1. BUSINESS

#### General Development of Business

NexCen is a strategic brand management company that currently owns and manages a portfolio of seven franchised brands. Five of our brands (Great American Cookies, Marble Slab Creamery, MaggieMoo's, Pretzel Time and Pretzelmaker) are in the quick service restaurant ("QSR") industry. The other two brands (The Athlete's Foot and Shoebox New York) are in the retail footwear and accessories industry. All seven franchised brands are managed by NexCen Franchise Management, Inc. ("NFM"), a wholly owned subsidiary of NexCen Brands.

In 2008, we narrowed our business model to focus only on our franchised brands. Previously, we had owned and licensed the Bill Blass consumer products brand in the apparel industry and the Waverly consumer products brand in the home goods industry. We sold the Waverly brand on October 3, 2008 and the Bill Blass brand on December 24, 2008.

We commenced our brand management business in June 2006 when we acquired UCC Capital Corporation ("UCC Capital"), an investment banking firm that provided financial advisory services, particularly to companies involved in monetizing intellectual property assets. The founder and president of UCC Capital, Robert D'Loren, became our chief executive officer upon completion of the acquisition in June 2006, and other employees of UCC Capital also joined our Company. In acquiring UCC Capital, our strategy was to begin building a brand management business by acquiring and operating businesses that own valuable brand assets and other intellectual property and that earn revenues primarily from the franchising or licensing of their intellectual property. UCC Capital had worked with companies whose value was represented primarily by their intellectual property. As described below, our franchise businesses (and the Waverly and Bill Blass businesses that we sold in 2008) earn revenues primarily through the licensing of their valuable brands and related intellectual property.

In building our portfolio of brands and their related franchising and licensing businesses, NexCen consummated nine acquisitions in fourteen months from November 2006 through January 2008.

- In November 2006, we acquired our first retail franchised brand The Athlete's Foot by purchasing Athlete's Foot Brands, LLC, along with an affiliated company and certain related assets.
- In February 2007, we acquired the Bill Blass consumer products brand by purchasing Bill Blass Holding Co., Inc. and two affiliated licensing businesses.
- Also in February 2007, we acquired two QSR franchised brands, MaggieMoo's and Marble Slab Creamery, by purchasing MaggieMoo's International, LLC and the assets of Marble Slab Creamery, Inc., respectively.
- In May 2007, we acquired another consumer products brand, Waverly, by acquiring all of the intellectual property and license contracts related to that brand and the related Gramercy and Village brands.
- In August 2007, we acquired two QSR franchised brands, Pretzel Time and Pretzelmaker, by purchasing substantially all of the assets of Pretzel Time Franchising, LLC and Pretzelmaker Franchising, LLC, respectively.
- In January 2008, we acquired the trademarks and other intellectual property of TSBI Holdings, LLC, in a joint venture with third parties in order to franchise the Shoebox's high-fashion footwear concept domestically and internationally under the Shoebox New York brand.
- In January 2008, we acquired Great American Cookies, a QSR franchised brand, by purchasing substantially all of the assets of Great American Cookie Company Franchising, LLC. Along with the franchising business of Great American Cookies, we also acquired substantially all of the assets of Great American Manufacturing, LLC, including a manufacturing facility that produces cookie dough for, and supplies other products to, franchisees of the Great American Cookies brand, which is managed by NB Supply, Inc., a wholly-owned subsidiary of the Company.

Financial Information about Operating Segments

We restructured our Company during 2008 to operate in only one business segment, Franchising. Prior to this restructuring, based on our holdings and our plans to acquire additional brands, we previously provided financial information for fiscal year 2007 in four segments: QSR Franchising, Retail Franchising, Consumer Branded Products and Corporate.

## Narrative Description of Business

## General

Through our seven franchised brands, the Company franchises a system of retail stores and licenses branded products that are distributed primarily through franchised retail stores. Additionally, the Company manufactures and supplies cookie dough and other products to our Great American Cookies franchisees. Our franchise network, across all of our brands, consists of approximately 1,750 retail stores in approximately 40 countries. A listing of the states in which our franchisees operated as of December 31, 2008 is set forth below.

Total Domestic Franchised Stores: 1334

Location	Franchised Stores	Location	Franchised Stores
Alabama	39	Missouri	24
Alaska	1	Montana	4
Arizona	14	Nebraska	5
Arkansas	12	Nevada	12
California	60	New Hampshire	3
Colorado	24	New Jersey	23
Connecticut	19	New Mexico	1
Delaware	4	New York	62
District of Columbia	4	North Carolina	65
Florida	101	North Dakota	4
Georgia	81	Ohio	31
Hawaii	8	Oklahoma	22
Idaho	3	Oregon	4
Illinois	44	Pennsylvania	23
Indiana	20	Rhode Island	0
Iowa	25	South Carolina	46
Kansas	11	South Dakota	4
Kentucky	14	Tennessee	61
Louisiana	47	Texas	235
Maine	1	Utah	16
Maryland	29	Vermont	0
Massachusetts	10	Virginia	41
Michigan	25	Washington	11
Minnesota	8	West Virginia	8
Mississippi	11	Wisconsin	9
		Wyoming	5

A listing of the jurisdictions outside of the United States in which our franchisees operated as of December 31, 2008 is set forth below.

Total International Franchised Stores: 492

Location	Franchised Stores	Location	Franchised Stores
Antigua	1	Palau	1
Aruba	1	Panama	1
Australia	126	Peru	3
Bahamas	2	Philippines	9
Bahrain	5	Poland	39
Canada	95	Portugal	11
China	3	Puerto Rico	3
Curacao	1	Qatar	1
Denmark	1	Russia	3
Ecuador	5	Saipan	2
Guam	3	Saudi Arabia	11
Guatemala	1	South Korea	38
India	1	Spain	3
Indonesia	30	St. Kitts/Nevis	1
Kuwait	12	Sweden	1
Lebanon	1	Trinidad & Tobago	2
Mexico	39	United Arab Emirates	18
New Zealand	10	Venezuela	5
Oman	1	Vietnam	1
Pakistan	1		

In 2008, international franchise revenues represented approximately 7.7% of our total franchise revenues, of which approximately 4.0% of total franchise revenues or 56.3% of international franchise revenues were generated from stores located in Australia, Canada, Kuwait and the United Arab Emirates. For additional information about our geographic sources of revenue, see Note 22 – Segment Reporting to our Consolidated Financial Statements.

#### The Franchised Brands

The following is a brief description of each of our franchised brands.

##### Great American Cookies®

Great American Cookies was founded in Atlanta, Georgia in 1977 on the strength of an old family chocolate chip cookie recipe. For over 30 years, Great American Cookies has maintained the heritage and integrity of its products by producing original cookie dough exclusively from its plant in Atlanta. Great American Cookies is also known for its signature Cookie Cakes, signature flavors and menu of gourmet products baked fresh in store. Great American Cookies has approximately 300 franchised stores in the United States, Canada, Guam and Bahrain.

##### MaggieMoo's®

Each MaggieMoo's Ice Cream & Treatery features a menu of freshly made super-premium ice creams, mix-ins, smoothies, sorbets and custom ice cream cakes. MaggieMoo's is known as the innovator of the ice cream cupcake and



consistently has been awarded blue ribbons by the National Ice Cream Retailers Association for the quality of its ice creams. Maggie Moo's is the franchisor of approximately 170 stores located across the United States and in Puerto Rico.

Marble Slab Creamery®

Marble Slab Creamery is a purveyor of super-premium hand-mixed ice cream. It was founded in 1983 and was the innovator of the frozen slab technique. All Marble Slab Creamery ice cream is made in small batches in franchise locations using some of the finest ingredients from around the world and fresh dairy from local farms. Marble Slab Creamery has an international presence with approximately 370 locations in the United States, Canada, United Kingdom, Bahrain, Kuwait, Lebanon, and the United Arab Emirates.

### Pretzelmaker® and Pretzel Time®

Pretzelmaker and Pretzel Time are franchised concepts that specialize in offering hand-rolled soft pretzels, innovative soft pretzel products, dipping sauces and beverages. The brands were founded independently of each other in 1991, united under common ownership in 1998, and beginning in 2009 will be consolidated to become the new Pretzelmaker. Collectively, Pretzelmaker and Pretzel Time are the second largest soft pretzel franchise in the U.S. by store count with approximately 360 franchised stores located domestically and in Canada, Guam, Panama and Guatemala.

### The Athlete's Foot® (TAF)

The Athlete's Foot (TAF) is the world's first franchisor of athletic footwear stores and is recognized today as a leader in athletic footwear franchising. Robert and David Lando opened the first The Athlete's Foot store in 1971 in Pittsburgh, Pennsylvania. It was the first athletic footwear specialty store of its kind in the United States. Soon thereafter, The Athlete's Foot began franchising domestically with the first store opening in Oshkosh, Wisconsin. The first international franchised store opened in 1978 in Adelaide, Australia. TAF now has approximately 560 franchised stores in approximately 35 countries.

### Shoebox New York®

The Shoebox New York concept had its genesis from The Shoe Box, one of New York's premier women's multi-brand retailers for high-fashion footwear, handbags and accessories. Established in 1954 and known for its vast product assortment and trend-setting styles from top European and American designers, The Shoe Box garnered a dedicated following of sophisticated women. We continue this tradition by offering high-quality, high-fashion shoes and accessories under the Shoebox New York franchised brand in 8 stores in the United States and 5 stores internationally in Vietnam, South Korea and Kuwait.

### Franchising Operations

NexCen currently generates revenue from franchising and other commercial arrangements related to our seven brands. In connection with Great American Cookies, we also own and operate a cookie dough manufacturing facility that manufactures and supplies cookie dough to our franchisees and supplies ancillary products sold through our Great American Cookies franchised stores. The proprietary dough that is manufactured at the facility is considered a key factor in the product differentiation of Great American Cookies. Other than the Great American Cookies franchise system, we rely on franchisees and other business partners or suppliers to produce, warehouse and distribute branded products and incur the associated capital costs.

Generally, our franchise arrangements consist of the following types of agreements under which franchisees are required to pay an initial franchise or development fee and an on-going royalty on net sales. The royalty varies from 1% to 7%, depending on the market and the brand. In addition, most domestic franchisees must contribute to an advertising and marketing fund in amounts that range from 0.6-2.0% of net sales.

**Domestic Development Agreements.** Our domestic franchise development agreements provide for the development of specified number of stores for a specified brand within a defined geographic territory. Generally, these agreements call for the development of the stores over a specified period of time, with targeted opening dates for each store. Our developers typically pay an initial development fee of up to \$39,900 per store, depending on the franchise brand, size of territory and number of total stores to be developed. These development fees typically are paid in part when the agreement is executed and in part when each subsequent lease for a store is executed or on a date specified on the development schedule, whichever is sooner. The initial fee typically is non-refundable. Depending on the market and

the brand, limited sub-franchising rights also may be granted.

**International Development Agreements.** Our international franchise development agreements are similar to our domestic franchise development agreements, although the development time frames can be longer and the development fees generally are higher. Depending on the market and the brand, limited sub-franchising rights also may be granted.

**Domestic Franchise Agreements.** Our domestic franchise agreements convey the right to operate a specific store for a specified brand in a particular geographic territory. Franchisees may enter into a domestic franchise agreement either singly or pursuant to a domestic development agreement. If for a single store, our franchisees typically pay an initial franchise fee of up to \$39,900, depending on the franchise brand, which typically is non-refundable and paid when the agreement is executed. If pursuant to a domestic development agreement, our franchisees typically pay a fee when a lease for a store is executed or on a date specified on the development schedule, whichever is sooner. The fee typically is non-refundable.

International Franchise Agreements. The terms of our international franchise agreements are substantially similar to those included in our domestic franchise agreements, except that these agreements may be modified to reflect the multi-national nature of the transaction and to comply with the requirements of applicable local laws. Our current international franchise agreements generally are pursuant to an international development agreement and provide for payment of a nominal fee per store opened. In addition, the effective royalty rates may be lower than those included in domestic franchise agreements due to the more limited support services that we may provide to our international franchisees.

Cobranding Agreements. We offer a co-branding program with respect to our QSR brands whereby franchisees are permitted to offer food products under two or more of our QSR brands. The amount of initial franchise fees under a co-branding agreement depends on the configuration of the co-branding arrangement (e.g., adjacent stores offering different brands sharing a common storefront or a display case offering a brand within a store primarily offering a different brand).

All of our franchise agreements require that our franchisees operate stores in accordance with our defined operating procedures, adhere to the menu or product mix established by us, and meet applicable quality and service standards. We may terminate the franchise rights of any franchisee that does not comply with these standards and requirements.

In order to provide on-going support to our franchise systems and our franchisees, in 2007, we built a centralized training, research, development and operations center in Norcross, Georgia, which we call NexCen University. We believe NexCen University provides our Company with the infrastructure to operate and grow our current franchise systems and integrate additional franchise systems, all in a cost efficient manner. The following graphic provides a summary of the services that NexCen University provides across all of our franchise systems:

NexCen University allows us to achieve cost savings and operational efficiencies by consolidating back office functionalities such as IT, HR, Legal and Accounting, as well as front end drivers such as research and development, marketing and sales. We believe that NexCen University also provides franchisees with the tools, training and support needed to optimize their performance in the marketplace.

## Diversification and Growth

With our portfolio of franchised brands, we operate a business that is diversified in several ways:

- across multiple categories, ranging from footwear to baked goods to ice cream;
- across channels of distribution, ranging from mall-based stores to strip shopping centers to stand-alone stores;
- across consumer demand categories, ranging from premium to mass-market;
- across franchisees/licensees, ranging from individuals to multi-unit developers to a large publicly traded company;
- across geographies (both within the United States and internationally); and
- across multiple demographic groups.

We believe that multi-category diversification may help reduce potential volatility in our financial results.

We believe that our business also offers a multi-tiered growth opportunity. Our businesses can grow both domestically and internationally through organic growth and synergistically through cross-selling and co-branding across our multiple franchise systems.

## Our Business Strategy

NexCen faced a number of challenges in 2008, both internal and external. In May 2008, we disclosed issues related to our debt structure that placed the future of the Company in doubt. Simultaneously, the domestic and international economy and financial markets underwent significant slowdown and volatility due to uncertainties related to, among other factors, energy prices, availability of credit, difficulties in the banking and financial services sectors, softness in the housing market, severely diminished market liquidity, geopolitical conflicts, falling consumer confidence and rising unemployment rates. Since May 2008, we have developed a strategic plan to improve our business, in light of both the specific and general economic/financial factors affecting our Company. Although our plan takes into account the current and anticipated economic conditions, a longer or more severe downturn in the economy than we have anticipated in our plan may adversely impact our ability to successfully execute our strategy and may adversely impact our business, financial condition and results of operations. See Item 1A – Risk Factors, under the captions “Risks Related to Our Financial Condition” and “Risks of Our Business,” and Item 7 – MD&A under the caption “Financial Condition.”

The first phase of our two-phase strategic plan sought to address the immediate financial and operational challenges that we faced in the following four ways: (1) divest our non-core businesses; (2) enhance the Company’s cash flow, including by reducing operating expenses; (3) improve our corporate infrastructure and internal control environment; and (4) execute on initiatives to grow the franchised brands. We believe we have made substantial progress on all of these initiatives.

**Sale of Consumer Products Brands:** Starting in late May 2008, we began a review of our strategic alternatives. We then instituted an asset sale process in order to exit the licensing business associated with our consumer products brands, Bill Blass and Waverly. In the fourth quarter of 2008, we completed the sale of these businesses, despite a difficult mergers and acquisition environment and in advance of continuing deterioration of the market for home and apparel brands. The sale of Waverly and Bill Blass has enabled us to streamline the Company to focus solely on our seven franchised brands. Additionally, the divestitures allowed us to reduce our outstanding indebtedness by approximately \$33.4 million. We discuss the sale of these businesses in more detail in Note 15 – Discontinued Operations to our Consolidated Financial Statements.

**Improved Cash Flow:** As a result of the comprehensive restructuring of our credit facility on August 15, 2008 and subsequent amendments in late 2008 and 2009, as well as actions taken to restructure the Company and reduce its

recurring operating expense structure, we improved our cash flow and, in general, the Company's financial condition. We restructured our credit facility to defer to 2011 and thereafter much of our principal repayment obligations and certain of our interest obligations. We also have realized to date a meaningful reduction in interest expense in 2009 based on (i) the Company's reduced debt level following the sale of Waverly and Bill Blass in late 2008 and a further debt paydown in August 2009, (ii) the amendment to the bank credit facility, as detailed below, that reduced the fixed interest rate applicable to some of the Company's debt, and (iii) the low variable rates currently applicable to certain portions of our debt. We also restructured our credit facility to provide us with monthly, rather than quarterly, cash distributions from operating revenues that are remitted to certain "lockbox accounts" controlled by our lender. (For further details regarding our "lockbox accounts," see Note 2(d) – Cash and Cash Equivalents to Consolidated Financial Statements.) We use these distributions, which are net of required debt service payments, to pay our operating expenses and for other purposes permitted by the terms of our bank credit facility. Starting in May 2008, we also took immediate actions to reduce the Company's recurring operating expenses, including a headcount reduction of non-essential staff. As a result of these changes, we have access to cash more frequently to cover our reduced operating expenses and to pay principal payments on our debt over a longer period of time. We discuss our overall liquidity in Item 7 – MD&A under the caption, "Financial Condition" and provide further detail regarding our bank credit facility in Note 9 – Long-Term Debt to our Consolidated Financial Statements.

Strengthening of Corporate Infrastructure and Internal Control Environment: NexCen made substantial changes to our management team and management structure; centralized and clarified management responsibility; improved board communication and corporate governance; made changes to and increased the number of dedicated full-time accounting personnel; consolidated control and oversight of the Company's legal issues and outside counsel; and enhanced internal control policies and procedures. We made these changes in our effort to improve the Company's ability to ensure compliance with our legal, financial, and regulatory requirements and to satisfy our public reporting obligations on a timely basis.

Initiatives to Grow the Franchised Brands: In 2008, our franchisees, with our assistance, opened 97 franchised QSR and 67 franchised retail footwear and accessories stores. Moreover, in line with our strategy to expand our franchised stores internationally, we signed agreements for our respective brands to enter new markets such as Bahrain, Canada, Guam, Kuwait, Lebanon, Mexico, Oman, South Korea, St. Lucia and Vietnam. NexCen also continued a re-branding campaign for TAF; established an online Cookie Cake ordering program at Great American Cookies; introduced new packaging for pints and quarts at MaggieMoo's; launched a new in-store presentation with a new menu board program at Marble Slab Creamery; gained the first significant national media coverage for Pretzelmaker and Pretzel Time; and opened our first international Shoebox New York franchised store.

In 2009, we have moved to the second phase of our strategic plan which is to drive revenue growth by (1) strengthening each of NexCen's seven franchised brands; (2) completing the integration of the franchised brands into the NFM operating infrastructure; (3) enhancing profitability of NexCen franchisees; and (4) leveraging NexCen University, our franchising platform. As part of this plan and, in line with specific growth objectives for each of our franchised brands, the Company commenced implementation of the following strategic initiatives:

- Integrate Pretzel Time and Pretzelmaker, thus creating the second largest pretzel brand in the United States by market share;
  - Improve inventory and supply management for MaggieMoo's franchisees to lower operating costs;
- Execute a rebranding and remodeling program for Marble Slab Creamery stores to strengthen the Marble Slab Creamery brand;
  - Complete a review of the Great American Cookies brand and create new marketing initiatives;
    - Institute a new training platform for TAF franchisees; and
  - Further expand the Shoebox New York brand domestically and internationally.

With these initiatives, the Company seeks to support our franchisees to grow our franchised brands and ultimately to increase our revenues.

#### Changes to Our Business

As discussed above, we commenced our brand management business in June 2006, when we acquired UCC Capital and Mr. D'Loren became the Company's chief executive officer. Under Mr. D'Loren's leadership, we acquired nine brands and related licensing and franchising businesses from November 2006 through January 2008.

We financed these acquisitions with a combination of cash on hand, equity and borrowings. All of the borrowings, with the exception of the borrowings used to finance the acquisition of Great American Cookies, were pursuant to a series of note funding, security, management and related agreements, originally entered into on March 12, 2007 (the

“Original BTMUCC Credit Facility”) by BTMU Capital Corporation (“BTMUCC”) and certain of its subsidiaries, on the one hand, and by NexCen Brands, NexCen Holding Corp. (the “Issuer”), formerly known as NexCen Acquisition Corp., a wholly-owned subsidiary of NexCen Brands, and certain of our subsidiaries, on the other hand.



In January 2008, in order to finance the acquisition of Great American Cookies, the Company and BTMUCC entered into an amendment to the Original BTMUCC Credit Facility (the “January 2008 Amendment”). Under the January 2008 Amendment, the Company pledged the Great American Cookies assets (including the trademarks, franchise agreements, manufacturing facility and supply business assets) as collateral in a legal, securitized structure that was similar to the Original BTMUCC Credit Facility. The January 2008 Amendment allowed us to borrow an additional \$70 million and increased the maximum aggregate amount of borrowings under the credit facility to \$181 million. However, the January 2008 Amendment increased debt service payments to BTMUCC, required a \$30 million reduction in outstanding principal amounts through prepayments out of excess cash flow or proceeds of a refinancing by October 17, 2008, and generally reduced the amount of cash flow available to the Company to cover operating expenses. See Note 9 – Long-Term Debt to the Consolidated Financial Statements for a more detailed discussion of the January 2008 Amendment.

In May 2008, following the appointment of a new chief financial officer and during the course of preparing our Quarterly Report on Form 10-Q for the quarter ended March 31, 2008, management conducted a review of the Company’s prior public filings, including the disclosures related to the January 2008 Amendment. We concluded that disclosures regarding the accelerated-redemption feature of the January 2008 Amendment, as well as other changes that reduced the amount of cash available to the Company for general use, were not contained in the Current Report on Form 8-K filed on January 29, 2008 in connection with the acquisition of Great American Cookies or the Annual Report on Form 10-K for the fiscal year ended December 31, 2007, originally filed with the Securities and Exchange Commission on March 21, 2008 (the “Original 2007 10-K”) and subsequently amended by Amendment No. 1 filed on April 29, 2008 (the “First Amendment”). We further concluded that the January 2008 Amendment’s effect on the Company’s financial condition and liquidity also raised substantial doubt about our ability to continue as a going concern.

After discussions with the Company’s independent registered public accounting firm, management raised these matters with the Audit Committee of the Board of Directors. On May 16, 2008, the Audit Committee retained Paul, Weiss, Rifkind, Wharton & Garrison LLP as independent counsel to conduct an investigation into the matters described above on the Board of Director’s behalf. To address the financial aspects of the credit facility and NexCen’s general financial condition, the Board of Directors formed a special Restructuring Committee, comprised of David Oros (chairman of the board), George Stamas (a senior partner of the law firm of Kirkland & Ellis, LLP) and James Brady (the Chairman of the Audit Committee and a former managing partner of the Baltimore, Maryland office of the accounting firm of Arthur Andersen LLP). The Restructuring Committee was charged with overseeing, on behalf of the Board of Directors, NexCen’s efforts to improve our financial condition and evaluate our restructuring alternatives. (On May 12, 2009, the Restructuring Committee was disbanded after the Board’s determination that this ad hoc committee was no longer needed in light of the progress made to date by the Company in its restructuring efforts and the reduced number of members on the Board.)

We disclosed these matters in a Current Report on Form 8-K filed on May 19, 2008. We also announced that our 2007 financial statements should no longer be relied upon and no reliance should be placed upon KPMG LLP’s audit report dated March 20, 2008 or its report dated March 20, 2008 on the effectiveness of internal control over financial reporting as of December 31, 2007, as contained in the Company’s Original 2007 10-K. In addition, we announced that we would delay the filing of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2008.

#### Class Action Litigation, Government Investigation and NASDAQ Delisting

Following our May 19, 2008 disclosure of the previously undisclosed terms of the January 2008 Amendment, the substantial doubt about our ability to continue as a going concern, our inability to timely file our periodic report and our expected restatement of our Original 2007 10-K, four purported class action lawsuits, a shareholder derivative lawsuit and a direct lawsuit were filed against the Company and certain current and former officers and directors of

the Company, asserting various claims under the federal securities laws and certain state statutory and common laws. These lawsuits are discussed below in Item 3 – Legal Proceedings.

We voluntarily notified the Enforcement Division of the Securities and Exchange Commission (“SEC”) of our May 19, 2008 disclosure. The Company has been cooperating with the SEC and voluntarily provided documents and testimony, as requested. In March 2009, we were notified that the SEC had issued an order commencing a formal investigation on October 21, 2008.

As a result of noncompliance with the listing requirements of The Nasdaq Stock Market (“NASDAQ”) including delays in filing our periodic reports, our common stock was suspended from trading on NASDAQ effective at the opening of trading on January 13, 2009 and was delisted from NASDAQ on February 13, 2009. The Company’s common stock began trading under the symbol NEXC.PK on the Pink OTC Markets, formerly known as the Pink Sheets, starting on January 13, 2009.

#### Audit Committee Investigation

The Audit Committee directed independent counsel to review the events and circumstances surrounding the January 2008 Amendment to the Original BTMUCC Credit Facility and the public disclosures regarding that amendment.

Upon completion of the independent counsel’s comprehensive inquiry, which included numerous interviews and a review of relevant documents, the Audit Committee reached the following key conclusions:

- Certain members of the Company's senior management (i) failed to advise the Board of Directors of material changes in the terms of the financing of the Great American Cookies acquisition after the Board of Directors had approved terms previously presented to it and (ii) made serious errors with respect to public disclosures regarding the terms of the financing and their impact on the Company's financial condition that were contained in the Company's Current Report on Form 8-K filed with the SEC on January 29, 2008 and in the Company's Original 2007 10-K, filed with the SEC on March 21, 2008.
- Independent counsel did not find evidence that led it to conclude that there was an intentional effort to keep information concerning the terms of the financing from the Board, the Company's independent auditing firm or the public.

The Company disclosed these conclusions in our Current Report on Form 8-K filed on August 19, 2008.

#### Changes to Company's Business and Restructuring of the Credit Facility

Starting in May 2008, we engaged in a comprehensive review of our business strategy and began taking actions to focus on our franchised brands, restructure our corporate operations, reduce expenses and improve cash flow. We also suspended all activities related to further acquisitions, although, as discussed below, in late 2008, we completed a small acquisition of a Bill Blass licensee as part of our process to sell the Bill Blass business.

##### a. Reduction in Non-Essential Staff and Reduction of Other Recurring Expenses

Starting in May 2008, we took immediate actions to reduce the Company's recurring operating expenses, including a headcount reduction of non-essential staff. By May 31, 2008, we reduced the staff in our New York corporate office by 8 persons or 31% as compared to April 30, 2008. As of December 31, 2008, we further reduced the total number of our employees throughout the Company by an additional 21 persons, for a total reduction of 29 employees or 19% of total staff, and reduced other recurring expenses, thereby significantly decreasing our monthly selling, general and administrative expenses (excluding non-cash stock compensation expenses) compared to April 30, 2008.

##### b. Restructuring of the Credit Facility

On August 15, 2008, we completed a comprehensive restructuring of the Original BTMUCC Credit Facility and the January 2008 Amendment by entering into amended and restated note funding, security, management and related agreements with BTMUCC (the "Amended Credit Facility"). We subsequently completed five additional amendments with BTMUCC on September 11, 2008, December 24, 2008, January 27, 2009, July 15, 2009 and August 6, 2009, respectively (the amendments together with the Amended Credit Facility, the "Current Credit Facility"). The Current Credit Facility replaced all of the agreements comprising both the Original BTMUCC Credit Facility and the January 2008 Amendment. See Note 9 – Long-Term Debt to the Consolidated Financial Statements for additional details regarding the Current Credit Facility.

##### c. Sale of Waverly

On September 29, 2008, the Company executed a definitive agreement with Iconix Brand Group, Inc. for the sale of our Waverly consumer products brand for \$26.0 million. We closed the sale on October 3, 2008, and we used the proceeds from the sale, after payment of transaction expenses, to pay off all \$21.3 million of the note associated with the Waverly business. We also used the remaining sales proceeds to pay down \$2.6 million of principal of the \$26.3 million note associated with the Bill Blass business. We acquired the Waverly business in May 2007 for approximately \$34 million in cash. See Note 15 – Discontinued Operations to our Consolidated Financial Statements for additional details regarding the sale of the Waverly business.

d.

Sale of Bill Blass

In order to have greater control of the Bill Blass consumer products brand and conduct a more comprehensive sales process, the Company, through its wholly-owned subsidiary NexCen Fixed Asset Company, LLC, purchased Bill Blass Ltd., LLC on July 11, 2008. Bill Blass Ltd., LLC manufactured and distributed high-end, ready-to-wear women's clothing pursuant to a royalty-free trademark license with our Bill Blass licensing business ("Bill Blass Couture"). We paid nominal consideration, excluding amounts owed by Bill Blass, Ltd., LLC to the Company, in this transaction.

On December 24, 2008, we completed the sale of our Bill Blass licensing business to Peacock International Holdings, LLC for \$10.0 million pursuant to an asset purchase agreement executed on the same day. We used the proceeds of the sale, net of certain transaction costs, to pay down a portion of the remaining principal on the note associated with the Bill Blass licensing business. We acquired the Bill Blass business in February 2007 for approximately \$55 million in cash and stock. Because neither Peacock International Holdings, LLC nor any other party was interested in purchasing Bill Blass Couture, Bill Blass, Ltd. LLC filed for liquidation under Chapter 7 of the United States Bankruptcy Code on December 31, 2008. See Note 19 – Acquisitions Related to Bill Blass to our Consolidated Financial Statements for additional details regarding the purchase of the Bill Blass, Ltd. LLC business and Note 15 – Discontinued Operations for additional details regarding the sale of the Bill Blass licensing business.

#### Changes in Management, Management Structure and Corporate Governance

The executive team that was in place in 2007 is no longer with the Company, except for Sue J. Nam, who joined the Company on September 24, 2007 and remains the Company's general counsel and secretary. Kenneth J. Hall, who joined the Company on March 25, 2008 after the filing of the Original 2007 10-K as our chief financial officer, was appointed our chief executive officer on August 15, 2008. Mark E. Stanko, who joined the Company on April 30, 2008 as the chief financial officer of NFM, was appointed the Company's chief financial officer on November 12, 2008, while retaining his role as chief financial officer of NFM.

The Company also clarified lines of responsibility and altered our management structure. The chief financial officer now has responsibility for all aspects of financial, planning, analysis and reporting, whereas the Company previously had dual lines of responsibility for financial management. The corporate finance function now is more closely aligned with the corporate accounting function, so that those departments collaborate, under the direction of the chief financial officer, in the development and maintenance of financial models, cash flow projections, operating budgets and various analyses of financial performance. We also completed our transition to centralized control and oversight by our general counsel of the Company's material legal issues and the outside counsels working on those issues. Prior to September 2007, the Company did not have a general counsel, and oversight of legal issues and outside counsel relationships was dispersed among various members of senior management and was not consolidated under the general counsel until mid-2008.

In addition, we undertook efforts to improve our corporate governance and communications with our Board of Directors. We now have centralized responsibility for Board communication. The chief executive officer, in collaboration with the general counsel and the chief financial officer, is responsible for keeping the Board and the appropriate committees of the Board apprised of significant financial, legal, and operational developments and for obtaining the requisite approvals. We believe that this centralized responsibility for Board communication will ensure that the Board and the committees of the Board are informed of material information in a comprehensive and timely manner. We believe that the focusing of responsibility for Board communication materially strengthens our corporate governance and improves communications between management and our directors.

#### Completion of Review and Restatement of 2007 Financials

On August 11, 2009, after completing a comprehensive review of the Original 2007 10-K and the First Amendment thereto, the Company filed its Amended 2007 10-K for the fiscal year ended December 31, 2007. The adjustments to the Company's Consolidated Financial Statements for the year ended December 31, 2007 were not material either individually or in the aggregate and our 2007 net loss per share was not affected by the restatement.

#### Impact of the 2008 Events

The Company has spent considerable time, effort and expense in dealing with the events of 2008 and in making changes to its business to overcome the internal and external challenges facing the Company. Although our operations and financial condition have been materially and adversely affected, we believe that as a result of our actions the Company's core business remains intact and the Company is better positioned for future stability and growth.

#### Competition

Our brands are all subject to extensive competition by numerous domestic and foreign brands, not only for end consumers but also for management, hourly personnel, suitable real estate sites and qualified franchisees. Each is subject to competitive risks and pressures within its specific market and distribution channels, including price, quality and selection of merchandise, reputation, store location, advertising and customer service. The retail footwear and retail food industries, in which the Company competes, are often affected by changes in consumer tastes; national, regional or local economic conditions; currency fluctuations; demographic trends; traffic patterns; the type, number and location of competing footwear and food retailers and products; and disposable purchasing power. Our success is dependent on the image of our brands to consumers and prospective franchisees and on our franchisees' ability to sell products under our brands. Competing brands may have the backing of companies with greater financial and operating stability and greater distribution, marketing, capital and other resources than we or our franchisees have.

## Trademarks

The Company owns numerous registered trademarks and service marks. The Company believes that many of these marks, including The Athlete's Foot®, Great American Cookies®, MaggieMoo's®, Marble Slab Creamery®, Pretzel Time®, Pretzelmaker®, and Shoebox New York® are vital to our business. Our policy is to pursue registration of our important marks whenever feasible and to oppose vigorously any infringements of our marks. The use of these marks by franchisees and licensees has been authorized in franchise and license agreements. Under current law and with proper use, the Company's rights in our marks generally can last indefinitely.

## Seasonality

The business associated with certain of our brands is seasonal. However, the seasonality of our brands is complementary, so that the Company's operations do not experience material seasonality on an aggregate basis. For example, average sales of our mall-based QSR's (Great American Cookies, Pretzel Time, and Pretzelmaker) are higher during the winter months, especially in December, whereas average sales of our ice cream brands (MaggieMoo's and Marble Slab Creamery) are lower during the winter months.

## Research and Development ("R&D")

Since January 2008, the Company has operated a R&D facility for our Great American Cookies brand in our cookie dough manufacturing facility in Atlanta, Georgia. In May 2009, we opened a new R&D facility in the same location where we can develop new flavors, new offerings and new formulations of our food products across all of our QSR brands. Independent suppliers provided equipment and other resources for the new R&D facility. From time to time, independent suppliers also conduct or fund research and development activities for the benefit of our QSR brands. In addition, we conduct consumer research to determine our end-consumer's preferences, trends and opinions.

## Supply and Distribution

The Company negotiates supply and distribution agreements with a select number of food, beverage, footwear and accessories, paper, packaging, distribution and equipment vendors for the purpose of providing the lowest prices for our franchisees while ensuring compliance with certain quality standards. We have begun aggregating the purchasing power of our franchisees across our multiple brands to leverage scale to drive savings and effectiveness in the supply and distribution function.

## Government Regulation

Many states and the Federal Trade Commission, as well as certain foreign countries, require franchisors to transmit disclosure statements to potential franchisees before granting a franchise. Additionally, some states and certain foreign countries require us to register our franchise offering documents before we may offer a franchise. Due to the scope of our business and the complexity of franchise regulations, we may encounter compliance issues from time to time. Significant delays in registering our franchise offering documents may prevent us from selling franchises in certain jurisdictions, which may have a material adverse effect on our business.

Local, state and federal governments have adopted laws and regulations that affect us and our franchisees including, but not limited to, those relating to advertising, franchising, health, safety, environment, zoning and employment. The Company strives to comply with all applicable existing statutory and administrative rules and cannot predict the effect on our operations from the issuance of additional requirements in the future.

## Employees

As of December 31, 2008, we employed a total of 123 persons. We believe that our relations with our employees are good. None of our employees as of December 31, 2008 are covered by a collective bargaining agreement.



## Historical Operations

Until late 2004, the Company owned, acquired and operated a number of mobile and wireless communications businesses. These businesses never became profitable, and during 2004 we sold these businesses and started a mortgage-backed securities, or MBS, business. During 2004 and 2005, we assembled a leveraged portfolio of MBS investments. However, market conditions for the MBS business changed significantly during 2005 and into 2006, and the profitability of our leveraged MBS portfolio declined. In light of these changing market conditions, in late 2005 and into 2006, we began to explore additional and alternative business strategies that we thought could help us become profitable more quickly and create shareholder value. These efforts resulted in our decision to acquire UCC Capital in June 2006. On October 31, 2006, at the 2006 annual meeting of stockholders, our stockholders approved the sale of our MBS portfolio for the purpose of discontinuing our MBS business and allocating all cash proceeds from such sale to the growth and development of our brand management business. Our stockholders also approved a change of our Company name from Aether Holdings, Inc. to NexCen Brands. We sold our MBS investments in November 2006, and since that time, we have focused entirely on our brand management business.

## Tax Loss Carry-Forwards and Limits on Ownership of Our Common Stock

As a result of the substantial losses incurred by our predecessor businesses through 2004 and additional losses through 2008, as of December 31, 2008, we had federal net operating loss carry-forwards of approximately \$823 million that expire on various dates through 2028. In addition, as of December 31, 2008, we had capital loss carry-forwards of approximately \$149 million that expire between 2009 and 2011. If we have an “ownership change” as defined in Section 382 of the Internal Revenue Code of 1986, as amended (“IRC”), our net operating loss carry-forwards and capital loss carry-forwards generated prior to the ownership change would be subject to annual limitations, which could reduce, eliminate, or defer the utilization of these losses.

To help guard against a change of ownership occurring under Section 382, shares of our common stock are subject to transfer restrictions contained in our certificate of incorporation. In general, the transfer restrictions prohibit any person from acquiring 5% or more of our stock without our consent. Persons who owned 5% or more of our stock prior to May 4, 2005 are permitted to sell the shares owned as of May 4, 2005 without regard to the transfer restrictions. Shares acquired by such persons after May 4, 2005 are subject to the transfer restrictions. Our Board of Directors has the right to waive the application of these restrictions to any transfer.

To date, we do not believe that we have experienced an ownership change as defined under Section 382 resulting from transfer of shares by our existing shareholders. However, there remain significant uncertainties as to our ability to realize any tax savings in the future. See Note 10 – Income Taxes to our Consolidated Financial Statements for a more detailed discussion of our deferred tax assets. For a discussion on the risks associated with our tax loss carry-forwards and the limits on ownership of our common stock, please see Item 1A – Risk Factors, under the caption “Risks of Our Business.”

## General Corporate Matters

Our executive offices are located at 1330 Avenue of the Americas, 34th Floor, New York, NY 10019. Our telephone number is (212) 277-1100 and our fax number is (212) 277-1160.

## Availability of Information

We maintain a website at [www.nexcenbrands.com](http://www.nexcenbrands.com), which provides a wide variety of information on each of our brands. You may read and copy any materials we file with the Securities and Exchange Commission at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, DC 20549. For further information concerning the SEC’s

Public Reference Room, you may call the SEC at 1-800-SEC-0330. Some of this information also may be accessed on the SEC's website at [www.sec.gov](http://www.sec.gov). We also make available free of charge, on or through our website, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished to the SEC pursuant to Section 13(a) or Section 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. We also maintain the following sites for each of the Company's brands and operations: [www.theathletesfoot.com](http://www.theathletesfoot.com), [www.greatamericancookies.com](http://www.greatamericancookies.com), [www.maggiemoos.com](http://www.maggiemoos.com), [www.marbleslab.com](http://www.marbleslab.com), [www.pretzelttime.com](http://www.pretzelttime.com), [www.pretzelmaker.com](http://www.pretzelmaker.com), and [www.shoeboxny.com](http://www.shoeboxny.com). We are providing the address of our internet websites solely for the information of investors. We do not intend the internet addresses to be active links in this Report, and the contents of these websites are not incorporated into, and do not constitute a part of, this Report.

#### ITEM 1A. RISK FACTORS

You should carefully consider the following risks along with the other information contained in this Report. All of the following risks could materially and adversely affect our business, financial condition or results of operations. In addition to the risks discussed below and elsewhere in this Report, other risks and uncertainties not currently known to us or that we currently consider immaterial could, in the future, materially and adversely affect our business, financial condition and financial results.

### Risks Related to Our Financial Condition

Our substantial indebtedness may severely limit cash flow available for our operations, and we may not be able to service our debt or obtain additional financing, if necessary.

We are highly leveraged. As of December 31, 2008, we had approximately \$142 million of debt outstanding with BTMUCC. See Note 9 – Long-Term Debt to our Consolidated Financial Statements for additional details. Under our Current Credit Facility, substantially all revenues earned by the Company are remitted to “lockbox accounts,” and the terms of our Current Credit Facility limit the amount of cash flow from operations that may be distributed to NexCen for operating expenses, capital expenditures and other general corporate purposes. The Current Credit Facility also prohibits us from securing any additional borrowings without the prior written consent of BTMUCC. Thus, our indebtedness could, among other things:

- increase our vulnerability to general adverse economic and industry conditions;
- require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flow to fund working capital, capital expenditures, research and development efforts and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industries in which we operate;
  - place us at a competitive disadvantage if any of our competitors have less debt; and
  - limit our ability to borrow additional funds.

We are subject to numerous prevailing economic conditions and to financial, business, and other factors beyond our control. As a result, we cannot guarantee that we will be able to generate sufficient cash flow to service our interest and principal payment obligations under our outstanding debt, or that cash flow, future borrowings or equity financing will be available for the payment or refinancing of our debt. To the extent we are not successful in repaying or renegotiating renewals of our borrowings or in arranging new financing, our business, results of operations and financial condition will be materially and adversely affected.

Doubt about our ability to continue as a going concern could adversely impact our business, financial condition and results of operations.

Our future success depends in large part on the support of our current and future investors, lenders, franchisees, business partners and employees. Uncertainties with respect to our corporate viability and financial condition may discourage investors from purchasing our stock, lenders from providing additional capital, current and future franchisees from renewing existing agreements or executing new agreements with us, vendors and service providers from dealing with us without prepayment or other credit assurances, and/or current and future employees from committing to us, any or all of which could adversely affect our business, financial condition and results of operations.

Any failure to meet our debt obligations would adversely affect our business and financial condition.

Our Current Credit Facility contains numerous affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, fundamental changes, asset sales, acquisitions, capital and other expenditures, common stock repurchases, dividends and other payments affecting subsidiaries. The Company’s failure to comply with the financial and other restrictive covenants relating to our indebtedness could result in a default under the indebtedness, which could then trigger among other things the lender’s right to accelerate principal payment obligations, foreclose on virtually all of the assets of the Company and take control of all of the Company’s cash flow from operations. These restrictions also may limit our ability to operate our businesses and may prohibit or limit our ability to enhance our operations or take advantage of potential business opportunities as they arise.



We are vulnerable to interest rate risk with respect to a substantial portion of our debt.

As of December 31, 2008, approximately 61% of our current aggregate debt fluctuates with the 30-day London Interbank Offering Rate ("LIBOR"). Any increase in LIBOR will increase our interest expense and could negatively impact our business, liquidity and financial condition. See Item 7A – Quantitative and Qualitative Disclosure about Market Risk, under the caption "Interest Rate Risk."

We may need additional funds in the future to continue and/or improve our operations, but we face uncertainties with respect to access to working capital that could materially and adversely impact our business, financial condition and results of operations.

We anticipate that cash generated from operations will provide us with sufficient liquidity to meet the expenses related to ordinary course operations, including our debt service obligations, for at least the next twelve months. Nonetheless, market and economic conditions may worsen and negatively impact our franchisees and our ability to sell new franchises. Accordingly, there can be no assurance that our current cash on hand and cash from operations after debt service will continue to satisfy our working capital requirements in the future. We may require future working capital in order to operate, implement our revised business plan and/or further improve operations. We have no committed sources of working capital and do not know whether additional financing will be available when needed, or, if available, that the terms will be favorable. Our Current Credit Facility prohibits us from securing any additional borrowings without the prior written consent of our lender and limits the amount of cash flow from operations that may be used for operating expenses, capital expenditures, and other general corporate purposes. The failure to satisfy our working capital requirements will adversely affect our business, financial condition and results of operations.

We may seek additional funding through strategic alliances or private or public sales of our securities. There can be no assurance, however, that we can obtain additional funding on reasonable terms, or at all, and such funding, if available, may significantly dilute existing shareholders and trigger an ownership change that would limit our ability to utilize our tax loss carry-forwards assuming we have taxable income. If we cannot obtain adequate funds, we may need to significantly curtail our expenses, which may adversely affect our business, financial condition and results of operations.

Our ability to access capital markets may be constrained.

We failed to timely file with the SEC our Quarterly Reports on Form 10-Q for periods ended March 31, 2008, June 30, 2008, September 30, 2008, our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, and our Quarterly Report on Form 10-Q for the periods ended March 31, 2009 and June 30, 2009. Until we are timely in our filings for a period of 12 months, we will be precluded from registering any securities with the SEC on Form S-3, the most simplified registration form used by the SEC. In addition, we are limited under our Current Credit Facility from raising equity in excess of \$10 million in either the private or public markets unless certain conditions are met to protect our lender's interest. As a result, our ability to access the capital markets may be constrained, which may adversely affect our liquidity.

#### Risks Related to Our Pending Litigation and Governmental Investigations

Any adverse outcome of the investigation being conducted by the SEC could adversely affect our business, financial condition, results of operations and cash flows.

In March 2009, the Company received notice that a formal investigation had been commenced by the SEC in October 2008. We cannot predict the outcome of the investigation. The legal costs of such investigation and any negative outcome from the investigation could have a material adverse effect on our business, financial condition, results of

operations and cash flows.

Several lawsuits have been filed against us involving our past public disclosures, and the outcome of these lawsuits may have a material adverse effect on our business, financial condition, results of operations and cash flows.

A consolidated class action lawsuit, a shareholder derivative lawsuit and a direct lawsuit have been filed against us, as well as certain of our former officers and current and former directors, relating to, among other things, allegations of violations of the securities laws. We cannot predict the outcome of these lawsuits. Substantial damages or other monetary remedies assessed against us could have a material adverse effect on our business, financial condition, results of operations and cash flows, and any requirement to issue additional stock could be dilutive. See Item 3 – Legal Proceedings, for a discussion of these lawsuits.

We may not have sufficient insurance to cover our liability in our pending litigation claims and future claims due to coverage limits, as a result of insurance carriers seeking to deny coverage of such claims, or because the insurance carrier is unable to provide coverage, which in any case could have a material adverse effect on our business and financial condition.

We maintain third party insurance coverage against various liability risks, including securities and shareholder derivative claims, as well as other claims that form the basis of litigation matters pending against us. While we believe these insurance arrangements are an effective way to insure against liability risks, the potential liabilities associated with the litigation matters pending against us, or that could arise in the future, could exceed the coverage provided by such arrangements. Our insurance carriers also may seek to rescind or deny coverage with respect to pending or future actions. In addition, our primary insurance carrier for securities and shareholder derivative claims is a subsidiary of American Insurance Group, Inc., which has faced significant financial difficulties. If we do not have sufficient coverage under our policies, or if the insurance companies are successful in rescinding or denying coverage to us, or if our insurance carrier is unable to provide coverage, our business, financial condition, results of operations and cash flows would be materially and adversely affected.

Our potential indemnification obligations and limitations on our director and officer liability insurance could have a material adverse effect on our business, results of operations and financial condition.

Certain of our present and former directors, officers and employees are the subject of lawsuits. Under Delaware law, our bylaws and other contractual arrangements, we may have an obligation to indemnify our current and former directors, officers and employees in relation to completed investigations or pending and/or future investigations and actions. Indemnification payments that we make may be material and, in such event, would have a negative impact on our results of operations and financial condition to the extent insurance does not cover our costs. The insurance carriers that provide our directors' and officers' liability policies may seek to rescind or deny coverage with respect to pending and future investigations and actions, or we may not have sufficient coverage under such policies. If the insurance companies are successful in rescinding or denying coverage to us and/or some of our current and former directors, officers and employees, or we do not have sufficient coverage under our policies, our business, financial condition, results of operations and cash flows may be materially adversely affected.

The uncertainty of the outcome of the pending litigation and the SEC investigation may have a material adverse effect on our business.

The uncertainty and risks of the pending litigation and the SEC investigation may cause our stock price to be more volatile or lower than it otherwise would be and may affect our ability to retain and/or attract franchisees, business partners, investors and/or employees.

#### Risks of Our Business

Acquisitions involve numerous risks that we may not be able to address or overcome and that may negatively affect our business and financial results.

We have built our brand management business through acquisitions. Our acquisitions may not deliver the benefits we anticipated. Excessive expenses may result if we do not successfully integrate the acquired businesses, or if the costs and management resources we expend in connection with the integrations exceed our expectations. We expect that our previous acquisitions will have a continuing, significant impact on our business, financial condition and operating results. The value of some of the businesses that we acquired are less than the amount we paid, and our financial results may be adversely affected if we fail to realize anticipated benefits from our acquisitions, including various synergies and economies of scope and scale. Risks associated with our past acquisitions include, among others:

- overpaying for acquired assets or businesses;
  - being unable to license, market or otherwise exploit the assets that we acquired on anticipated terms or at all;
  - negative effects on reported results of operations from acquisition-related expenses, amortization or impairment of acquired intangibles and impairment of goodwill;
    - diversion of management's attention from management of day-to-day operational issues;
  - failing to maintain focus on, or ceasing to execute, core strategies and business plans as our brand portfolio grew and became more diversified;
    - failing to achieve synergies across our diverse brand portfolio;
  - failing to acquire or hire additional successful managers, or being unable to retain critical acquired managers;
  - failing to integrate acquired businesses with our existing businesses due to unanticipated costs and difficulties, which may disrupt our existing businesses or delay or diminish our ability to realize financial and operational benefits from those acquisitions; and
-



- underlying risks of the businesses that we acquired, which differ depending on the brand and its associated business and market, including those related to entering new lines of business or markets in which we have little or no prior experience.

Our business strategy to focus on our franchised brands may not be successful.

The Company's efforts to focus on the franchise business as our core business may not be successful and may not improve the performance of the Company. We may not be successful in effectively executing our strategy or in generally operating or expanding our brands or integrating them into an efficient overall business strategy. We may not be able to retain existing or attract new investors, franchisees, business partners and employees.

We may fail to reach our sales and expense projections, which may negatively impact our business, results of operations and financial condition.

We establish sales and expense projections each fiscal year based on a strategy of new market development, further penetration of existing markets and tight control over operating expenses against a backdrop of current and anticipated economic conditions. In addition to driving our financial results, these sales and expense projections are provided to our lender, and our progress in meeting projections on a monthly and quarterly basis affect our ability to meet debt and covenant obligations and to negotiate any waivers and/or amendments we may need under our Current Credit Facility. Our ability to meet our sales and expense projections is dependent on our ability to locate and attract new franchisees and area developers; maintain and enhance our brands; maintain satisfactory relations with our franchisees; monitor and audit the reports and payments received from franchisees; maintain or increase same store sales in existing markets; achieve new store openings and control expenses – all of which are dependent on factors both within and outside our control. Our failure to reach our sales and expense goals, which may be exacerbated by current volatile economic conditions, may negatively impact our business, financial condition, results of operation and cash flow.

Our business depends on market acceptance of our brands in highly competitive industries.

Continued market acceptance of our franchised brands is critical to our future success and subject to great uncertainty. The retail footwear and retail food industries in which we compete are extremely competitive, both in the United States and overseas. Accordingly, we and our current and future franchisees, licensees and other business partners face and will face intense and substantial competition with respect to marketing and expanding products under our franchised brands. As a result, we may not be able to attract franchisees, licensees, and other business partners on favorable terms or at all. In addition, franchisees, licensees and other third parties with whom we deal may not be successful in selling products that make use of our brands. They (and we) also may not be able to expand the distribution of such products and services into new markets.

In general, competitive factors include quality, price, style, selection of merchandise, reputation, name recognition, store location, advertising and customer service. The retail footwear and retail food industries are often affected by changes in consumer tastes; national, regional or local economic conditions; currency fluctuations; demographic trends; traffic patterns; the type, number and location of competing footwear and food retailers and products; and disposable purchasing power. Competing brands may have the backing of companies with greater financial and operational stability and greater distribution, marketing, capital and other resources than we or our franchisees and other business partners have. This may increase the obstacles that we and they face in competing successfully. Among other things, we may have to spend more on advertising and marketing or may need to reduce the amounts that we charge franchisees, licensees and other business partners. This could have a negative impact on our business, financial condition, and results of operations.

Deterioration of general economic conditions and declines in consumer spending can negatively affect our business.

Our business is sensitive to consumer spending patterns and preferences. Market and general economic conditions affect the level of discretionary spending on the merchandise we and our franchisees offer, including general business conditions, interest rates, taxation, the availability of consumer credit and consumer confidence in future economic conditions. Any unfavorable occurrences in these economic conditions on a local, regional, national or multi-national level may adversely affect our growth, sales and profitability. Given the significance of our domestic business, the likely negative impact of the current recession in the general economy in the United States or the general decline in domestic consumer spending may not be wholly mitigated by our business outside the United States, especially as the economic downturn has become more global in nature.

Many of our franchisees' stores are located in shopping malls, particularly in the United States. Our franchisees derive revenue, in part, from the high volume of traffic in these malls. As a result of deteriorating economic conditions, the inability of mall "anchor" tenants and other area attractions to generate consumer traffic around our franchised stores or the decline in popularity of malls as shopping destinations could reduce our franchising revenue dependent on sales volume.

Our operating results are closely tied to the success of our franchisees, over which we have limited control.

As a result of our franchising programs, our operating results are dependent upon the sales volumes and viability of our franchisees. Any significant inability of our franchisees to operate successfully could adversely affect our operating results, and the quality of franchised operations may be impacted by factors that are not in our control. We provide training and support to our franchisees, but do not exercise day-to-day control over them. Franchisees may not successfully operate their businesses in a manner consistent with our standards and requirements, or may not hire and train qualified managers and other store personnel. In addition, franchisees may not be able to find suitable sites on which to develop stores, negotiate acceptable leases for the sites, obtain the necessary permits or government approvals or meet construction schedules. Any of these problems could negatively impact our business, could slow our planned growth and negatively impact our business, results of operations and financial condition.

The current disruptions in the availability of financing for current and prospective franchisees may adversely affect our business, results of operations and financial condition.

As a result of steep declines in the capital markets and the severe limits on credit availability, current and prospective franchisees may not have access to the financial or management resources that they need to open or continue operating the units contemplated by franchise or development agreements. Our franchisees generally depend upon financing from banks or other financial institutions in order to construct and open new units. Especially in this tight credit environment, financing has been difficult to obtain for some of our current and prospective franchisees. The continued difficulties with franchisee financing could reduce our store count, franchise fee revenues and royalty revenues, slow our planned growth, and negatively impact our business, results of operations and financial condition.

We depend on our franchisees to provide timely and accurate information about their sales and operations, which we rely upon to effectively manage the franchised brands.

Franchisees are contractually obligated to provide timely and accurate information regarding their sales and operations, and we rely on this information to collect royalties and manage the franchised brands. Most of franchisees are required to report on a weekly basis. However, the franchise agreements for our TAF brand require reporting on a monthly or quarterly, versus weekly, basis. This delay in reporting reduces our visibility into the results of operations for the TAF brand. In addition, a significant number of our franchisees are not consistently compliant with their reporting obligations. Our inability to collect timely and accurate information from our franchisees may adversely affect our business and results of operation.

Significant delays in registering our franchise offering documents may adversely affect our business, results of operations and financial condition.

Many states and the Federal Trade Commission, as well as certain foreign countries, require franchisors to transmit disclosure statements to potential franchisees before granting a franchise. Additionally, some states and certain foreign countries require us to register our franchise offering documents before we may offer a franchise. Due to the scope of our business and the complexity of franchise regulations, we may encounter compliance issues from time to time. Significant delays in registering our franchise offering documents may prevent us from selling franchises in certain jurisdictions, which may have a material adverse effect on our business, results of operations and financial condition.

We operate a global business that exposes us to additional risks that may adversely affect our business, results of operations and financial condition.

Our franchisees operate in approximately 40 countries. As a result, we are subject to risks associated with doing business globally. We intend to continue to pursue growth opportunities for our franchised brands outside the United

States, which could expose us to greater risks. The risks associated with our franchise business outside the United States include:

- Political and economic instability or civil unrest;
- Armed conflict, natural disasters or terrorism;
- Health concerns or similar issues, such as a pandemic or epidemic;
- Multiple foreign regulatory requirements that are subject to change and that differ between jurisdictions;
- Changes in trade protection laws, policies and measures, and other regulatory requirements effecting trade and investment;
- Differences from one country to the next in legal protections applicable to intellectual property assets, including trademarks and similar assets, enforcement of such protections and remedies available for infringements;
  - Fluctuations in foreign currency exchange rates and interest rates; and

- Adverse consequences from changes in tax laws.

The effects of these risks, individually or in the aggregate, could have a material adverse impact on our business, results of operations and financial condition.

We may not be able to adequately protect our intellectual property, which could harm the value of our brands and adversely affect our business.

We believe that our trademarks and other intellectual property rights are vital to our success, the success of our brands and our competitive position. Accordingly, we devote substantial resources to the development and protection of our trademarks and other intellectual property rights. However, the actions taken by us may be inadequate to prevent infringement or other unauthorized use of our intellectual property by others, which may thereby dilute our brands in the marketplace and/or diminish the value of our proprietary rights. We also may be unable to prevent others from claiming infringement or other unauthorized use of their trademarks and intellectual property rights by us. Our rights to our trademarks may in some cases be subject to the common law or statutory rights of any person who filed an application and/or began using the trademark (or confusingly similar mark) prior to the date of our application and/or our first use of such trademarks in the relevant territory. We cannot provide assurances that third parties will not assert claims against our trademarks and other intellectual property rights or that we will be able to successfully resolve such claims, which could result in our inability to use certain trademarks or other intellectual property in certain jurisdictions or in connection with certain goods or services. Future actions by third parties, including franchisees or licensees, may diminish the strength of our trademarks or other intellectual property rights, injure the goodwill associated with our business and decrease our competitive strength and performance. We also could incur substantial costs to defend or pursue legal actions relating to the use of our trademarks and other intellectual rights, which could have a material adverse effect on our business, results of operations or financial condition.

We may be required to recognize additional impairment charges for goodwill, trademarks and other intangible assets with indefinite or long lives.

As a result of our acquisition strategy, we recorded a material amount of trademark, goodwill and other intangible assets with indefinite or long lives on our balance sheet. We assess these assets as and when required by U.S. generally accepted accounting principles (GAAP) to determine whether they are impaired. Based on our review in fiscal year 2008, we recorded impairments totaling approximately \$242 million in 2008 with respect to our acquired assets. If market conditions continue to deteriorate or if operating results decline unexpectedly, we may be required to record additional impairment charges. Additional impairment charges would reduce our reported earnings for the periods in which they are recorded. Those reductions could be material and, in such event, would adversely affect our financial results.

We determined that we had material weaknesses in disclosure controls and procedures and internal control over financial reporting. Any future material weaknesses could adversely affect our business, our financial condition and our ability to carry out our strategic business plan.

As discussed in Item 9A(T) – Controls and Procedures, we concluded that, as of December 31, 2008, our disclosure controls and procedures and internal control over financial reporting were not effective. We made substantial changes to our management team and management structure; improved board communication and corporate governance; made changes to and increased the number of dedicated full-time accounting personnel; and enhanced internal control policies and procedures. Nonetheless, if we are unsuccessful in our effort to remedy the weaknesses in our financial reporting mechanisms and internal controls and to maintain effective corporate governance practices, our business, our financial condition, our ability to carry out our strategic business plan, our ability to report our financial condition and results of operations accurately in a timely manner, and our ability to retain the trust of our franchisees, lender,

business partners, investors, employees and shareholders could be adversely affected.

The time, effort and expense related to internal and external investigations, litigation, the completion of our delinquent SEC filings, and the development and implementation of improved internal controls and procedures, have had an adverse effect on our business.

Our management team has spent considerable time, effort and expense in dealing with the Audit Committee investigation, pending litigation, the SEC's investigation, completing our delinquent SEC filings and in developing and implementing accounting policies and procedures, disclosure controls and procedures, and corporate governance policies and procedures. This has prevented management from devoting its full attention to our business and many of these matters may continue to distract management's attention in the future. The significant time, effort and expense spent have adversely affected our operations and our financial condition, and may continue to do so in the future.

Current and prospective investors, franchisees, business partners, and employees may react adversely to our inability to file in a timely manner all of our SEC filings.

Our inability to file on a timely basis all of our SEC filings has caused negative publicity about us, has resulted in the delisting of our common stock from NASDAQ, and has, and may continue to have, a negative impact on the market price of our common stock. In addition, any future delays in our SEC filings could cause current and future investors, franchisees, business partners and employees to lose confidence in our Company, which may affect their willingness to remain in current relationships or enter into new relationships with us.

Our stock trades on the over-the-counter “Pink Sheets” market, and our stock price may be volatile.

On January 13, 2009, as a result of noncompliance with NASDAQ listing requirements, our common stock was suspended from trading on NASDAQ. Immediately thereafter, our stock began trading under the symbol NEXC.PK on the Pink OTC Markets, formerly known as the Pink Sheets. Although we plan to apply for relisting of our stock on NASDAQ as soon as we are in compliance with the listing requirements, we may not be successful in that effort. Our stock price has been volatile in the past and may continue to be volatile for the foreseeable future.

Limits on ownership of our common stock could have an adverse consequence to you and could limit your opportunity to receive a premium on our stock.

Under transfer restrictions that have been applicable to our common stock since 2005, acquisitions of 5% or more of our stock is not permitted without the consent of our Board of Directors. In addition, even if our Board of Directors consented to a significant stock acquisition, a potential buyer might be deterred from acquiring our common stock while we still have significant tax losses being carried forward, because such an acquisition might trigger an ownership change and severely impair our ability to use our tax losses against future income. Thus, this potential tax situation could have the effect of delaying, deferring or preventing a change in control and, therefore, could affect adversely our shareholders’ ability to realize a premium over the then prevailing market price for our common stock in connection with a change in control.

The transfer restrictions that apply to shares of our common stock, although designed as a protective measure to avoid an ownership change, may have the effect of impeding or discouraging a merger, tender offer or proxy contest, even if such a transaction may be favorable to the interests of some or all of our shareholders. This effect might prevent our stockholders from realizing an opportunity to sell all or a portion of their common stock at a premium to the prevailing market price.

Our ability to realize value from our tax loss carry-forwards is subject to significant uncertainty.

As of December 31, 2008, we had federal net operating loss carry-forwards of approximately \$823 million that expire at various dates through 2028. In addition, we had capital loss carry-forwards of approximately \$149 million that expire between 2009 and 2011. However, our ability to realize value from our tax loss carry-forwards is subject to significant uncertainty.

There can be no assurance that we will have sufficient taxable income or capital gains in future years to use the net operating loss carry-forwards or capital loss carry-forwards before they expire. This is especially true for our capital loss carry-forwards, because they expire over a shorter period of time than our net operating loss carry-forwards. The amount of our net operating loss carry-forwards and capital loss carry-forwards also has not been audited or otherwise validated by the IRS. The IRS could challenge the amount of our net operating loss carry-forwards and capital loss carry-forwards, which could result in an increase in our liability for income taxes.





In addition, if we have an “ownership change” as defined in Section 382 of the Internal Revenue Code, our net operating loss carry-forwards and capital loss carry-forwards generated prior to the ownership change would be subject to annual limitations, which could reduce, eliminate, or defer the utilization of these losses. As of the date of this Report, we do not believe that we have experienced an ownership change as defined under Section 382 resulting from transfer of shares by our existing shareholders. However, the Company has entered into recent amendments of our credit facility, which may have resulted in a change of control as defined by Section 382. We are in the process of assessing the impact of those amendments and what limitations, if any, we may be subject to under Section 382. Even if these amendments to our credit facility did not result in a change of control as defined by Section 382, we cannot guarantee that we will not enter into other transactions or that transfers of stock will not occur, which may result in an ownership change that would severely limit our ability to use our loss our net operating loss carry-forwards and capital loss carry-forwards to offset future taxable income. For additional information regarding our deferred tax assets, see Note 10 – Income Taxes.

#### ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

#### ITEM 2. PROPERTIES

As of December 31, 2008, we leased a total of approximately 30,650 square feet of office space for our operations. Our principal executive office totals 10,250 square feet and is located in New York, New York. Our franchising operations are centralized in one facility totaling approximately 20,400 square feet located in Norcross, Georgia. On January 29, 2008, in connection with the acquisition of Great American Cookies, we acquired a cookie dough manufacturing facility. The facility is located on approximately four acres of land in Atlanta, Georgia and totals approximately 37,400 square feet. The cookie dough manufacturing facility is subject to BTMUCC’s security interest. We believe that our facilities are adequate for the purposes for which they are presently used and that replacement facilities are available at comparable cost, should the need arise.

Notwithstanding the sale of the Waverly and Bill Blass businesses in late 2008, we remained obligated as of December 31, 2008 on the lease for the Waverly showroom and the lease for the Bill Blass showroom. We have sublet the Waverly showroom to third parties through the lease expiration on February 27, 2019. On June 11, 2009, we made a one-time payment of approximately \$230,000 in order to assign to a third party the lease for the Bill Blass showroom, which expires on January 2014. In addition, a lease for the Bill Blass business for space located in New York, New York totaling 4,950 square feet expired as of December 31, 2008. We also assumed leases for office space in connection with our acquisitions of MaggieMoo’s and Marble Slab Creamery, which we no longer use. We negotiated a settlement of the MaggieMoo’s lease for a one-time payment of \$330,000 which was made in January 2008. We sublet the Marble Slab Creamery office in Houston, Texas to a third party through the lease expiration in April 2009.

We do not own or lease property used by our franchisees, but in connection with certain acquisitions we are obligated under guarantees for certain franchise location leases.

#### ITEM 3. LEGAL PROCEEDINGS

Securities Class Action. A total of four putative securities class actions have been filed in the United States District Court for Southern District of New York against NexCen Brands and certain of our former officers and current director for alleged violations of the federal securities laws. These actions are captioned: Mark Gray v. NexCen Brands, Inc., David S. Oros, Robert W. D’Loren & David Meister, No. 08-CV-4906 (filed on May 28, 2008); Ghiath Hammoud v. NexCen Brands, Inc., Robert W. D’Loren, & David B. Meister, No. 08-CV-5063 (filed on June 3, 2008); Ronald Doty v. NexCen Brands, Inc., David S. Oros, Robert W. D’Loren & David Meister, No. 08-CV-5172 (filed on

June 5, 2008); and Frank B. Falkenstein v. NexCen Brands, Inc., David S. Oros, Robert W. D'Loren, David Meister, No. 08-CV-6126 (filed on July 3, 2008).

Although the formulations of the allegations differ slightly, plaintiffs allege that defendants violated federal securities laws by misleading investors in the Company's public filings and statements. The complaints assert claims under Section 10(b) of the Exchange Act and SEC Rule 10b-5, and also assert that the individual defendants are liable as controlling persons under Section 20(a) of the Exchange Act. Plaintiffs seek damages and attorneys' fees and costs.

On March 5, 2009, the court consolidated the actions and appointed Vincent Granatelli as lead plaintiff and Cohen, Milstein, Hausfeld & Toll, P.L.L.C. as lead counsel. On August 24, 2009, plaintiff filed an Amended Consolidated Complaint. The Company intends to file a motion to dismiss the amended complaint on or before October 8, 2009 in accordance with the scheduling order entered by the court.

**Shareholder Derivative Action.** A federal shareholder derivative action premised on essentially the same factual assertions as the federal securities actions also has been filed in the United States District Court for Southern District of New York against the directors or former directors of NexCen. This action is captioned: Soheila Rahbari v. David Oros, Robert W. D'Loren, James T. Brady, Paul Caine, Jack B. Dunn IV, Edward J. Mathias, Jack Rovner, George Stamas & Marvin Traub, No. 08-CV-5843 (filed on June 27, 2008). In this action, plaintiff alleges that NexCen's Board of Directors breached its fiduciary duties in a variety of ways, mismanaged and abused its control of the Company, wasted corporate assets, and unjustly enriched itself by engaging in insider sales with the benefit of material non-public information that was not shared with shareholders. Plaintiff further contends that she was not required to make a demand on the Board of Directors prior to bringing suit because such a demand would have been futile, due to the board members' alleged lack of independence and incapability of exercising disinterested judgment on behalf of the shareholders. Plaintiff seeks damages, restitution, disgorgement of profits, attorneys' fees and costs, and miscellaneous other relief. On November 18, 2008, the court agreed to stay the derivative case until at least May 18, 2009, on which date the court scheduled a status conference. After holding the status conference on May 18, 2009, the court stayed the derivative case until the filing of the Company's Amended 2007 10-K and ordered plaintiff to file its amended complaint within two weeks after the filing of the Amended 2007 10-K. On June 9, 2009, plaintiff requested transfer of the derivative case to the court presiding over the securities class action case. This request was denied. On August 24, 2009, plaintiff filed the first amended shareholder derivative complaint. The Company intends to file a motion to dismiss on or before October 8, 2009 in accordance with the scheduling order entered by the court.

**California Litigation.** A direct action was filed in Superior Court of California, Marin County against NexCen Brands and certain of our former officers by a series of limited partnerships or investment funds. The case is captioned: Willow Creek Capital Partners, L.P., et al. v. NexCen Brands, Inc., Case No. CV084266 (Cal. Superior Ct., Marin County) (filed on August 29, 2008). Predicated on substantially similar factual allegations as the federal securities actions, this lawsuit is brought under California law and asserts both fraud and negligent misrepresentation claims. Plaintiffs seek compensatory damages, punitive damages and costs.

The California state court action was served on NexCen on September 2, 2008. Plaintiffs in the California action served NexCen with discovery requests on September 19, 2008. On October 17, 2008, NexCen filed two simultaneous but separate motions in order to limit discovery. First, NexCen filed a motion in the United States District Court for Southern District of New York to stay discovery in the California actions pursuant to the Securities Litigation Uniform Standards Act of 1998. Second, NexCen filed a motion in the California court to dismiss the California complaint on the ground of forum non conveniens, or to stay the action in its entirety, or in the alternative to stay discovery, pending the outcome of the federal class actions.

The California state court held a hearing on NexCen's motion on December 12, 2008. At the hearing, the court issued a tentative ruling from the bench granting defendants' motion to stay. On December 26, 2008, the court entered a final order staying the California action in its entirety pending resolution of the putative class actions pending in the Southern District of New York. Plaintiff filed a motion to lift the stay, which motion is scheduled to be heard on October 8, 2009.

**SEC Investigation.** We voluntarily notified the Enforcement Division of the SEC of our May 19, 2008 disclosure. The Company has been cooperating with the SEC and voluntarily provided documents and testimony, as requested. On or about March 17, 2009, we were notified that the SEC had commenced a formal investigation of the Company as of October 2008.

**Legacy Aether IPO Litigation.** The Company is among the hundreds of defendants named in a series of class action lawsuits seeking damages due to alleged violations of securities law. The case is being heard in the United States District Court for the Southern District of New York. The court has consolidated the actions by all of the named defendants that actually issued the securities in question. There are approximately 310 consolidated cases before Judge Scheindlin, including this action, under the caption In Re Initial Public Offerings Litigation, Master File 21 MC

92 (SAS).

As to NexCen, these actions were filed on behalf of persons and entities that acquired the Company's stock after our initial public offering in October 20, 1999. Among other things, the complaints claim that prospectuses, dated October 20, 1999 and September 27, 2000 and issued by the Company in connection with the public offerings of common stock, allegedly contained untrue statements of material fact or omissions of material fact in violation of securities laws. The complaint alleges that the prospectuses allegedly failed to disclose that the offerings' underwriters had solicited and received additional and excessive fees, commissions and benefits beyond those listed in the arrangements with certain of their customers, which were designed to maintain, distort and/or inflate the market price of the Company's common stock in the aftermarket. The actions seek unspecified monetary damages and rescission.

After initial procedural motions and the start of discovery in 2002 and 2003, plaintiffs voluntarily dismissed without prejudice the officer and director defendants of each of the 310 named issuers, including NexCen. Then in June 2003, the Plaintiff's Executive Committee announced a proposed settlement with the issuer-defendants, including NexCen, and the officer and director defendants of the issuers (the "Issuer Settlement"). A settlement agreement was signed in 2004 and presented to the court for approval. NexCen reserved \$465,000 for its estimated exposure under the Issuer Settlement. The proposed Issuer Settlement did not include the underwriter-defendants, and they continued to defend the actions and objected to the proposed settlement. (One of the defendant-underwriters signed a memorandum of understanding in April 2006 agreeing to a \$425 million settlement of claims against it.)

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The district court granted preliminary approval of the proposed Issuer Settlement in 2005 and held a fairness hearing on the matter in April 2006. In December 2006, before final action by the court on the proposed Issuer Settlement, the United States Court of Appeals for the Second Circuit issued a ruling vacating class certification for certain plaintiffs in the actions against the underwriter-defendants (the “Miles Decision”). Plaintiffs filed a petition in early 2007 seeking rehearing of this decision and/or a rehearing en banc. On April 6, 2007, the Second Circuit denied the petition for rehearing in an opinion. After careful consideration by the parties of the effect of the Miles Decision on the proposed settlement (i.e., whether in light of the Miles Decision no class may be certified in these actions, even a settlement class), plaintiffs and the issuer-defendants executed a stipulation and proposed order terminating the proposed Issuers’ Settlement on June 22, 2007. The district court “so ordered” the stipulation and proposed order, terminating the proposed Issuers’ Settlement shortly thereafter.

Discovery in the actions resumed, and plaintiffs filed amended complaints in the focus cases shortly thereafter. Defendants moved to dismiss the amended complaints. Plaintiffs filed motions for class certification in the focus cases. Defendants filed papers opposing class certification.

In 2008, the Plaintiff’s Executive Committee resumed settlement discussions with the issuer-defendants, including NexCen, and the officer and director defendants of the issuers. The parties reached a preliminary settlement in which NexCen would have to contribute no out-of-pocket amount to the settlement (the “Revised Issuer Settlement”). The parties filed their motion for preliminary approval of the Revised Issuer Settlement on April 2, 2009, which was granted by the district court on June 9, 2009. The hearing on final approval was held on September 10, 2009. The parties await a decision from the court. Until the court grants final approval of the Revised Issuer Settlement, NexCen will maintain its reserve of \$465,000.

Other. NexCen Brands and our subsidiaries are subject to other litigation in the ordinary course of business, including contract, franchisee, trademark and employment-related litigation. In the course of operating our franchise systems, occasional disputes arise between the Company and our franchisees relating to a broad range of subjects, including, without limitation, contentions regarding grants, transfers or terminations of franchises, territorial disputes and delinquent payments.

#### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

## PART II

## ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

## PRICE RANGE OF COMMON STOCK

Our common stock was quoted on NASDAQ under the symbol NEXC from November 1, 2006 until January 13, 2009. Prior to November 1, 2006, starting with our initial public offering on October 20, 1999, the Company's common stock was quoted on NASDAQ under the symbol AETH. As a result of noncompliance with NASDAQ listing requirements, our common stock was suspended from trading on NASDAQ effective at the opening of trading on January 13, 2009 and was delisted from NASDAQ on February 13, 2009. Starting on January 13, 2009, the Company's common stock been traded under the symbol NEXC.PK on the Pink OTC Markets, formerly known as the Pink Sheets.

The following table sets forth, for the periods indicated, the high and low prices per share of the common stock as reported on NASDAQ for 2008 and 2007.

QUARTER ENDED	2008		2007	
	HIGH	LOW	HIGH	LOW
March 31	\$ 4.82	\$ 2.83	\$ 11.04	\$ 7.42
June 30	\$ 3.49	\$ 0.41	\$ 12.98	\$ 9.98
September 30	\$ 0.67	\$ 0.24	\$ 11.41	\$ 5.56
December 31	\$ 0.30	\$ 0.07	\$ 7.37	\$ 3.89

## APPROXIMATE NUMBER OF EQUITY SECURITY HOLDERS

As of September 30, 2009, the approximate number of stockholders of record of NexCen's common stock was 253.

## DIVIDENDS

We have never declared or paid any cash dividends on our common stock. For the foreseeable future, we expect to utilize earnings, if any, to reduce our indebtedness as required under our credit facility.

## SECURITIES AUTHORIZED FOR ISSUANCE UNDER EQUITY COMPENSATION PLANS

The following table sets forth, as of December 31, 2008, information concerning compensation plans under which our securities are authorized for issuance. The table does not reflect grants, awards, exercises, terminations or expirations since that date.

Plan Category	Plan Name	Number of securities to be issued upon exercise of outstanding options, and restricted stock	Weighted-average exercise price of outstanding options, and restricted stock	Number of securities remaining available for future issuance under equity compensation plans
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Equity compensation plans approved by security holders	1999 Equity Incentive Plan	746,700	\$	5.50	—
	2006 Equity Incentive Plan	1,842,500	\$	2.20	1,657,500
Equity compensation plans not approved by security holders	2000 Plan	24,571	\$	2.90	—
Total as of December 31, 2008		2,613,771	\$	3.15	1,657,500

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#### The 1999 Plan

In September 1999, the Company adopted the 1999 Equity Incentive Plan, as amended on September 5, 2005 (the “1999 Plan”). It was approved by the Company’s sole stockholder prior to the Company’s initial public offering on October 20, 1999. The 1999 Plan provided for the issuance of NexCen common stock, pursuant to grants of stock options or restricted stock, in an amount that adjusted automatically to equal 20% of the Company’s outstanding shares. On September 2, 2005, the Company filed a registration statement with the SEC on Form S-8 registering an additional 973,866 shares under the 1999 Plan. A participant immediately forfeits any and all unvested options and forfeits all unvested restricted stock at the time of separation from NexCen, unless the award agreement provides otherwise. No participant is permitted to exercise vested options after the 90th day from the date of termination from NexCen, unless the award grant provides otherwise.

#### The 2000 Plan

Effective December 15, 2000, the Company adopted the Acquisition Incentive Plan (the “2000 Plan”) to provide options or direct grants to all employees (other than directors and officers), consultants and certain other service providers of the Company and our related affiliates, without shareholder approval. NexCen’s Board of Directors authorized the issuance of up to 1,900,000 shares of NexCen common stock under the 2000 Plan, in connection with the grant of stock options or restricted stock. All options granted under the 2000 Plan were required to be nonqualified stock options.

#### The 2006 Plan

Effective October 31, 2006, the Company adopted the 2006 Equity Incentive Plan (the “2006 Plan”) to replace the 1999 Plan and the 2000 Plan. The Company’s stockholders approved the adoption of the 2006 Plan at the annual meeting held on October 31, 2006. The 2006 Plan is now the sole plan for providing stock-based compensation to eligible employees, directors and consultants. The 1999 Plan and the 2000 Plans remain in existence solely for the purpose of addressing the rights of holders of existing awards already granted under those plans. No new awards have been or will be granted under the 1999 Plan and the 2000 Plan.

A total of 3.5 million shares of common stock were initially reserved for issuance under the 2006 Plan, which represented approximately 7.4% of NexCen’s outstanding shares at the time of adoption. Options under the 2006 Plan expire after ten years from date of grant and are granted at an exercise price no less than the fair value of the common stock on the grant date. In the event of a “change of control” as such term is defined in the 2006 Plan, awards of restricted stock and stock options became fully vested or exercisable, as applicable, to the extent the award agreement granting such restricted stock or options provides for such acceleration. A participant immediately forfeits any and all unvested options and forfeits all unvested restricted stock at the time of separation from NexCen, unless the award agreement provides otherwise. No participant is permitted to exercise vested options after the 90th day from the date of termination from NexCen, unless the award grant provides otherwise.

#### Stock Option Cancellation Program

On November 12, 2008, in light of the limited number of shares available for future issuance under the 2006 Plan, the Company instituted a stock option cancellation program for vested or unvested stock options issued under the 2006 Plan for certain eligible directors and employees (the “Stock Option Cancellation Program”). The Stock Option Cancellation Program was a voluntary, non-incentivized program. The Company provided no remuneration or consideration of any kind for the cancellation of stock options. In addition, to ensure that the program was in no way coercive or perceived to be coercive, we limited it to directors and executives at the level of vice president or above. As of December 31, 2008, the Company recaptured 856,666 options through this program.



## PURCHASES OF EQUITY SECURITIES BY THE ISSUER AND AFFILIATED PURCHASERS

The following table presents shares surrendered by employees to exercise stock options and to satisfy tax withholding obligations on vested restricted stock and stock option exercises during the period covered by this Report.

Period	Total Number of Shares Purchased	Average Price Paid for Shares	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans and Programs
January 1 - January 31, 2008	-	-	-	-
February 1 - February 29, 2008	-	-	-	-
March 1 - March 31, 2008	3,879	\$ 1.06	-	-
April 1 - April 30, 2008	-	-	-	-
May 1 - May 31, 2008	-	-	-	-
June 1 - June 30, 2008	-	-	-	-
July 1 - July 31, 2008	-	-	-	-
August 1 - August 31, 2008	-	-	-	-
September 1 - September 30, 2008	-	-	-	-
October 1 - October 31, 2008	-	-	-	-
November 1 - November 30, 2008	-	-	-	-
December 1 - December 31, 2008	-	-	-	-
<b>Total</b>	<b>3,879</b>	<b>\$ 1.06</b>	<b>-</b>	<b>-</b>

## Performance Graph

The following performance graph compares the cumulative total stockholder return on the Company's common stock (NEXC.PK) with that of a current peer group of companies ("PGI"), the NASDAQ Composite Index and the Russell 2000 Index. We have previously provided the NASDAQ Composite Index as a comparison index, and we have added the Russell 2000 Index because we believe that it is comprised of companies that are similar to us in market capitalization. The PGI was selected as representing our competitive peer group, comprised of multi-franchise concept companies and/or franchising companies with a similar business and size.

This graph assumes that \$100 was invested on December 31, 2003 in NexCen's common stock and in each of the above indices with reinvestment of any dividends. The cumulative total returns indicated in the graph are not necessarily indicative and are not intended to suggest future cumulative total returns.

The information provided under the heading "Performance Graph" shall not be considered "filed" for purposes of the Securities Exchange Act of 1934 or incorporated by reference in any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934.

	Measurement Period - five years (1) (2)					
	Fiscal 2003	Fiscal 2004	Fiscal 2005	Fiscal 2006	Fiscal 2007	Fiscal 2008
NEXC.PK	100.00	70.32	69.89	152.21	101.89	2.32
NASDAQ	100.00	108.59	110.08	120.56	132.39	78.72
RUSSELL						
2000	100.00	117.00	120.88	141.43	137.55	89.68
PGI (3)	100.00	137.83	168.84	187.33	127.71	103.67

(1) Assumes all distributions to stockholders are reinvested on payment dates.

(2) Assumes \$100 initial investment on December 31, 2003 in NEXC, the PGI, the NASDAQ Composite Index, and the Russell 2000 Index.

(3) The PGI is an index of comparable companies to NEXC, weighted by the market capitalization of the company at the beginning of the measurement period.

The PGI index includes:

- AFC Enterprises Incorporated (AFCE)
- CKE Restaurants, Incorporated (CKE)
- Panera Bread (PNRA)
- Sonic Corporation (SONC)
- Cosi (COSI)
- Einstein-Noah Restaurant Group (BAGL)

## ITEM 6. SELECTED FINANCIAL DATA

The table that follows presents portions of our Consolidated Financial Statements and is not a complete presentation in accordance with U.S. generally accepted accounting principles (GAAP). You should read the following Selected Financial Data together with our Consolidated Financial Statements and related notes and with our MD&A included in Item 7 of this Report.

Our Selected Financial Data and our Consolidated Financial Statements assume that we will continue as a going concern, and do not contain any adjustments that might result if we were unable to continue as a going concern. However, based on the Company's financial condition and liquidity, we have concluded that there was substantial doubt about our ability to continue as a going concern as of December 31, 2008.

The results of operations in the following Selected Financial Data, as well as in our Consolidated Financial Statements, present the results of our brand management business in franchising as continuing operations. We began operating the brand management business in 2006, but we owned only one brand, TAF, in 2006 (and only for the last seven weeks of that fiscal year). In fiscal 2007, we acquired six additional brands, namely, Bill Blass, Marble Slab Creamery, MaggieMoo's, Waverly, Pretzel Time and Pretzelmaker. We then acquired the Great American Cookies brand and an interest in the Shoebox New York brand, respectively, in January 2008. We sold the Bill Blass consumer products brand in December 2008 and the Waverly consumer products brand in October 2008. The results of the mobile and data communications business that we sold during 2004 and the mortgage-backed securities (MBS) business that we sold in 2006 are reported as discontinued operations. As a result of the reclassification of our former MBS business to discontinued operations as of December 31, 2006, the results presented in these Selected Financial Data differ from the results that we presented in reporting periods prior to the fourth quarter of 2006. In addition, as a result of the reclassification of Bill Blass and Waverly, which comprised our Consumer Branded Products segment, and UCC Capital, which was part of our Corporate segment, to discontinued operations during the fiscal year ended December 31, 2008, the results presented in these Selected Financial Data also differ from the results that we present in reporting periods after the fourth quarter of 2007. Accordingly, the historical results presented below are not indicative of the results to be expected for any future fiscal year.

	Year Ended December 31,				
	(IN THOUSANDS, EXCEPT FOR PER SHARE AMOUNTS)				
	2008	2007	2006	2005	2004
<b>Revenues:</b>					
Royalty revenues	\$ 24,735	\$ 15,722	\$ 1,175	\$ -	\$ -
Factory revenues	17,310	-	-	-	-
Franchise fee revenues	3,616	3,447	749	-	-
Licensing and other revenues	1,295	419	-	-	-
Total revenues	46,956	19,588	1,924	-	-
<b>Total operating expenses</b>					
	(194,173)	(26,696)	(3,597)	-	-
Operating loss	(147,217)	(7,108)	(1,673)	-	-
Total non-operating income (expense)	(12,349)	(857)	2,002	-	-
(Loss) income from continuing operations before income taxes	(159,566)	(7,965)	329	-	-
<b>Income taxes:</b>					
Current	(337)	1,562	(299)	-	-
Deferred	6,331	(2,481)	-	-	-

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(Loss) income from continuing operations	(153,572)	(8,884)	30	-	-
<b>Discontinued operations:</b>					
(Loss) income from discontinued operations, net of tax (expense) benefit of \$15,765, (\$2,383), and (\$154) for 2008, 2007, and 2006, respectively	(91,593)	4,016	(2,905)	(3,326)	(69,153)
(Loss) gain on sale of discontinued operations, net of income tax benefit of \$4,158 in 2008	(10,614)	-	755	(1,194)	20,825
Net loss	\$ (255,779)	\$ (4,868)	\$ (2,120)	\$ (4,520)	\$ (48,328)
<b>Other comprehensive loss:</b>					
Foreign currency translation adjustment	-	-	-	-	(3,830)
Unrealized holding gain on investments available for sale	-	-	-	-	67
Comprehensive loss	\$ (255,779)	\$ (4,868)	\$ (2,120)	\$ (4,520)	\$ (52,091)
<b>Loss per share:</b>					
Loss per share (basic and diluted) from continuing operations	\$ (2.71)	\$ (0.17)	\$ 0.00	\$ -	\$ -
(Loss) income per share (basic and diluted) from discontinued operations	(1.81)	0.08	(0.05)	(0.10)	(1.11)
Net loss per share - basic and diluted	\$ (4.52)	\$ (0.09)	\$ (0.05)	\$ (0.10)	\$ (1.11)
<b>Weighted average shares outstanding - basic and diluted</b>					
	56,550	51,889	45,636	44,006	43,713

Year Ended December 31,  
(IN THOUSANDS)

	2008	2007	2006	2005	2004
<b>CONSOLIDATED BALANCE SHEET DATA:</b>					
Cash & cash equivalents	\$ 8,293	\$ 46,569	\$ 83,536	\$ 9,725	\$ 69,555
Mortgage-backed securities, at fair value - discontinued operations	-	-	-	253,900	62,184
Trademarks, goodwill, and other non-amortizable assets	78,422	163,364	64,607	-	-
Assets held for sale	-	119,183	-	-	-
<b>Total Assets</b>	<b>\$ 113,903</b>	<b>\$ 359,610</b>	<b>\$ 158,385</b>	<b>\$ 266,008</b>	<b>\$ 136,586</b>
Repurchase agreements and sales tax liabilities - discontinued operations	-	-	-	133,924	-
Debt (net of debt discount of \$1.4 million in 2008)	140,873	109,578	-	-	-
Liabilities held for sale	-	1,482	-	-	-
<b>Total liabilities</b>	<b>163,396</b>	<b>163,607</b>	<b>11,772</b>	<b>139,621</b>	<b>5,996</b>
Stockholders' (deficit) equity	(49,493)	192,963	146,613	126,387	130,590

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of the results of operations and financial condition of NexCen Brands should be read in conjunction with the information contained in the Consolidated Financial Statements and related Notes, which appear in Item 8 of this Report.

### OVERVIEW

NexCen is a strategic brand management company that owns and manages a portfolio of seven franchised brands, operating in a single business segment: Franchising. Five of our brands (Great American Cookies, Marble Slab Creamery, MaggieMoo's, Pretzel Time and Pretzelmaker) are in the QSR industry. The other two brands (TAF and Shoebox New York) are in the retail footwear and accessories industry. All seven franchised brands are managed by NFM, a wholly owned subsidiary of NexCen Brands. Our franchise network, across all of our brands, consists of approximately 1,750 retail stores in approximately 40 countries.

We acquired our seven franchised brands as follows:

- TAF (acquired November 7, 2006)
- MaggieMoo's (acquired February 28, 2007)
- Marble Slab Creamery (acquired February 28, 2007)
- Pretzel Time (acquired August 7, 2007)
- Pretzelmaker (acquired August 7, 2007)
- Shoebox New York (joint venture interest – January 15, 2008)
- Great American Cookies (acquired January 29, 2008)

We earn revenues primarily from the franchising, royalty, licensing and other contractual fees that third parties pay us for the right to use the intellectual property associated with our brands and from the sale of cookie dough and other ancillary products to our Great American Cookies franchisees.

As discussed in detail in Item 1– Business, we commenced our brand management business in June 2006, when we acquired UCC Capital, an investment banking firm that provided financial advisory services, particularly to companies involved in monetizing intellectual property assets. In acquiring UCC Capital, our strategy was to begin building a brand management business by acquiring and operating businesses that own valuable brand assets and other intellectual property and that earn revenues primarily from the franchising or licensing of their intellectual property. In addition to our seven franchised brands, we also owned the Bill Blass consumer products brand in the apparel industry and the Waverly consumer products brand in the home goods industry. We sold the Waverly brand on October 3, 2008 and the Bill Blass brand on December 24, 2008.

NexCen faced a number of challenges in 2008, both internal and external. In May 2008, we disclosed issues related to our debt structure that materially and negatively affected the Company. Specifically, we disclosed previously undisclosed terms of the January 2008 Amendment, substantial doubt about our ability to continue as a going concern, our inability to timely file our periodic report and our expected restatement of our Annual Report on Form 10-K for the fiscal year ended December 31, 2007 ("Original 2007 10-K"). The Company also announced that it was actively exploring all strategic alternatives to enhance its liquidity including the possible sale of one or more of our businesses. These disclosures had an immediate and significant adverse impact on our business. The price of our common stock dropped; the Company and certain current and former officers and directors of the Company were sued for various claims under the federal securities laws and certain state statutory and common laws (see Item 3 – Legal Proceedings); and we became the subject of an investigation by the Enforcement Division of the SEC. In addition, as a result of

noncompliance with the listing requirements of NASDAQ including delays in filing our periodic reports, our common stock was suspended from trading on NASDAQ on January 13, 2009 and delisted from NASDAQ on February 13, 2009.

In addition, throughout 2008, the worldwide financial markets experienced unprecedented deterioration, affecting both debt and equity markets in the U.S. and internationally. The economy underwent a significant slowdown due to uncertainties related to, among other factors, energy prices, availability of credit, difficulties in the banking and financial services sectors, softness in the housing market, severely diminished market liquidity, geopolitical conflicts, falling consumer confidence and rising unemployment rates. The market for home and apparel brands fell especially dramatically.

Starting in May 2008, we sought to address the immediate financial and operational challenges that we faced. By December 31, 2008, we reduced non-essential staff and recurring expenses; restructured our credit facility; sold our Waverly and Bill Blass businesses; made significant changes in management, management structure and corporate governance; and improved our corporate infrastructure and our internal control environment. We believe that as a result of our actions the Company's core business remains intact and the Company is better positioned for future stability and growth. However, our actions had a significant impact on our 2008 financial results. Our total operating expenses increased to \$194.2 million primarily due to impairment expenses related to our intangible assets, restructuring charges, increased professional fees related to the internal and external investigations and other expenses specific to the events of 2008. Accordingly, we believe that financial results in 2009 will be more representative of the Company's financial condition and more indicative of continuing performance of the Company's business than the 2008 financial results.

In addition, we believe year-over-year comparisons are not meaningful because of the acquisition of brands throughout 2007 and early 2008 and the atypical events and circumstances of 2008.

- We did not initiate our current brand management business until the second half of 2006 and did not begin to earn royalties or license and franchise fees until halfway through the fourth quarter of 2006, when we acquired TAF. We acquired Pretzel Time, Pretzelmaker, Marble Slab Creamery, and MaggieMoo's during 2007.
- We acquired Great American Cookies on January 29, 2008. This acquisition materially increased the Company's royalty and franchise fee revenue. In addition, the Company acquired a manufacturing facility, which generated factory revenue and cost of sales expenses for the first time.
- We acquired our joint venture interest in Shoebox New York on January 15, 2008. Fees paid by the joint venture to the Company to manage the brand are reflected in the Company's operating revenues, whereas the Company's portion of income or expense from the joint venture investment is included in the Company's non-operating income (expense).
- The Company's operating expenses materially increased in 2008 over the 2007 comparable periods as the Company built its brand management business over the course of 2007 and early 2008 and built its corporate and franchising staff and infrastructure in connection with the Company's actual and anticipated growth.
- Starting in late May 2008, the Company began reducing non-essential corporate staff and incurred restructuring charges that continued through the remainder of the year. Corporate SG&A thus decreased starting in second quarter 2008, although these decreases were offset in the fourth quarter by a stock compensation charge of \$2.1 million associated with the voluntary cancellation of stock option grants.
- The Company recorded materially greater interest expense through the course of 2007 and the beginning of 2008 due to the increases in the Company's borrowings used to finance its acquisitions.
- In addition to the professional fees related to special investigations, corporate as well as franchising professional fees increased throughout most of 2008, as compared to 2007, due to the increased legal costs and auditing costs associated with the events of May 2008, the growth of the Company and the integration of acquisitions.
- Beginning in the first quarter of 2008, the Company began incurring financing charges consisting of legal fees related to the amendments to its credit facility, including the January 2008 Amendment, the August 2008 restructuring, and further amendments on September 11, 2008 and December 24, 2008.
- As a likely result of the events of May 2008 and the uncertainties surrounding the Company's viability, there was a significant decrease in initial franchise fee revenue in second and third quarter of 2008 as compared to first and fourth quarter of 2008. In contrast, royalty and factory revenues remained relatively stable through 2008, taking into account the acquisition of Great American Cookies in January 2008.
- As a result of the events of May 2008 and the general downturn of the economy, the Company recorded material impairments of its intangible assets in the second and third quarters of 2008.
- In 2008, we exited the licensing business for consumer branded products, and the Company recorded losses on the sales of Waverly and Bill Blass in the fourth quarter of 2008.

#### DISCONTINUED OPERATIONS AS OF DECEMBER 31, 2008

In 2008, we narrowed our business model to focus only on our franchised brands. We sold the Waverly brand on October 3, 2008 and the Bill Blass brand on December 24, 2008. In accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-lived Assets," the Company has reflected the Waverly and Bill Blass brands as discontinued operations. Bill Blass Ltd, LLC also is reflected in discontinued operations for the year ended December 31, 2008. The loss from operations of the Waverly and Bill Blass brands is presented in the Consolidated Statements of Operations as a component of loss from discontinued operations. The loss on the sale of the Waverly and Bill Blass brands is discussed in Note 15 – Discontinued Operations to our Consolidated Financial Statements. In 2008, we also discontinued all acquisition activities that we conducted through UCC Capital, which also earned loan servicing revenues. UCC Capital previously was part of our Corporate segment. Our franchising business, which previously comprised our QSR Franchising and Retail Franchising segments, now constitutes our one and only segment, Franchising, and is reported as continuing



operations for 2008, 2007, and 2006.

In November 2006, we exited the MBS business by selling our remaining \$75.5 million of MBS investments from which we recognized a gain of \$755,000. Earlier in 2006, we sold \$140 million of our MBS investments and used the proceeds primarily to repay indebtedness under repurchase agreements that had been incurred to purchase our MBS portfolio. In 2007, we settled litigation and other claims related to the mobile and wireless communications businesses we sold in 2004, which amounts were charged to discontinued operations.

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## CRITICAL ACCOUNTING POLICIES

Our critical accounting policies affect the amount of income and expense we record in each period, as well as the value of our assets and liabilities and our disclosures regarding contingent assets and liabilities. In applying these critical accounting policies, we must make estimates and assumptions to prepare our financial statements, which, if made differently, could have a positive or negative effect on our financial results. We believe that our estimates and assumptions are both reasonable and appropriate, and in accordance with United States generally accepted accounting principles. However, estimates involve judgments with respect to numerous factors that are difficult to predict and are beyond management's control. As a result, actual amounts could materially differ from estimates.

Management believes that the following accounting policies represent "critical accounting policies," which the SEC defines as those that are most important to the portrayal of a company's financial condition and results of operations and require management's most difficult, subjective, or complex judgments, often because management must make estimates about uncertain and changing matters.

- **Valuation of Deferred Tax Assets** - We have deferred tax assets as a result of years of accumulated tax loss carry-forwards. Management is developing plans to achieve profitable operations in future years that may enable us to recover the benefit of our deferred tax assets. The ultimate realization of deferred tax assets is primarily dependent upon the generation of future taxable income during periods in which those temporary differences become deductible. We presently do not have sufficient objective evidence that the Company will generate future taxable income. Accordingly, we maintain a full valuation allowance for our net deferred tax assets. We adopted the provisions of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN 48"), effective January 1, 2007. FIN 48 creates a single model to address accounting for uncertainty in tax positions and clarifies accounting for income taxes by prescribing a minimum recognition threshold that a tax position is required to meet before being recognized in the financial statements.
- **Valuation of Goodwill, Trademarks and Intangible Assets** - The Company accounts for recorded goodwill and other intangible assets in accordance with SFAS No. 142, "Goodwill and Other Intangible Assets." This standard classifies intangible assets into three categories: (1) goodwill; (2) intangible assets with indefinite lives not subject to amortization; and (3) intangible assets with definite lives subject to amortization. In accordance with SFAS No. 142, we do not amortize goodwill and indefinite-lived intangible assets. We evaluate the remaining useful life of an intangible asset that is not being amortized each reporting period to determine whether events and circumstances continue to support an indefinite useful life. If an intangible asset that is not being amortized is subsequently determined to have a finite useful life, we amortize the intangible asset prospectively over its estimated remaining useful life. Amortizable intangible assets are amortized on a straight-line basis.

In accordance with the requirements of SFAS No. 142, goodwill has been assigned to reporting units for purposes of impairment testing. Our reporting unit is our operating segment. We evaluate goodwill for impairment on an annual basis or more often if an event occurs or circumstances change that indicate impairment might exist. Goodwill impairment tests consist of a comparison of each reporting unit's fair value with its carrying value. Fair value is the price a willing buyer would pay for a reporting unit, which we estimate using multiple valuation techniques. These include an income approach, based upon discounted expected future cash flows from operations, and a market approach, based upon business enterprise multiples of comparable companies. The discount rate used is our estimate of the required rate of return that a third-party buyer would expect to receive when purchasing from us a business that constitutes a reporting unit. We believe the discount rate is commensurate with the risks and uncertainty inherent in the forecasted cash flows.

If the carrying value of a reporting unit exceeds its fair value, goodwill is written down to its implied fair value. The implied fair value of goodwill is determined by allocating the fair value of the reporting unit to all of its assets and liabilities other than goodwill. The remaining value, after the fair value of the reporting unit has been allocated to the

identifiable assets, is the implied fair value of goodwill.

During 2008, we evaluated our goodwill for impairment at multiple time periods based upon the existence of indicators of impairment. As of December 31, 2008, all of the Company's recorded goodwill has been written off.

In accordance with SFAS No. 144, "Accounting for Impairment or Disposal of Long-Lived Assets," for indefinite-lived intangible assets, our impairment test consists of a comparison of the fair value of an intangible asset with its carrying amount. Fair value is an estimate of the price a willing buyer would pay for the intangible asset and is generally estimated by discounting the expected future cash flows associated with the intangible asset. Similar to goodwill, we evaluate indefinite lived assets for impairment on an annual basis or more often if an event occurs or circumstances change that indicate impairment might exist. Based on our tests, impairment charges were recorded in the second and third quarters of 2008.

Our definite-lived intangible assets are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount of the intangible asset may not be recoverable. An intangible asset that is deemed impaired is written down to its estimated fair value, which is generally based on replacement cost. For purposes of our impairment analysis, we update the costs that were initially used to value the definite-lived intangible asset to reflect our current estimates and assumptions over the asset's future remaining life. Impairment charges related to definite-lived intangibles were recorded in the second and third quarters of 2008.

We discuss impairments in more detail in Note 6 – Goodwill, Trademarks and Other Intangible Assets to the Consolidated Financial Statements.

- Valuation of Stock-Based Compensation – Under the provisions of SFAS No. 123R “Share-Based Payment,” share-based compensation cost is measured at the grant date, based on the calculated fair value of the award, and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity grant). SFAS No. 123R also requires the related excess tax benefit received upon exercise of stock options or vesting of restricted stock, if any, to be reflected in the statement of cash flows as a financing activity rather than an operating activity.

We used the Black-Scholes option pricing model to value the compensation expense associated with our stock option awards under SFAS No. 123R. In addition, we estimated forfeitures when recognizing compensation expense associated with our stock options, and adjusted our estimate of forfeitures when they were expected to differ. Key input assumptions used to estimate the fair value of stock options included the market value of the underlying shares at the date of grant, the exercise price of the award, the expected option term, the expected volatility (based on historical volatility) of our stock over the option's expected term, the risk-free interest rate over the option's expected term, and the expected annual dividend yield, if any.

- Valuation of Allowance for Doubtful Accounts - We maintain an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. In evaluating the collectability of accounts receivable, we consider a number of factors, including the age of the accounts, changes in status of the customers' financial condition and other relevant factors. Estimates of uncollectible amounts are revised each period, and changes are recorded in the period they become known.

#### RECENT ACCOUNTING PRONOUNCEMENTS

In December 2007, the FASB issued SFAS No. 141 (Revised 2007), “Business Combinations.” Under Statement SFAS No. 141R, acquiring entities will recognize assets acquired and liabilities assumed in connection with business combinations at fair market value with limited exception. Among its provisions, SFAS No. 141R requires that: (a) acquisition costs will generally be expensed as incurred and not capitalized, (b) contingent consideration will be recognized at estimated fair value at the time of acquisition, and (c) noncontrolling interests will be valued at the fair value at the acquisition date. SFAS No. 141R is effective for annual periods beginning on or after December 15, 2008. SFAS No. 141R will impact the Company's accounting for future acquisitions, if any.

In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements - An Amendment of ARB No. 51.” SFAS No. 160 provides that noncontrolling interests in a subsidiary (minority interests) are to be recorded as a component of equity, separate from the parent's equity. SFAS No. 160 also provides for changes in the way minority interest expense is recorded in the income statement, and will require expanded disclosure regarding the interests of the parent and its noncontrolling interest. SFAS No. 160 is effective for years and interim periods beginning on or after December 15, 2008. The Company adopted SFAS No. 160 as of January 1, 2009. SFAS No. 160 will impact the presentation and disclosure of minority interest, if any, in the Company's Consolidated Financial Statements.

In February 2008, the FASB issued FSP FAS No. 157-2, Effective Date of FASB Statement No. 157 ("FSP FAS No. 157-2"), that partially deferred the effective date of SFAS No. 157 for one year for non-financial assets and non-financial liabilities that are recognized or disclosed at fair value in the financial statements on a non-recurring basis. The Company adopted FSP FAS No. 157-2 on January 1, 2009. See Note 2(d) – Fair Value of Financial Instruments for additional disclosures required under FSP FAS No. 157-2 for non-financial assets and liabilities recognized or disclosed at fair value in the statements.

In April 2008, the FASB issued FSP No. 142-3, "Determination of the Useful Life of Intangible Assets." FSP No. 142-3 will improve the consistency between the useful life of a recognized intangible asset under SFAS No. 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS No. 141R, and other U.S. generally accepted accounting principles. FSP No. 142-3 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. The Company has adopted this standard as of January 1, 2009. The impact of adopting FSP No. 142-3 is expected to be immaterial to the Company's Consolidated Financial Statements.

In April 2009, the FASB issued FSP FAS 157-4, "Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly" ("FSP FAS 157-4"), which provides additional guidance for estimating fair value in accordance with SFAS No. 157, "Fair Value Measurements," when the volume and level of activity for the asset or liability have significantly decreased. FSP FAS 157-4 includes guidance on identifying circumstances that indicate a transaction is not orderly. FSP FAS 157-4 will be effective for interim reporting periods after June 15, 2009. FSP FAS 157-4 does not require disclosures in earlier periods presented for comparative purposes at initial adoption, and, in periods after initial adoption, comparative disclosures are only required for periods ending after initial adoption. The adoption of FSP FAS 157-4 is not expected to have a material impact on the financial condition or results of operations of the Company.

In April 2009, the FASB issued FSP FAS No. 107-1 and Accounting Principles Board ("APB") 28-1 ("FSP FAS No. 107-1 and APB No. 28-1"), "Interim Disclosures about Fair Value of Financial Instruments," which amends SFAS No. 107, "Disclosures about Fair Value of Financial Instruments," and requires disclosures about the fair value of financial instruments for interim reporting periods of publically traded companies as well as in annual financial statements. FSP FAS No. 107-1 and APB No. 28-1 also amends APB Opinion, "Interim Financial Reporting," to require those disclosures in summarized financial information at interim reporting periods. FSP FAS No. 107-1 and APB No. 28-1 are effective for interim reporting periods ending after June 15, 2009. FSP FAS No. 107-1 and APB No. 28-1 do not require disclosures for earlier periods presented for comparative purposes at initial adoption, and, in periods after initial adoption, comparative disclosures are only required for periods ending after initial adoption.

In May 2009, the FASB issued FSP FAS No. 165, "Subsequent Events," which formalizes the recognition and non-recognition of subsequent events and the disclosure requirements not addressed in other generally accepted accounting guidance. This statement is effective for the Company's financial statements beginning with the quarterly period ended on June 30, 2009. The adoption of SFAS No. 165 will not have an impact on the financial condition or results of operations of the Company.

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)," which changed the determination of when a variable interest entity ("VIE") should be consolidated. Under SFAS No. 167, the determination of whether to consolidate a VIE is based on the power to direct the activities of the VIE that most significantly impact the VIE's economic performance together with either the obligation to absorb losses or the right to receive benefits that could be significant to the VIE, as well as the VIE's purpose and design. This statement is effective for fiscal years beginning after November 15, 2009. We believe the adoption of this pronouncement will not have a material impact on our Consolidated Financial Statements.

In June 2009, the FASB issued SFAS No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles – a replacement of FASB Statement No. 162." SFAS No. 168 states that the FASB Accounting Standards Codification will become the source of authoritative U.S. GAAP recognized by the FASB. Once effective, the Codification's content will carry the same level of authority, effectively superseding SFAS No. 162. The GAAP hierarchy will be modified to include only two levels of GAAP: authoritative and non-authoritative. This statement will be effective for the Company's financial statements beginning with the interim period ending September 30, 2009. The adoption of SFAS No. 168 will not impact the financial condition or results of operations of the Company.

## RESULTS OF CONTINUING OPERATIONS FOR YEARS ENDED DECEMBER 31, 2008, 2007 AND 2006

The Company has spent considerable time, effort and expense in dealing with the events of 2008 and in making changes to its business to overcome internal and external challenges. These changes, including the sale of Bill Blass and Waverly brands, which comprised our Consumer Branded Products business, impacted the Company's operating results for 2008. The financial results for 2008 and 2007 discussed below reflect the reclassification of the Consumer Branded Products and UCC Capital businesses as discontinued operations.

### Royalty, Franchise Fee, Factory, and Licensing and Other Revenues

We recognized \$47.0 million in revenues in 2008, an increase of \$27.4 million, or 140%, over \$19.6 million in revenues for 2007. The increase in revenues reflect full-year operating revenues in 2008 for Marble Slab Creamery (acquired in February 2007), MaggieMoo's (acquired in February 2007), Pretzel Time (acquired in August 2007) and Pretzelmaker (acquired in August 2007), and the partial-year operating revenues from Great American Cookies (acquired in January 2008). Of the \$47.0 million in revenues recognized in 2008, \$24.8 million related to royalties, an increase of \$9.0 million, or 57%, over 2007; \$3.6 million related to franchise fees, an increase of \$0.2 million, or 5%, over 2007; and \$1.3 million related to licensing and other revenues, an increase of \$0.9 million, or 209%, over 2007. Licensing and other revenues consist of licensing revenues, management fees from the Shoebox New York joint venture and rebates earned from vendors with which the Company conducts business. The remaining \$17.3 million in 2008 revenues were from the sales of cookie dough and other ancillary products to our Great American Cookies franchisees. In connection with our acquisition of Great American Cookies in January 2008, the Company acquired a manufacturing facility that produces cookie dough for, and supplies other products to, franchisees of the Great American Cookies brand.

We recognized \$19.6 million in revenues in 2007 as compared to \$1.9 million in revenues for 2006. The increase in revenues is the result of our ownership of five brands in 2007 compared to our ownership of only one brand in 2006 for seven weeks. Of the \$19.6 million in revenues recognized in 2007, \$15.8 million related to royalty revenues, \$3.4 million related to franchise fees, and \$0.4 million related to licensing and other revenues.

### Cost of Sales

In 2008, the Company recorded \$11.5 million in cost of sales associated with our Great American Cookies manufacturing facility, including raw ingredients, labor and other direct manufacturing costs. The facility was acquired by the Company in January 2008. Accordingly, the Company recorded no cost of sales in 2007 or 2006.

### Selling, General and Administrative Expenses ("SG&A")

SG&A expenses consist primarily of compensation, stock compensation expense and personnel related costs, rent, facility related support costs, travel and advertising.

Corporate SG&A expenses increased \$3.7 million, or 32%, to \$15.5 million in 2008 from \$11.8 million in 2007. This increase is attributable to an increase in the number of staff to support the growth of the Company and to bolster the Company's corporate infrastructure, and an increase of \$1.0 million in stock compensation expenses. Franchising SG&A increased by \$6.3 million, or 59%, to \$17.0 million in 2008 from \$10.7 million in 2007. This increase is attributable to the additional costs associated with the establishment of our NexCen University facility, the integration of our brands and the acquisition of Great American Cookies during 2008. Personnel employed by the Company increased from 107 employees as of December 31, 2007 to a peak of 152 employees on April 30, 2008, before decreasing to 123 as of December 31, 2008.

Corporate SG&A expenses increased \$11.1 million to \$11.8 million in 2007 from \$0.7 million in 2006. The increase primarily reflects the additional costs resulting from the hiring of corporate staff to support our acquisition activity, the growth of the Company and increased stock compensation expense. Included in Corporate SG&A expense for 2007 is \$408,000 of state tax expense which is based on capital and not income. Franchising SG&A expenses increased \$10.2 million to \$10.7 million from \$0.5 million in 2006. As a result of our acquisitions in 2007, personnel employed by the Company increased from 36 employees as of December 31, 2006 to 107 employees as of December 31, 2007.

#### Stock Compensation Expense

In 2008, the Company recorded stock compensation expense of \$5.3 million, an increase of \$1.0 million, or 23%, from \$4.3 million in 2007. The increase resulted from grants of options and warrants to purchase a total of approximately 2.0 million shares of the Company's common stock, consisting of grants to employees of options to purchase 1.5 million shares of common stock, warrants to certain Great American Cookies franchisees to purchase 300,000 shares of common stock, and a warrant to BTMUCC to purchase 200,000 shares of common stock. The Company also expensed an additional \$2.1 million related to outstanding stock options that were voluntarily cancelled in 2008 pursuant the Stock Option Cancellation Program. (See Part II, Item 5 under the caption, "Securities Authorized for Issuance under Equity Compensation Plans. "). The increase was partially offset by the reversal of previously accrued stock compensation expense pertaining to cancelled or forfeited stock options.



In 2007, the Company recorded stock compensation expense of \$4.3 million, an increase of \$2.7 million, from \$1.6 million in 2006. The increase resulted from the grant of a total of approximately 7.1 million options and warrants in 2007 and 2006. Substantially all of the options granted in 2006 were granted from June through the end of the year. Therefore, the increase in stock compensation expense in 2007 over 2006 was due to the options being outstanding for a full year in 2007 and only a portion of the year in 2006. These options and warrants were issued to provide long-term incentive packages to new executives and other senior managers that we hired in 2007 and 2006, including individuals who were employed by UCC Capital, TAF, Bill Blass, Marble Slab, and Waverly prior to their acquisition by us and warrants to the sellers of TAF, Bill Blass, MaggieMoo's, Waverly, Pretzel Time and Pretzelmaker.

#### Professional Fees

The Company incurred \$3.9 million in professional fees related to the special investigations conducted at the direction of the Audit Committee of the Board of Directors, the Company and in response to information requested by the SEC, respectively, regarding the Company's public disclosures of previously undisclosed terms of the January 2008 Amendment. The professional fees related to special investigations represent the cost of outside attorneys in either conducting the investigations or responding to the investigations, as well as the cost of outside consultants that were engaged to assist the Company and the Board of Directors to investigate and address the Company's financial condition resulting from the January 2008 Amendment. The Company did not incur any professional fees related to special investigations in 2007 or 2006.

The Company incurred corporate professional fees of \$2.7 million in 2008, an increase of \$1.0 million, or 61%, from \$1.7 million in 2007. The increase is primarily due to increased external audit and tax fees associated with the growth of the Company, the events of 2008 as well as legal fees associated with public reporting, compliance and litigation (including claims arising from the same events covered by the special investigations). The Company incurred corporate professional fees of \$1.7 million in 2007, an increase of \$0.6 million, or 62%, from \$1.0 million in 2006. This increase is attributed to the Company's continued growth and expansion during 2007.

The Company incurred professional fees related to franchising of \$1.7 million in 2008, an increase of \$0.5 million, or 40%, from \$1.2 million in 2007. The Company incurred professional fees related to franchising of \$1.2 million in 2007, an increase of \$1.1 million from \$0.1 million in 2006. The increase in franchising professional fees for both periods reflects the increased legal and auditing fees associated with the growth of the Company and the integration of acquisitions.

#### Impairment of Intangible Assets

As a result of our acquisition strategy, we recorded a material amount of trademarks, goodwill and other intangible assets with indefinite or long lives. Market and economic conditions deteriorated during 2008, requiring the Company to record impairment charges and reducing the book value of such assets relating to continuing operations by a total of \$137.9 million. See Note 6 – Goodwill, Trademarks and Other Intangible Assets for additional details regarding the impairment charges.

The Company did not record any impairment charges related to intangible assets in 2007 or 2006.

#### Depreciation and Amortization

Depreciation expenses arise from property and equipment purchased for use in our operations. Amortization costs arise from acquired intangible assets.

The Company recorded depreciation and amortization expenses of \$3.0 million in 2008, an increase of \$1.6 million, or 119%, from \$1.4 million in 2007. The increase is primarily attributable to accelerated depreciation of certain corporate

assets such as leasehold improvements resulting from the changes to the Company's business in 2008 which reduced the estimatable useful life of those assets.

The Company recorded depreciation and amortization expenses of \$1.4 million in 2007, an increase of \$1.2 million from \$0.2 million in 2006. The increase primarily reflects the amortization of intangible assets related to a non-compete agreement with our former chief executive officer, and amortization of intangibles of franchise agreements, license agreements, and master development agreements related to the TAF, Marble Slab Creamery, MaggieMoo's, Pretzel Time and Pretzelmaker acquisitions.

### Restructuring Charges

In connection with our cost reduction efforts and our sales of the Waverly and Bill Blass brands, we reduced the staff in the New York corporate office. The Company recorded \$1.1 million in restructuring charges in 2008 related primarily to employee separation benefits.

The Company did not incur any expenses from restructuring in 2007.

After the acquisition of UCC Capital, the Company relocated our principal corporate office from Baltimore, Maryland to New York City. As a result, certain reductions in staffing occurred in 2006, and we recorded a restructuring charge of \$1.1 million in 2006.

### Total Operating Expenses

Total operating expenses were \$194.2 million in 2008, an increase of \$167.5 million from \$26.7 million in 2007. We believe that this year-over-year increase is not indicative of future operating expenses, as the increase encompasses many significant expenses that are specific to the events of 2008, including (as discussed in more detail above) impairment charges related to intangible assets of \$137.9 million, \$3.9 million in professional fees related to special investigations and \$1.1 million in restructuring charges.

Excluding impairment charges related to intangible assets, professional fees related to special investigations and restructuring charges, operating expenses in 2008 were \$51.3 million, an increase of \$24.6 million, or 92%, from 2007. This increase reflects the additional expenses incurred by the Company in operating the brands that we acquired, including \$11.5 million in cost of sales, a \$10.0 million increase in SG&A expenses, a \$1.5 million increase in corporate and franchising professional fees, and a \$1.6 million increase in depreciation and amortization.

Operating expenses of \$26.7 million in 2007 reflect an increase of \$23.1 million from \$3.6 million in 2006. The increase in operating expenses reflects the additional expenses incurred by the Company in operating the brands that we acquired, including a \$21.3 million increase in SG&A expenses, a \$1.7 million increase in professional fees, a \$1.2 million increase in depreciation and amortization, offset by a \$1.1 million decrease in restructuring charges from 2006 related to the relocation of our headquarters from Baltimore, Maryland to New York City and the transition of our senior management team.

### Interest Income

The Company recognized interest income of \$0.4 million in 2008, a decrease of \$1.6 million, or 78%, from \$2.0 million in 2007. Interest income of \$2.0 million in 2007 increased \$0.6 million, or 40%, from \$1.4 million in 2006. Interest income primarily reflects the interest earned on our cash balances, which have declined over the three year period.

### Interest Expense

The Company recorded interest expense of \$10.7 million in 2008, an increase of \$7.8 million, or 269%, from \$2.9 million in 2007. This increase reflects additional interest expense incurred in connection with our increased borrowings related to our continuing operations under our BTMUCC Credit Facility including the acquisition of Great American Cookies in January 2008. The Company entered into the Original BTMUCC Credit Facility in March 2007 (See Note 9 – Long-Term Debt to our Consolidated Financial Statements for a description of the Original BTMUCC Credit Facility, the January 2008 Amendment, the Amended BTMUCC Credit Facility, and the subsequent amendments.) Interest expense consists primarily of interest incurred in connection with our borrowings related to our continuing operations under the BTMUCC Credit Facility, as well as amortization of deferred loan costs and imputed

interest of \$184,000 in 2008 related to a long-term consulting agreement liability, expiring in 2028, which was assumed in The Athlete's Foot acquisition.

We had no outstanding borrowings under the Original BTMUCC Credit Facility prior to 2007. The Company did not incur interest expense in 2006.

#### Financing Charges

The Company incurred \$1.8 million in financing charges in 2008 consisting of legal fees related to the amendments to the Original BTMUCC Credit Facility, including the January 2008 Amendment, the August 2008 restructuring, and the subsequent amendments. The Company did not incur any such financing charges in 2007 or 2006.

#### Other Income (Expense)

The Company recorded other expense of \$284,000 in 2008, primarily representing the Company's share of losses on its equity investment in Shoebox New York.

The Company recorded other income of \$11,000 and \$552,000 in 2007 and 2006, respectively, consisting of recoveries received from a venture capital investment, which had been written off in 2002. We recorded these recoveries as we received them because the extent of future payments, if any, could not be readily determined.

#### Loss from Continuing Operations before Income Taxes

Loss from continuing operations before income taxes was \$159.6 million in 2008, an increase of \$151.6 million from a loss of \$8.0 million in 2007. We believe this year-over-year increase is not indicative of future performance as the increase in loss is primarily the result of the Company incurring significant expenses that were specific to the events of 2008 as discussed above.

Loss from continuing operations before income taxes was \$8.0 million in 2007, an increase of \$8.3 million from income of \$0.3 million in 2006. The increase in loss was the result of the reclassification of our Consumer Branded Products and UCC Capital businesses to discontinued operations, along with additional corporate expenses incurred in 2007 in building our brand management business. No revenues were earned in the first ten months of 2006 in connection with our current continuing operations.

#### Income Taxes – Continuing Operations

In 2008, we recorded current income tax expense of \$0.3 million. This reflects \$0.1 million of state income tax expense and \$0.2 million of foreign taxes withheld on franchise royalties received from franchisees located outside of the United States in accordance with applicable tax treaties. In 2007, we recorded current income tax benefit of \$1.6 million due to the realization of tax benefits to offset income related to a discontinued subsidiary. In 2006, we recorded current income tax expense of \$0.3 million reflecting primarily foreign taxes withheld on franchise royalties received from franchisees located outside of the United States.

In 2008, we recorded combined federal and state deferred tax benefit of \$6.3 million. In 2007, we recorded combined federal and state deferred tax liability of \$2.5 million. Both the 2008 deferred tax benefit and the 2007 tax expense resulted from the timing differences between the amortization of trademarks and other intangible assets for tax purposes and impairment charges recorded for book purposes. In 2006, we recorded no deferred tax benefit or expense. For more information about our deferred tax expense and benefit, see Note 10 – Income Taxes to our Consolidated Financial Statements.

As discussed in Item 1 – Business under the caption “Tax Loss Carry-Forwards and Limits on Ownership of Our Common Stock,” the Company has accumulated significant deferred tax assets related to tax loss carry-forwards. However, under GAAP, we are not able to recognize the value of our deferred tax assets attributable to our tax loss carry-forwards until such time as we have satisfied GAAP requirements that there exists objective evidence of our ability to generate sustainable taxable income from our operations. Because we have a history of losses, we have not satisfied this requirement as of December 31, 2008. Even if we are able to report net income in 2009 and beyond, we may not satisfy this accounting requirement over the next several quarters (and perhaps longer) because continued amortization of trademarks in future periods may generate additional tax losses. In addition, our net tax loss carry-forwards will not offset all state, local and foreign tax liabilities, and we will remain subject to alternative minimum taxes.

#### Discontinued Operations

In 2008, the Company recorded net losses from discontinued operations of \$102.2 million or (\$1.81) per share. This amount includes \$53.8 million of operating loss (including impairment charges of \$66.9 million) from Bill Blass and Waverly which comprised our Consumer Branded Products business, a net loss of approximately \$10.6 million on the sale of those businesses, an impairment of UCC Capital goodwill of \$37.5 million, and \$0.8 million in net loss from

the Company's discontinued UCC Capital loan servicing business. For a detailed Statement of Operations from the Company's discontinued operations, see Note 15 – Discontinued Operations to our Consolidated Financial Statements. Our net income tax benefit from discontinued operations in 2008 was \$19.9 million, consisting of a reversal of deferred tax expenses recorded in 2007. Both the 2008 deferred tax benefit and the 2007 tax expense resulted from the timing differences relating to the amortization of trademarks for book versus tax purposes. See Note 10 – Income Taxes to our Consolidated Financial Statements. The current tax expense for 2006 was attributable to the application of the alternative minimum tax.

In 2007, the Company recognized net income from discontinued operations of \$4.0 million or earnings of \$0.08 per share. This amount reflects net income of \$6.0 million generated by our Consumer Branded Products business, \$1.4 million in operating expenses of UCC Capital, and \$0.6 million relating to other legacy expenses.

## QUARTERLY FINANCIAL INFORMATION

The following tables summarize the Company's unaudited condensed consolidated financial condition and results of operations for each of the quarters of the fiscal years ended December 31, 2008 and 2007. Similar to year-over-year comparisons, quarter-over-quarter comparisons are not meaningful because we acquired several brands throughout 2007 and early 2008 and certain atypical events and circumstances in 2008 materially affected our quarterly financial data.

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Consolidated Balance Sheet (in thousands)	2008 As of			
	March 31,	June 30, (Unaudited)	September 30,	December 31, (Audited)
<b>Assets</b>				
Cash & cash equivalents	\$ 18,306	\$ 12,604	\$ 8,638	\$ 8,293
Trade receivable, net of allowances	5,119	5,903	4,946	5,617
Other receivables	4,293	3,085	1,993	834
Inventory	1,131	1,248	1,116	1,232
Restricted cash	2,371	771	-	-
Prepaid expenses and other current assets	3,006	2,869	2,161	2,439
Total current assets	34,226	26,480	18,854	18,415
Property and equipment, net	5,773	5,532	4,971	4,395
Investment in joint venture	561	288	262	87
Goodwill	49,233	-	-	-
Trademarks	204,381	106,500	78,422	78,422
Other intangible assets, net of amortization	7,040	6,743	6,400	6,158
Deferred financing costs, net and other assets	5,379	4,939	5,228	5,486
Restricted cash	908	908	936	940
Assets held for sale	122,035	60,070	52,855	-
Total Assets	429,536	\$ 211,460	\$ 167,928	\$ 113,903
<b>Liabilities and Stockholders' Equity</b>				
Accounts payable and accrued expenses	\$ 8,923	\$ 10,552	\$ 6,986	\$ 9,373
Deferred revenue	3,660	3,807	4,557	4,044
Current portion of long-term debt, net of debt discount	39,085	40,453	1,653	611
Acquisition related liabilities	6,699	4,918	4,749	4,689
Total current liabilities	58,367	59,730	17,945	18,717
Long-term debt, net of debt discount	138,833	134,511	172,462	140,262
Deferred tax liability	27,631	8,588	7,556	-
Acquisition related liabilities	776	930	532	480
Other long-term liabilities	3,690	3,664	3,123	3,937
Liabilities held for sale	2,815	2,947	1,817	-
Total liabilities	232,112	210,370	203,435	163,396
<b>Commitments and Contingencies</b>				
Minority interest	1,814	-	-	-
<b>Stockholders' equity (deficit):</b>				
Preferred stock	-	-	-	-
Common stock	568	568	569	569
Additional paid-in capital	2,676,230	2,677,560	2,679,315	2,681,600
Treasury stock	(1,757)	(1,757)	(1,757)	(1,757)
Accumulated deficit	(2,479,431)	(2,675,281)	(2,713,634)	(2,729,905)
Stockholders' equity (deficit)	195,610	1,090	(35,507)	(49,493)
Total liabilities and stockholders' equity (deficit)	\$ 429,536	\$ 211,460	\$ 167,928	\$ 113,903





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Consolidated Statements of Operations

(Unaudited)

2008

For the three months ended

(Dollars and shares in thousands, except per share amounts)	March 31	June 30	September 30	December 31
<b>Revenues:</b>				
Royalty revenues	\$ 5,359	\$ 6,452	\$ 6,733	\$ 6,191
Factory revenues	2,975	4,761	4,598	4,976
Franchise fee revenues	1,583	397	454	1,182
Licensing and other revenues	308	314	379	294
Total revenues	10,225	11,924	12,164	12,643
<b>Operating expenses:</b>				
Cost of sales	(2,322)	(2,974)	(3,093)	(3,095)
<b>Selling, general and administrative expenses:</b>				
Franchising	(4,328)	(4,335)	(3,426)	(4,869)
Corporate	(4,366)	(3,468)	(2,987)	(4,639)
<b>Professional fees:</b>				
Franchising	(276)	(354)	(498)	(557)
Corporate	(998)	(1,010)	(71)	(617)
Special Investigations	-	(1,932)	(1,640)	(325)
Impairment of intangible assets	-	(109,733)	(28,148)	-
Depreciation and amortization	(491)	(674)	(935)	(916)
Restructuring charges	-	(815)	(281)	-
Total operating expenses	(12,781)	(125,295)	(41,079)	(15,018)
Operating loss	(2,556)	(113,371)	(28,915)	(2,375)
<b>Non-operating income (expense):</b>				
Interest income	250	84	44	61
Interest expense	(2,279)	(2,472)	(2,793)	(3,146)
Financing charges	(37)	(889)	(791)	(97)
Other (expense) income, net	(483)	(193)	240	152
Total non-operating expense	(2,549)	(3,470)	(3,300)	(3,030)
Loss from continuing operations before income taxes	(5,105)	(116,841)	(32,215)	(5,405)
<b>Income tax (expense) benefit:</b>				
Current	(77)	(107)	(72)	(81)
Deferred	(1,190)	4,126	-	3,395
Total provision for income taxes	(1,267)	4,019	(72)	3,314
Loss from continuing operations	(6,372)	(112,822)	(32,287)	(2,091)
Income (loss) from discontinued operations, net of income taxes	1,067	(83,027)	(6,067)	(14,180)
Net loss	\$ (5,305)	\$ (195,849)	\$ (38,354)	\$ (16,271)
<b>Loss per share (basic and diluted) from continuing operations</b>				
	\$ (0.11)	\$ (1.99)	\$ (0.57)	\$ (0.04)
	\$ 0.02	\$ (1.47)	\$ (0.11)	\$ (0.25)

Income (loss) per share (basic and diluted) from discontinued operations								
Net income (loss) per share - basic and diluted	\$	(0.09)	\$	(3.46)	\$	(0.68)	\$	(0.29)
Weighted average shares outstanding - basic		56,267		56,621		56,639		56,671
Weighted average shares outstanding - diluted		56,267		56,621		56,639		56,671

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Consolidated Balance Sheet

(in thousands)	2007			
	March 31,	June 30,	September 30,	December 31,
		(Unaudited)		(Audited)
<b>Assets</b>				
Cash & cash equivalents	\$ 37,980	\$ 27,116	\$ 29,432	\$ 46,569
Trade receivable, net of allowances	2,853	2,631	3,837	4,710
Other receivables	1,663	1,288	2,102	2,673
Restricted cash	7,014	5,514	5,222	5,174
Prepaid expenses and other current assets	1,513	1,479	2,045	2,873
<b>Total current assets</b>	<b>51,023</b>	<b>38,028</b>	<b>42,638</b>	<b>61,999</b>
Property and equipment, net	2,600	2,746	2,780	3,941
Goodwill	17,012	22,739	51,629	47,514
Trademarks	85,500	85,500	113,000	115,850
Other intangible assets, net of amortization	5,493	5,369	6,925	6,541
Deferred financing costs, net and other assets	908	1,441	2,093	2,926
Restricted cash	-	1,498	1,818	1,656
Assets held for sale	76,928	115,666	116,847	119,183
<b>Total Assets</b>	<b>\$ 239,464</b>	<b>\$ 272,987</b>	<b>\$ 337,730</b>	<b>\$ 359,610</b>
<b>Liabilities and Stockholders' Equity</b>				
Accounts payable and accrued expenses	\$ 7,547	\$ 8,797	\$ 6,602	\$ 7,220
Deferred revenue	5,267	5,651	4,965	4,033
Current portion of long-term debt	958	1,946	4,273	6,340
Acquisition related liabilities	5,450	6,254	9,415	7,360
<b>Total current liabilities</b>	<b>19,222</b>	<b>22,648</b>	<b>25,255</b>	<b>24,953</b>
Long-term debt	25,542	51,854	87,055	103,238
Deferred tax liability	20,493	20,537	21,716	26,607
Acquisition related liabilities	2,954	5,546	2,429	3,915
Other long-term liabilities	2,376	2,093	2,078	3,412
Liabilities held for sale	661	1,005	2,178	1,482
<b>Total liabilities</b>	<b>71,248</b>	<b>103,683</b>	<b>140,711</b>	<b>163,607</b>
<b>Commitments and Contingencies</b>				
Minority interest	2,824	2,982	3,038	3,040
<b>Stockholders' equity:</b>				
Preferred stock	-	-	-	-
Common stock	506	512	551	557
Additional paid-in capital	2,634,694	2,637,268	2,664,771	2,668,289
Treasury stock	(352)	(1,757)	(1,757)	(1,757)
Accumulated deficit	(2,469,456)	(2,469,701)	(2,469,584)	(2,474,126)
<b>Stockholders' equity</b>	<b>165,392</b>	<b>166,322</b>	<b>193,981</b>	<b>192,963</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 239,464</b>	<b>\$ 272,987</b>	<b>\$ 337,730</b>	<b>\$ 359,610</b>



## Consolidated Statements of Operations

(Unaudited)

2007

For the three months ended

(Dollars and shares in thousands, except per share amounts)	March 31	June 30	September 30	December 31
<b>Revenues:</b>				
Royalty revenues	\$ 2,175	\$ 3,515	\$ 4,899	\$ 5,133
Franchise fee revenues	103	1,158	1,466	720
Licensing and other revenues	10	11	118	280
<b>Total revenues</b>	<b>2,288</b>	<b>4,684</b>	<b>6,483</b>	<b>6,133</b>
<b>Operating expenses:</b>				
<b>Selling, general and administrative expenses:</b>				
Franchising	(1,612)	(2,704)	(2,990)	(3,382)
Corporate	(1,978)	(3,018)	(2,659)	(4,098)
<b>Professional fees:</b>				
Franchising	(200)	28	(238)	(794)
Corporate	(567)	(368)	(320)	(417)
Depreciation and amortization	(155)	(232)	(298)	(694)
<b>Total operating expenses</b>	<b>(4,512)</b>	<b>(6,294)</b>	<b>(6,505)</b>	<b>(9,385)</b>
<b>Operating loss</b>	<b>(2,224)</b>	<b>(1,610)</b>	<b>(22)</b>	<b>(3,252)</b>
<b>Non-operating income (expense):</b>				
Interest income	759	385	291	593
Interest expense	(160)	(653)	(737)	(1,346)
Other income (expense), net	4	36	(4)	(25)
<b>Total non-operating income (expense)</b>	<b>603</b>	<b>(232)</b>	<b>(450)</b>	<b>(778)</b>
<b>Loss from continuing operations before income taxes</b>	<b>(1,621)</b>	<b>(1,842)</b>	<b>(472)</b>	<b>(4,030)</b>
<b>Income tax (expense) benefit:</b>				
Current	367	454	384	357
Deferred	-	(100)	(976)	(1,405)
<b>Total provision for income taxes</b>	<b>367</b>	<b>354</b>	<b>(592)</b>	<b>(1,048)</b>
<b>Loss from continuing operations</b>	<b>(1,254)</b>	<b>(1,488)</b>	<b>(1,064)</b>	<b>(5,078)</b>
<b>Income from discontinued operations</b>	<b>1,056</b>	<b>803</b>	<b>1,145</b>	<b>1,012</b>
<b>Net (loss) income</b>	<b>\$ (198)</b>	<b>\$ (685)</b>	<b>\$ 81</b>	<b>\$ (4,066)</b>
<b>Loss per share (basic and diluted) from continuing operations</b>				
	<b>\$ (0.03)</b>	<b>\$ (0.03)</b>	<b>\$ (0.02)</b>	<b>\$ (0.09)</b>
<b>Income per share (basic and diluted) from discontinued operations</b>				
	<b>\$ 0.02</b>	<b>\$ 0.02</b>	<b>\$ 0.02</b>	<b>\$ 0.02</b>
<b>Net income (loss) per share - basic and diluted</b>	<b>\$ (0.01)</b>	<b>\$ (0.01)</b>	<b>\$ -</b>	<b>\$ (0.07)</b>
<b>Weighted average shares outstanding - basic</b>	<b>45,159</b>	<b>50,824</b>	<b>52,384</b>	<b>55,116</b>
<b>Weighted average shares outstanding - diluted</b>	<b>45,159</b>	<b>54,465</b>	<b>54,250</b>	<b>55,116</b>



QUARTER ENDED MARCH 31, 2008 VERSUS QUARTER ENDED MARCH 31, 2007

Royalty, Franchise Fee, Factory, Licensing and Other Revenues

We recognized \$10.2 million in revenues for the three months ended March 31, 2008, an increase of \$7.9 million, or 347%, from \$2.3 million in revenues for the three months ended March 31, 2007. The quarter-over-quarter increase in revenues reflects full quarter operating revenues in first quarter 2008 for Marble Slab Creamery (acquired in February 2007), Maggie Moo's (acquired in February 2007), Pretzel Time (acquired in August 2007) and Pretzelmaker (acquired in August 2007), and partial quarter revenues in the first quarter 2008 for Great American Cookies (acquired in January 2008). Of the \$10.2 million in revenues recognized for the three months ended March 31, 2008, \$5.4 million related to royalties, an increase of \$3.2 million, or 146%, from the 2007 comparable quarter; \$1.6 million related to franchise fees, an increase of \$1.5 million from the 2007 comparable quarter; and \$0.2 million in licensing and other revenues, consisting of licensing revenues, management fees from the Shoebox New York joint venture and rebates earned from vendors with which the Company conducts business. The remaining \$3.0 million in first quarter 2008 revenues were from the sales of cookie dough and other ancillary products to our Great American Cookies franchisees. In connection with our acquisition of Great American Cookies in January 2008, the Company acquired a manufacturing facility that produces cookie dough for, and supplies other products to, franchisees of the Great American Cookies brand.

Cost of Sales

For the three months ended March 31, 2008, the Company incurred \$2.3 million in cost of sales associated with our Great American Cookies manufacturing facility, including raw ingredients, labor and other manufacturing costs. Cost of sales for the three months ended March 31, 2008 includes \$234,000 of purchase accounting adjustments related to inventory acquired. The Company incurred no cost of sales in 2007, as the manufacturing facility was acquired by the Company in January 2008.

Selling, General and Administrative Expenses

SG&A expenses consist primarily of compensation, stock compensation expense and personnel related costs, rent, facility related support costs, travel and advertising.

For the three months ended March 31, 2008, the Company recorded Corporate SG&A expenses of \$4.4 million, an increase of \$2.4 million, or 121%, from \$2.0 million for the 2007 comparable quarter. This quarter-over-quarter increase is attributable to additional costs resulting from the hiring of staff to support the Company's growth and to bolster the Company's corporate infrastructure, and an increase of \$0.7 million in stock compensation expenses. The Company recorded Franchising SG&A of \$4.3 million for the three months ended March 31, 2008, an increase of \$2.7 million, or 168%, from \$1.6 million for the 2007 comparable quarter. This increase reflects the additional costs resulting from continued integration of our brands and the acquisition of Great American Cookies in January 2008.

Stock Compensation Expense

For the three months ended March 31, 2008, the Company recorded stock compensation expense of \$1.3 million, an increase of \$0.7 million, or 110%, from \$0.6 million for the three months ended March 31, 2007. The quarter-over-quarter increase is attributable to additional grants of options to Company employees, accelerated vesting of a former officer's options, and an adjustment in certain forfeiture assumptions that resulted in increased expense during the 2008 period.

Professional Fees



For the three months ended March 31, 2008, the Company incurred corporate professional fees of \$1.0 million, an increase of \$0.4 million, or 76%, from \$0.6 million for the three months ended March 31, 2007. Corporate professional fees primarily consist of legal expenses associated with our public reporting, compliance and corporate finance activities, and accounting fees related to auditing and tax services. The Company incurred professional fees related to franchising of \$0.3 million for the three months ended March 31, 2008, increasing \$0.1 million, or 38%, from the 2007 comparable quarter. Franchising professional fees primarily consist of legal and accounting fees associated with franchising activities and trademark maintenance. The quarter-over-quarter increase in professional fees reflects the increased costs of compliance and auditing associated with the growth of the Company and the integration of acquisitions.

#### Depreciation and Amortization

Depreciation expenses arise from property and equipment purchased for use in our operations. Amortization costs arise from acquired intangible assets.

For the three months ended March 31, 2008 and 2007, the Company recorded depreciation and amortization expenses of \$0.5 million and \$0.2 million, respectively. The quarter-over-quarter increase is attributable primarily to the additional assets acquired as a result of the Great American Cookies acquisition.

#### Total Operating Expenses

Total operating expenses for the three months ended March 31, 2008 were \$12.8 million, an increase of \$8.3 million, or 183%, from \$4.5 million for the three months ended March 31, 2007. The quarter-over-quarter increase reflects the additional expenses incurred by the Company in operating the brands that we acquired, including \$2.3 million in cost of sales.

#### Interest Income

The Company recognized interest income of \$0.3 million for the three months ended March 31, 2008, a decrease of \$0.5 million, or 67%, from \$0.8 million for three months ended March 31, 2007. Interest income primarily reflects the interest earned on our cash balances, which declined between the respective periods.

#### Interest Expense

The Company recorded interest expense of \$2.3 million for the three months ended March 31, 2008, an increase of \$2.1 million from \$0.2 million for the three months ended March 31, 2007. This quarter-over-quarter increase reflects the additional interest expense incurred in connection with our increased borrowings under our BTMUCC Credit Facility. (See Note 9 – Long-Term Debt to our Consolidated Financial Statements for a description of the Original BTMUCC Credit Facility, the January 2008 Amendment, the Amended BTMUCC Credit Facility, and the subsequent amendments).

#### Financing Charges

The Company incurred \$37,000 in financing charges in the first quarter 2008 consisting of legal fees related to the January 2008 Amendment of the BTMUCC Credit Facility. The Company did not incur any similar financing charges in 2007.

#### Other Income (Expense)

The Company recorded other expense of \$0.5 million for the three months ended March 31, 2008, primarily reflecting certain non-operating expenses attributable to the Company's brands, as compared to income of \$4,000 for the three months ended March 31, 2007.

#### Loss from Continuing Operations before Income Taxes

Loss from continuing operations before income taxes was \$5.1 million for the three months ended March 31, 2008, an increase of \$3.5 million, or 215%, from a loss of \$1.6 million for the three months ended March 31, 2007. The quarter-over-quarter increase in loss was the result of corporate expenses incurred in 2008 towards the building of our brand management business and increased interest expense as a result of the Company's increased outstanding debt.

#### Income Taxes – Continuing Operations

Income taxes for the three months ended March 31, 2008 were \$1.3 million as compared to a benefit of \$0.4 million for the three months ended March 31, 2007. Deferred income tax expense comprised \$1.2 million of the first quarter 2008 amount.

#### Discontinued Operations

For the three months ended March 31, 2008, the Company recognized net income from discontinued operations of \$1.1 million. This amount includes \$1.1 million of net income from Bill Blass and Waverly, which comprised our Consumer Branded Products business, \$0.4 million in net loss from the Company's discontinued mortgage backed securities business, and \$0.4 million in net income related to our former mobile and wireless communications businesses. A deferred income tax benefit of \$0.2 million is included within discontinued operations for the three months ended March 31, 2008. For a detailed Statement of Operations from the Company's discontinued Consumer Branded Products business, see Note 15 – Discontinued Operations to our Consolidated Financial Statements.

For the three months ended March 31, 2007, the Company recognized net income from discontinued operations of \$1.1 million. This amount reflects net income of \$0.9 million generated by our Consumer Branded Products and the reversal of \$0.6 million in sales tax liabilities related to our former mobile and wireless communications businesses, offset by net loss from UCC of \$0.4 million and legal fees of \$0.2 million incurred in connection with litigation related to the transportation business sale. Income tax expense incurred within discontinued operations was \$0.4 million for the three months ended March 31, 2007.

QUARTER ENDED JUNE 30, 2008 VERSUS QUARTER ENDED JUNE 30, 2007

Royalty, Franchise Fee, Factory, Licensing and Other Revenues

We recognized \$11.9 million in revenues for the three months ended June 30, 2008, an increase of \$7.2 million, or 155%, from \$4.7 million in revenues for the three months ended June 30, 2007. The quarter-over-quarter increase in revenues reflects full quarter operating revenues in second quarter 2008 for Pretzel Time (acquired in August 2007), Pretzelmaker (acquired in August 2007) and Great American Cookies (acquired in January 2008). Of the \$11.9 million in revenues recognized for the three months ended June 30, 2008, \$6.4 million related to royalties, an increase of \$2.9 million, or 84%, from the 2007 comparable quarter; \$0.4 million related to franchise fees, a decrease of \$0.8 million, or 66%, from the 2007 comparable quarter; and \$0.3 million in licensing and other revenues, consisting of licensing revenues, management fees from the Shoebox New York joint venture and rebates earned from vendors with which the Company conducts business. The remaining \$4.8 million in second quarter 2008 revenues were from the sales of cookie dough and other ancillary products to our Great American Cookies franchisees.

Cost of Sales

For the three months ended June 30, 2008, the Company incurred \$3.0 million in cost of sales associated with our Great American Cookies manufacturing facility, including raw ingredients, labor and other manufacturing costs. The manufacturing facility was acquired by the Company in January 2008. The Company incurred no cost of sales in 2007.

Selling, General and Administrative Expenses

SG&A expenses consist primarily of compensation, stock compensation expense and personnel related costs, rent, facility related support costs, travel and advertising.

For the three months ended June 30, 2008, the Company recorded Corporate SG&A expenses of \$3.5 million, an increase of \$0.5 million, or 15%, from \$3.0 million for the 2007 comparable quarter. This quarter-over-quarter increase is attributable to additional costs resulting from the hiring of staff to support the Company's growth and to bolster the Company's corporate infrastructure. The Company recorded Franchising SG&A of \$4.3 million for the three months ended June 30, 2008, an increase of \$1.6 million, or 60% from \$2.7 million for the 2007 comparable quarter. This increase is attributable to the continued integration of our brands and the acquisition of Great American Cookies during 2008.

Stock Compensation Expense

For the three months ended June 30, 2008, the Company recorded stock compensation expense of \$0.9 million, an increase of \$0.2 million, or 21%, from \$0.7 million for the three months ended June 30, 2007. The increase is attributable to accelerated vesting of options for a former officer of the Company in connection with the termination of his employment at the end of May 2008.

Professional Fees

For the three months ended June 30, 2008, the Company incurred \$1.9 million in professional fees related to special investigations. The Company did not incur such professional fees in 2007.

For the three months ended June 30, 2008, the Company incurred corporate professional fees of \$1.0 million, an increase of \$0.6 million, or 174%, from \$0.4 million for the three months ended June 30, 2007. Corporate professional

fees primarily consist of legal fees associated with public reporting, compliance and litigation (including claims arising from the same events covered by special investigations), and accounting fees related to auditing and tax services. The Company incurred professional fees related to franchising of \$0.4 million for the three months ended June 30, 2008, an increase of \$0.4 million from the 2007 comparable quarter. Franchising professional fees primarily consist of legal and accounting fees associated with franchising activities and trademark maintenance. The increase in corporate and franchising professional fees reflects the increased legal and auditing costs associated with the events of May 2008, the growth of the Company, and the integration of acquisitions.

#### Impairment of Intangible Assets

In accordance with SFAS No. 142, the Company tests goodwill, trademarks and other intangibles for potential impairment annually and between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit or the assets below its respective carrying amount.

In May 2008, the Company disclosed issues related to our debt structure that materially and negatively affected the Company. Based on our analyses of the value of our acquired intangible assets, we recorded impairment charges totaling \$109.7 million during the three months ended June 30, 2008. See Note 6 – Goodwill, Trademarks and Other Intangible Assets for additional details regarding impairment. The Company did not record any impairment charges in the 2007 comparable quarter.

### Depreciation and Amortization

Depreciation expenses arise from property and equipment purchased for use in our operations. Amortization costs arise from acquired intangible assets.

For the three months ended June 30, 2008 and 2007, the Company recorded depreciation and amortization expenses of \$0.7 million and \$0.2 million, respectively. The quarter-over-quarter increase is attributable to additional assets acquired as a result of the Great American Cookies acquisition and accelerated depreciation on certain corporate fixed assets.

### Restructuring Charges

On May 31, 2008, in conjunction with cost cutting efforts, we reduced the staff in the New York corporate office. The Company recorded \$0.8 million in restructuring charge in the three month period ended June 30, 2008 related to employee separation benefits. The Company did not incur restructuring charges in 2007.

### Total Operating Expenses

Total operating expenses were \$125.3 million for the three months ended June 30, 2008, including impairment charges related to intangible assets of \$109.7 million, \$1.9 million of professional fees related to special investigations and \$0.8 million in restructuring charges. Operating expenses were \$6.2 million for the three months ended June 30, 2007.

Excluding the impairment charge related to intangible assets, professional fees related to special investigations and restructuring charges, operating expenses for the three months ended June 30, 2008 were \$12.8 million, an increase of \$6.5 million, or 104%, from \$6.3 million for the three months ended June 30, 2007. The quarter-over-quarter increase reflects the additional expenses incurred by the Company in operating the brands that we acquired, including \$3.0 million in cost of sales, a \$2.1 million increase in SG&A expenses, a \$1.0 million increase in corporate and franchising professional fees, and a \$0.4 million increase in depreciation and amortization.

### Interest Income

The Company recognized interest income of \$0.1 million for the three months ended June 30, 2008, a decrease of \$0.3 million, or 78%, from \$0.4 million for the three months ended June 30, 2007. Interest income primarily reflects the interest earned on our cash balances, which declined between the respective periods.

### Interest Expense

The Company recorded interest expense of \$2.5 million for the three months ended June 30, 2008, an increase of \$1.8 million, or 279%, from \$0.7 million for the three months ended June 30, 2007. The increase reflects additional interest expense incurred in connection with our increased borrowings under our BTMUCC Credit Facility. (See Note 9 – Long-Term Debt to our Consolidated Financial Statements for a description of the Original BTMUCC Credit Facility, the January 2008 Amendment, the Amended BTMUCC Credit Facility, and the subsequent amendments.)

### Financing Charges

The Company incurred \$0.9 million in financing charges in the second quarter 2008 consisting of legal fees related to the August 2008 restructuring of the BTMUCC Credit Facility. The Company did not incur any similar financing charges in 2007.

Other Income (Expense)

The Company recognized other expense of \$193,000 for the three months ended June 30, 2008, a decrease of \$229,000 from income of \$36,000 for the 2007 comparable quarter. Other expense in second quarter 2008 was primarily comprised of the Company's portion of the loss from our investment in Shoebox New York. Other income in second quarter 2007 is due to the reversal of certain previously expensed items.

Loss from Continuing Operations before Income Taxes

The Company's loss from continuing operations for the three months ended June 30, 2008 was \$116.8 million, an increase of \$115.0 million from a loss of \$1.8 million for the three months ended June 30, 2007. The increase in loss is primarily the result of the Company incurring significant expenses that were specific to the events of 2008, including impairment charges related to intangible assets of \$109.7 million, professional fees related to special investigations of \$1.9 million and a charge of \$0.8 million resulting from our corporate restructuring.

#### Income Taxes – Continuing Operations

Income taxes for the three months ended June 30, 2008 were a benefit of \$4.0 million as compared to a benefit of \$0.4 million for the three months ended June 30, 2007.

#### Discontinued Operations

For the three months ended June 30, 2008, the Company recorded net loss from discontinued operations of \$83.0 million. This amount includes impairment charges of \$98.4 million on intangible assets associated with UCC Capital, Bill Blass and Waverly. Included within net loss from discontinued operations is approximately \$14.9 million in income tax benefit, almost all of which related to the recognition of deferred income tax benefits. For a detailed Statement of Operations from the Company's discontinued Consumer Branded Products business, refer to Note 15 – Discontinued Operations to our Consolidated Financial Statements.

For the three months ended June 30, 2007, the Company recognized net income from discontinued operations of \$0.8 million. This amount reflects net income of \$2.0 million generated by our Consumer Branded Products and loan servicing businesses offset by \$1.2 million in expenses attributed to our legacy wireless and transportation businesses. Income tax expense incurred within discontinued operations was \$0.6 million for the three months ended June 30, 2007.

#### QUARTER ENDED SEPTEMBER 30, 2008 VERSUS QUARTER ENDED SEPTEMBER 30, 2007

##### Royalty, Franchise Fee, Factory, Licensing and Other Revenues

We recognized \$12.2 million in revenues for the three months ended September 30, 2008, an increase of \$5.7 million, or 88%, from \$6.5 million in revenues for the three months ended September 30, 2007. The increase in revenues reflects full-quarter operating revenues for Pretzel Time (acquired in August 2007), Pretzelmaker (acquired in August 2007) and Great American Cookies (acquired in January 2008). Of the \$12.2 million in revenues recognized for the three months ended September 30, 2008, \$6.7 million related to royalties, an increase of \$1.8 million, or 37%, from the 2007 comparable quarter; \$0.5 million related to franchise fees, a decline of \$1.0 million, or 69%, from the 2007 comparable quarter; and \$0.4 million in licensing and other revenues, consisting of licensing revenues, management fees from the Shoebox New York joint venture and rebates earned from vendors with which the Company conducts business. The remaining \$4.6 million in third quarter 2008 revenues were from the sales of cookie dough and other ancillary products to our Great American Cookies franchisees.

##### Cost of Sales

For the three months ended September 30, 2008, the Company incurred \$3.1 million in cost of sales associated with our Great American Cookies manufacturing facility, including raw ingredients, labor and other manufacturing costs. The manufacturing facility was acquired by the Company in January 2008. The Company incurred no cost of sales in 2007.

##### Selling, General and Administrative Expenses

SG&A expenses consist primarily of compensation, stock compensation expense and personnel related costs, rent, facility related support costs, travel and advertising.

For the three months ended September 30, 2008, the Company recorded Corporate SG&A expenses of \$3.0 million, an increase of \$0.3 million, or 12%, from \$2.7 million for the 2007 comparable quarter. This quarter-over-quarter



increase is attributable to additional costs resulting from the hiring of staff to support the Company's growth and to bolster the Company's corporate infrastructure, slightly offset by reduced stock compensation expense. The Company recorded Franchising SG&A of \$3.4 million for the three months ending September 30, 2008, an increase of \$0.4 million, or 15%, from \$3.0 million for the 2007 comparable quarter. This increase is attributable to the continued integration of our brands and the acquisition of Great American Cookies in January 2008.

#### Stock Compensation Expense

For the three months ended September 30, 2008, the Company recorded stock compensation expense of \$0.8 million, a decrease of \$0.1 million, or 8.6%, from \$0.9 million for the 2007 comparable quarter. The decrease is the result of more options granted in third quarter 2007 as compared to third quarter 2008 at greater fair value.

#### Professional Fees

For the three months ended September 30, 2008, the Company incurred \$1.6 million in professional fees related to special investigations. The Company did not incur such professional fees in 2007.

For the three months ended September 30, 2008, the Company incurred corporate professional fees of \$0.1 million, a decrease of \$0.2 million, or 78%, from \$0.3 million for the three months ended September 30, 2007. Corporate professional fees primarily consist of legal fees associated with public reporting, compliance and litigation (including claims arising from the same events as the special investigations), and accounting fees related to auditing and tax services. The Company incurred professional fees related to franchising of \$0.5 million for the three months ended September 30, 2008, an increase of \$0.3 million, or 109%, from \$0.2 million for the 2007 comparable quarter. Franchising professional fees primarily consist of legal and accounting fees associated with franchising activities and trademark maintenance. The overall increase in professional fees reflects the increased legal and auditing fees associated with the events of 2008, the growth of the Company, and the integration of acquisitions.

#### Impairment of Intangible Assets

Market conditions continued to deteriorate during the three months ended September 30, 2008 requiring the Company to record additional impairment charges. Based on our analyses of the value of our acquired intangible assets, we recorded impairment charges totaling \$28.1 million during the three months ended September 30, 2008. The Company did not record any impairment charges during the 2007 comparable quarter.

#### Depreciation and Amortization

Depreciation expenses arise from property and equipment purchased for use in our operations. Amortization costs arise from acquired intangible assets.

For the three months ended September 30, 2008 and 2007, the Company recorded depreciation and amortization expenses of \$0.9 million and \$0.3 million, respectively. The increase in the 2008 period is attributable to additional assets acquired as a result of the Great American Cookies purchase and accelerated depreciation on certain corporate fixed assets.

#### Restructuring Charges

In conjunction with cost reduction efforts, we reduced the staff in the New York corporate office. The Company recorded a \$0.3 million restructuring charge related to employee separation benefits during the three months ended September 30, 2008. The Company did not incur restructuring charges in 2007.

#### Total Operating Expenses

Total operating expenses were \$41.1 million for the three months ended September 30, 2008, including impairment charges on intangible assets of \$28.1 million, \$1.6 million of professional fees related to special investigations and \$0.3 million in restructuring charges. Operating expenses were \$6.5 million for the three months ended September 30,

2007.

Excluding the impairment charge related to intangible assets, professional fees related to special investigations and restructuring charges, operating expenses for the three months ended September 30, 2008 were \$11.0 million, an increase of \$4.5 million, or 69%, from \$6.5 million for the three months ended September 30, 2007. The quarter-over-quarter increase reflects the additional expenses incurred by the Company in operating the brands that we acquired, including \$3.1 million in cost of sales, a \$0.7 million increase in SG&A expenses and a \$0.6 million increase in depreciation and amortization expenses.

#### Interest Income

The Company recognized interest income of \$44,000 for the three months ended September 30, 2008, a decrease of \$247,000, or 85%, from \$291,000 for the three months ended September 30, 2007. Interest income primarily reflects the interest earned on our cash balances, which declined between the respective periods.

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#### Interest Expense

The Company recorded interest and other expense of \$2.8 million for the three months ended September 30, 2008, an increase of \$2.1 million from \$0.7 million for the three months ended September 30, 2007. This increase reflects additional interest expense incurred in connection with our increased borrowings under our BTMUCC Credit Facility. (See Note 9 – Long-Term Debt to our Consolidated Financial Statements for a description of the Original BTMUCC Credit Facility, the January 2008 Amendment, the Amended BTMUCC Credit Facility, and the subsequent amendments.)

#### Financing charges

The Company incurred \$0.8 million in financing charges in the third quarter 2008 consisting of legal fees related to the August 2008 restructuring of and subsequent amendments to the BTMUCC Credit Facility. The Company did not incur any similar financing charges in 2007.

#### Other Income (Expense)

The Company recognized other income of \$240,000 for the three months ended September 30, 2008 as compared to expense of \$4,000 for the 2007 comparable quarter. Other income in third quarter 2008 was comprised primarily of income recorded as a result of lease settlements related to certain Maggie Moo's legacy corporate stores, offset by an unrealized loss from our investment in Shoebox New York.

#### Loss from Continuing Operations before Income Taxes

The Company's loss from continuing operations for the three months ended September 30, 2008 was \$32.2 million, an increase of \$31.7 million from a loss of \$0.5 million for the three months ended September 30, 2007.

The increase in loss is primarily the result of the Company incurring significant expenses that were specific to the events of 2008, including an impairment charge related to intangible assets of \$28.1 million, professional fees of \$1.6 million related to special investigations and a charge of \$0.3 million resulting from our corporate restructuring.

#### Income Taxes – Continuing Operations

Income taxes for the three months ended September 30, 2008 were \$0.1 million as compared to \$0.6 million for the three months ended September 30, 2007.

#### Discontinued Operations

For the three months ended September 30, 2008, the Company recorded net loss from discontinued operations of \$6.1 million. This amount includes impairment charges of \$6.0 million on intangible assets associated with Bill Blass and Waverly, which comprised our Consumer Branded Products business. Included within net loss from discontinued operations is approximately \$1.0 million in income tax benefit, almost all of which related to the recognition of deferred income tax benefits. For a detailed Statement of Operations from the Company's Consumer Branded Products business, refer to Note 15 – Discontinued Operations to our Consolidated Financial Statements.

For the three months ended September 30, 2007, the Company recognized net income from discontinued operations of \$1.1 million. This amount reflects net income generated by our Consumer Branded Products and UCC Capital businesses. Included within net income from discontinued operations is approximately \$0.6 million in income tax expense.



QUARTER ENDED DECEMBER 31, 2008 VERSUS QUARTER ENDED DECEMBER 31, 2007

Royalty, Franchise Fee, Factory, Licensing and Other Revenues

We recognized \$12.6 million in revenues for the three months ended December 31, 2008, an increase of \$6.5 million, or 106%, from \$6.1 million for the three months ended December 31, 2007. The quarter-over-quarter increase in revenues reflects full-quarter operating revenues for Great American Cookies (acquired in January 2008). Of the \$12.6 million in revenues recognized for the three months ended December 31, 2008, \$6.2 million related to royalties, an increase of \$1.1 million, or 21%, from the 2007 comparable quarter; \$1.2 million related to franchise fees, an increase of \$0.5 million, or 64%, from the 2007 comparable quarter; and \$0.2 million in licensing and other revenues, consisting of licensing revenues, management fees from the Shoebox New York joint venture and rebates earned from vendors with which the Company conducts business. The remaining \$5.0 million in fourth quarter 2008 revenues were from the sales of cookie dough and other ancillary products to our Great American Cookies franchisees.

Cost of Sales

For the three months ended December 31, 2008, the Company incurred \$3.1 million in cost of sales associated with our Great American Cookies manufacturing facility, including raw ingredients, labor and other manufacturing costs. The Company incurred no cost of sales in 2007.

Selling, General and Administrative Expenses

SG&A expenses consist primarily of compensation, stock compensation expense and personnel related costs, rent, facility related support costs, travel and advertising.

For the three months ended December 31, 2008, the Company recorded Corporate SG&A expenses of \$4.6 million, an increase of \$0.5 million, or 13%, from \$4.1 million in the 2007 comparable quarter. Corporate SG&A expenses for fourth quarter 2008 would have been lower than for the 2007 comparable quarter, but for the \$2.1 million of stock compensation expense in fourth quarter 2008 resulting from the acceleration of certain employee stock options that were voluntary cancelled. (See Stock Compensation Expense below.) The Company recorded Franchising SG&A of \$4.9 million, an increase of \$1.5 million, or 44%, from \$3.4 million for the 2007 comparable quarter. This increase is largely attributed to \$1.1 million of expense recorded representing the expected net present value of future contributions to be made by the Company pursuant to a matching contribution program with The Athlete's Foot Marketing Support Fund, LLC, a marketing fund for TAF.

Stock Compensation Expense

For the three months ended December 31, 2008, the Company recorded stock compensation expense of \$2.3 million, an increase of \$0.2 million, or 10%, from \$2.1 million for the three months ended December 31, 2007. The increase is attributable to \$2.1 million of stock compensation expense in fourth quarter 2008 resulting from the acceleration of certain employee stock options that were voluntary cancelled pursuant the Stock Option Cancellation Program. (See Part II, Item 5 under the caption, "Securities Authorized for Issuance under Equity Compensation Plans.")

Professional Fees

For the three months ended December 31, 2008, the Company incurred \$325,000 in professional fees related to special investigations. The Company did not incur such professional fees in 2007.

For the three months ended December 31, 2008, the Company incurred corporate professional fees of \$0.6 million, an increase of \$0.3 million, or 76%, from \$0.3 million for the three months ended December 31, 2007. Corporate professional fees primarily consist of legal fees associated with public reporting, compliance and litigation (including claims arising from the same events covered by special investigations), and accounting fees related to auditing and tax services. The Company incurred professional fees related to franchising of \$0.6 million for the three months ended December 31, 2008, a decrease of \$0.2 million, or 30%, from \$0.8 million for the 2007 comparable quarter. Franchising professional fees primarily consist of legal and accounting fees associated with franchising activities and trademark maintenance.

#### Depreciation and Amortization

Depreciation expenses arise from property and equipment purchased for use in our operations. Amortization costs arise from acquired intangible assets.

For the three months ended December 31, 2008 and 2007, the Company recorded depreciation and amortization expenses of \$0.9 million and \$0.7 million, respectively.

#### Total Operating Expenses

Total operating expenses for the three months ended December 31, 2008 were \$15.0 million, an increase of \$5.7 million, or 61%, from \$9.3 million for the three months ended December 31, 2007. The quarter-over-quarter increase reflects the additional expenses incurred by the Company, including \$3.1 million in cost of sales, \$0.2 million in depreciation and amortization, a \$2.1 million increase in SG&A expenses, and \$0.3 million of professional fees related to special investigations offset by decreases in corporate and franchising professional fees.

#### Interest Income

The Company recognized interest income of \$0.1 million for the three months ended December 31, 2008, a decrease of \$0.5 million, or 90%, from \$0.6 million for three months ended December 31, 2007. Interest income primarily reflects the interest earned on our cash balances, which declined between the respective periods.

#### Interest Expense

The Company recorded interest expense of \$3.1 million for the three months ended December 31, 2008, an increase of \$1.8 million, or 134%, from \$1.3 million for the three months ended December 31, 2007. This increase reflects additional interest expense incurred in connection with our increased borrowings under our BTMUCC Credit Facility. (See Note 9 – Long-Term Debt to our Consolidated Financial Statements for a description of the Original BTMUCC Credit Facility, the January 2008 Amendment, the Amended BTMUCC Credit Facility, and the subsequent amendments.)

#### Financing Charges

The Company incurred \$0.1 million in financing charges in the fourth quarter 2008, consisting of legal fees related to amendments to the BTMUCC Credit Facility. The Company did not incur any similar financing charges in 2007.

#### Other Income (Expense)

The Company recorded other income of \$0.2 million for the three months ended December 31, 2008. The Company recorded other expense of \$25,000 for the three months ended December 31, 2007.

#### Loss from Continuing Operations before Income Taxes

Loss from continuing operations before income taxes was \$5.4 million for the three months ended December 31, 2008, an increase of \$1.4 million, or 36%, from a loss of \$4.0 million for the three months ended December 31, 2007.

#### Income Taxes – Continuing Operations

Income taxes for the three months ended December 31, 2008 were a benefit of \$3.3 million, substantially all of which consisted of a deferred tax benefit from the use of a capital loss carry-forward by a discontinued subsidiary, as compared to an expense of \$1.0 million for the three months ended December 31, 2007. For the 2007 comparable quarter, deferred income tax expense of \$1.4 million offset a current income tax benefit of approximately \$0.4 million.

#### Discontinued Operations

For the three months ended December 31, 2008, the Company recorded net loss from discontinued operations of \$14.2 million. This amount reflects \$10.6 million in net losses recognized on the sales of Waverly and Bill Blass, which



were part of our Consumer Branded Products business. Current income tax expense incurred within discontinued operations for the three months ended December 31, 2007 was \$0.4 million. For a detailed Statement of Operations from the Company's discontinued Consumer Branded Products business, refer to Note 15 – Discontinued Operations to our Consolidated Financial Statements.

For the three months ended December 31, 2007, the Company recorded net income from discontinued operations of \$1.0 million. Net income from Waverly and Bill Blass of \$1.2 million was offset by net loss of approximately \$0.2 million from Aether and UCC Capital. Included within net income from discontinued operations is approximately \$1.2 million in income tax benefit.

## FINANCIAL CONDITION

During 2008, our total assets decreased by approximately \$246 million, while our total liabilities decreased by approximately \$0.2 million. These changes reflect the acquisitions of assets related to Great American Cookies, offset by the sale of assets related to Bill Blass and Waverly, a decrease in cash used for acquisitions and operating expenses, and a decrease in the value of intangible assets.

In connection with the acquisition of Great American Cookies in January 2008, we used approximately \$20 million of the \$46.6 million of cash that the Company had on hand as of December 31, 2007. For the remaining purchase price, the Company and BTMUCC entered into the January 2008 Amendment to the Original BTMUCC Credit Facility. As discussed in detail in Note 9 –Long-Term Debt to our Consolidated Financial Statements, the January 2008 Amendment allowed us to borrow an additional \$70 million but increased debt service payments to BTMUCC and reduced the amount of cash flow available to the Company to cover operating expenses. Specifically, the amendment required \$35 million of the principal amount of the additional borrowings to be reduced to \$5 million by October 17, 2008. The increased debt service obligations and the accelerated redemption feature of the January 2008 Amendment raised significant concerns about the Company's liquidity and capital resources and led us to believe that there was substantial doubt about the Company's ability to continue as a going concern. Based on preliminary projections as of May 2008, the Company expected that without changes to the terms of the January 2008 Amendment or other measures to enhance our liquidity, the Company would have faced a cash shortfall of approximately \$7-10 million by October 2008 and also would have needed additional cash to make the required principal payment on October 17, 2008, then estimated to be approximately \$21 million.

As a result of the August 15, 2008 comprehensive restructuring of the Original BTMUCC Credit Facility and the January 2008 Amendment and subsequent amendments in 2008 and 2009, as well as actions taken to restructure the Company and reduce our recurring operating expenses, we improved our cash flow and, in general, the Company's financial condition. Under the Current Credit Facility, we deferred to 2011 and thereafter much of our principal repayment obligations and certain of our interest obligations. We also restructured our credit facility to provide us with monthly, rather than quarterly, cash distributions from our operating revenues that are held in lock-box accounts until distributed pursuant to the terms of the Current Credit Facility. We use these distributions, which are net of required debt service payments, to pay our operating expenses and for other purposes permitted by the terms of our Current Credit Facility. Any excess monies after paying operating expenses and capital expenses permitted under the Current Credit Facility are required to be applied to pay down the outstanding principal. Starting in May 2008, we also took immediate actions to reduce the Company's recurring operating expenses, including a headcount reduction of non-essential staff, thereby significantly decreasing our monthly selling, general and administrative expenses (excluding non-cash stock compensation expenses) as compared to April 30, 2008. In addition, we have realized a meaningful reduction in interest expense in 2009 based on (i) the Company's reduced debt level following the sales of Waverly and Bill Blass in late 2008 and the further paydown of debt in August 2009, (ii) the amendment to the bank credit facility in early 2009 that reduced the fixed interest rate applicable to certain Company debt, and (iii) the low variable rates currently applicable to other portions of our debt. As a result of these changes, we have access to more cash more frequently to cover our reduced recurring operating expenses and pay principal payments on our debt. See Note 9 – Long-Term Debt to the Consolidated Financial Statements for details regarding our Current Credit Facility.

As of December 31, 2008, we had approximately \$8.3 million cash on hand. The Company also had long-term restricted cash of \$0.9 million, used to secure letters of credit issued as security deposits on the Company's leased facilities. We anticipate that cash generated from operations will provide us with sufficient liquidity to meet the expenses related to ordinary course operations, including our debt service obligations, for at least the next twelve months. Nonetheless, market and economic conditions may worsen and negatively impact our franchisees and our ability to sell new franchises. As a result, our financial condition and liquidity as of December 31, 2008 raise substantial doubt about our ability to continue as a going concern. We are highly leveraged; we have no additional

borrowing capacity under the Current Credit Facility; and the Current Credit Facility imposes restrictions on our ability to freely access the capital markets. In addition, the Current Credit Facility imposes various restrictions on the cash generated by operations. Accordingly, we continue to have uncertainty with respect to our ability to meet non-ordinary course expenses or expenses beyond certain total limits, which are not permitted to be paid out of cash generated from operations under the terms of the Current Credit Facility, but instead must be paid out of cash on hand. If we are not able to generate sufficient cash from operations to pay our debt service obligations and all of our expenses, we would defer, reduce or eliminate certain expenditures, which may negatively impact our operations. Alternatively, we would seek to restructure or refinance our debt, but there can be no guarantee that BTMUCC would agree to any restructuring or refinancing plan.

Our Current Credit Facility also contains numerous affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, fundamental changes, asset sales, acquisitions, capital and other expenditures, dividends and other payments affecting subsidiaries. The Company's failure to comply with the financial and other restrictive covenants could result in a default under our Current Credit Facility, which could then trigger among other things BTMUCC's right to accelerate all payment obligations, foreclose on virtually all of the assets of the Company and take control of all of the Company's cash flow from operations. (See Note 9 – Long-Term Debt to the Consolidated Financial Statements for details regarding the security structure of the debt.) In addition, our Current Credit Facility contains provisions whereby our lender has the right to accelerate all principal payment obligations upon a "material adverse change," which is broadly defined as the occurrence of any event or condition that, individually or in the aggregate, has had, is having or could reasonably be expected to have a material adverse effect on (i) the collectability of interest and principal on the debt, (ii) the value or collectability of the assets securing the debt, (iii) the business, financial condition, or operations of the Company or its subsidiaries, individually or taken as a whole, (iv) the ability of the Company or its subsidiaries to perform its respective obligations under the loan agreements, (v) the validity or enforceability of any of the loan documents, and (iv) the lender's ability to foreclose or otherwise enforce its interest in any of the assets securitizing the debt. To date, BTMUCC has not invoked the "material adverse change" provision or otherwise sought acceleration of our principal payment obligations.

We believe we have a good relationship with our lender, and the Company has received waivers and/or amendments from BTMUCC (without concessions from the Company), including reduction of interest rates, deferral of scheduled principal payment obligations and certain interest payments, waiver and extension of time related to the obligations to issue dilutive warrants, allowance of certain payments to be excluded from debt service obligations, as well as relief from debt coverage ratio requirements, certain capital and operating expenditure limits, certain loan-to-value ratio requirements, certain free cash flow margin requirements and the requirement to provide financial statements by certain deadlines. In light of these amendments and waivers, we believe it is unlikely that the Company will need to seek additional material waivers or amendments or otherwise default on our Current Credit Facility through June 30, 2010.

The following table reflects use of net cash for operations, investing, and financing activities:

(IN THOUSANDS)	2008	2007	2006
Net cash used in operating activities	\$ (10,409)	\$ (3,407)	\$ (890)
Net cash (used in) provided by investing activities	(56,601)	(146,173)	217,609
Net cash provided by (used in) financing activities	28,734	112,613	(134,275)
Net (decrease) increase in cash and cash equivalents	\$ (38,276)	\$ (36,967)	\$ 82,444

Net cash used in operating activities was \$10.4 million in 2008, compared to net cash used in operating activities of \$3.4 million in 2007 and \$890,000 in 2006. The cash used in operating activities in 2008 reflects cash generated from operations offset by an increase to working capital. Net cash used in operating activities in 2008 includes expenditures for special investigations, restructuring costs and increased professional fees as discussed above, and does not reflect the full year effects of cost reduction efforts that were implemented starting in May 2008. Cash used in operating activities in 2007 primarily reflects increases in accounts receivable, prepaid expenses and other assets reflecting growth in the businesses we acquired. Cash used in operating activities in 2006 reflects the results of our discontinued operations and our corporate expenses. In 2006, we owned UCC Capital for six months and TAF for seven weeks.

Net cash used in investing activities was \$56.6 million in 2008, primarily used for the acquisition of Great American Cookies, offset by proceeds of \$35.4 million from the sale of our Consumer Branded Products business. See Note 20 – Acquisition of Great American Cookies to our Consolidated Financial Statements for details regarding the acquisition and Note 15 – Discontinued Operations for details regarding the sale of our Consumer Branded Products business. The Company also used \$0.73 million for the acquisition of equity interest in Shoe Box Holdings, LLC and \$1.25 million

for the purchase of one half of the minority interest of Designer Equity Holding Company LLC (“DEHC”), equaling 5% percent, in BB Jeans, LLC, formerly known as Bill Blass Jeans, LLC, a now inactive subsidiary of the Company. Net cash used in investing activities was \$146.2 million in 2007 primarily used for the acquisitions of Bill Blass, Marble Slab, MaggieMoo’s, Waverly, Pretzel Time, and Pretzelmaker. Net cash provided by investing activities of \$217.6 million for 2006, primarily reflects \$253.6 million of MBS sales and principal repayments, partially offset by \$43.1 million of cash used in the acquisitions of UCC Capital and TAF.

Net cash provided by financing activities in 2008 was \$28.7 million, which primarily reflects the borrowing of \$70 million under the January 2008 Amendment to the Original BTMUCC Credit Facility, which is discussed in Note 9 – Long-Term Debt to our Consolidated Financial Statements, offset by principal repayments in 2008 of approximately \$37.9 million. Net cash provided by financing activities in 2007 of \$112.6 million primarily reflects borrowing on the Original BTMUCC Credit Facility, as well as \$2.5 million received by the Company from the sale of minority interest in BB Jeans, LLC. Net cash used in financing activities in 2006 of \$134.3 million primarily reflects the repayment of short-term repurchase agreements that were used to fund MBS investments.

## Contractual Obligations

The following table reflects our contractual commitments, including our future minimum lease payments as of December 31, 2008:

Contractual Obligations	Total	Payments due by period (in thousands)			
		Less than 1 year	1-3 Years	3-5 Years	More than 5 years
Long-term Debt (a)	\$ 156,495	\$ 1,152	\$ 47,442	\$ 107,901	\$ -
Capital Lease Obligations					
(b)	21	21	-	-	-
Operating Leases (c)	13,053	1,738	3,374	3,553	4,388
Purchase Obligations (d)	970	970	-	-	-
Other Long-Term Liabilities Reflected on the Registrant's Balance Sheet under GAAP					
(e)	2,666	781	532	105	1,248
Total	\$ 173,205	\$ 4,662	\$ 51,348	\$ 111,559	\$ 5,636

- (a) Amounts included in this chart reflect the outstanding borrowings with BTMUCC as of December 31, 2008. We entered into the January 2008 Amendment increasing our indebtedness by \$70 million, then comprehensively restructured the facility in August 2008, partially paid down the facility with the proceeds from the sales of the Bill Blass and Waverly businesses in late 2008, entered into amendments to the facility in late 2008, all of which impacted our debt obligations and are reflected above. See Note 9 – Long-Term Debt to our Consolidated Financial Statements for details regarding the amount and maturity dates of each note under the credit facility as of December 31, 2008. This chart does not reflect the additional changes to the outstanding borrowings in 2009 including the further paydown of \$5 million of the facility in August 2009.
- (b) Capital Lease Obligations represents a lease for computer hardware assumed pursuant to the MaggieMoo's acquisition.
- (c) Operating Lease Obligations includes primarily our real estate leases for our corporate headquarters, our Bill Blass showroom located in New York City (for which we remained obligated until we assigned the lease on June 11, 2009), our Waverly showroom located in New York City (which we have subleased through the lease expiration) and our NFM facility in Norcross, Georgia. See Item 2 – Properties for additional information.
- (d) Purchase Obligations represent cash consideration with respect to the acquisition of MaggieMoo's in the amount of \$130,000 of initial cash consideration held back for certain potential post-acquisition adjustments and approximately \$840,000 pursuant to an earn-out provision, both payable on March 31, 2008. The \$130,000 of MaggieMoo's deferred cash consideration was paid in March 2009. The earn-out of \$840,000 has not yet been paid due to the Company's claims of off-sets and other on-going disputes between the parties. Any amount of earn-out that is ultimately paid will be from the Company's cash on hand, as the earn-out is not permitted to be paid out of cash generated from operations under the terms of the BTMUCC Credit Facility.
- (e) Other Long-Term Liabilities include: (a) the expected net present value of guaranteed lease obligations we assumed in connection with our acquisition of MaggieMoo's, related to the leases of franchisees that we guarantee, which have been adjusted to reflect subsequent changes to those obligations and (b) the net present value of a long-term compensation arrangement with a franchisee of TAF. We have not included contracts for maintenance support on hardware or software that we own because we generally pay in advance for these services and have the option of choosing whether or not to renew these services each year.

## Off Balance Sheet Arrangements

The Company maintains advertising funds in connection with our franchised brands (“Marketing Funds”). The Marketing Funds are funded by franchisees pursuant to franchise agreements. These Marketing Funds are considered separate legal entities from the Company and are used exclusively for marketing of the respective franchised brands. Athletes Foot Marketing Support Fund, LLC (“TAF MSF”) is a Marketing Fund for the TAF brand. Historically, on an as needed basis, the Company advanced funds to the TAF MSF under a loan agreement. The terms of the loan agreement include a borrowing rate of prime plus 2%, and repayment by the TAF MSF with no penalty at any time. As of December 31, 2008 and 2007, the Company had receivable balances of \$1.7 million and \$1.4 million from the TAF MSF, respectively. The Company does not consolidate this or other Marketing Funds under FIN-46(R) – “Variable Interest Entities.” For further discussion of Marketing Funds, see Note 2(m) to our Consolidated Financial Statements.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company is exposed to certain market risks, which exist as part of our ongoing business operations. The following discussion about our market risk disclosures involves forward-looking statements. Actual results could differ materially from those projected in these forward-looking statements.

## Interest Rate Risk

Our primary exposure to market risk is to changes in interest rates on our long-term debt. As of December 31, 2008, the Company had outstanding borrowings of \$142.2 million under the Current Credit Facility in three separate tranches: (1) approximately \$86.3 million of Class A Franchise Notes, (2) approximately \$41.7 of Class B Franchise Note and (3) \$14.2 million of a Deficiency Note. On August 6, 2009, the Company paid down \$5 million of the Class B Franchise Note. (For additional information regarding the debt as of December 31, 2008 and as of the date of this Report, see Note 9 – Long-Term Debt and Note 23 – Subsequent Events). The Class B Franchise Note and the Deficiency Note both bear a fixed interest rate. However, the Class A Franchise Notes, representing approximately 61% of the outstanding debt, bear interest at 30-day LIBOR plus 3.75% per year through July 31, 2011 and then LIBOR plus 5% per year thereafter until maturity on July 31, 2013. Although LIBOR rates fluctuate on a daily basis, our LIBOR rate resets monthly on the 15th day of each month.

We are subject to interest rate risk on our rate-sensitive financing to the extent interest rates change. Our fixed and variable rate debt as of December 31, 2008 is shown in the following table (in millions).

	As of December 31, 2008	% of Total
Fixed Rate Debt	\$ 55.9	39%
Variable Rate Debt	86.3	61%
Total long-term debt	\$ 142.2	100%

The estimated fair value of the Company's debt as of December 31, 2008 was approximately \$101 million.

A change in LIBOR can have material impact on our interest expense and cash flows. Under our Current Credit Facility and based upon the principal balance as of December 31, 2008, a 1% increase in 30-day LIBOR would have resulted in additional \$0.9 million in interest expense per year, while a 1% decrease in LIBOR would have reduced interest expense by \$0.9 million per year. We did not in 2008, and do not currently, utilize any type of derivative instruments to manage interest rate risk. If our lender requests it, however, we will be obligated to hedge the interest rate exposure on our outstanding debt if 30-day LIBOR exceeds 3.5%.

## Foreign Exchange Rate Risk

The Company is exposed to fluctuations in foreign currency on a limited basis due to our international franchisees that transact business in currencies other than the U.S. dollar. However, the overall exposure to foreign exchange gains and losses is not expected to have a material impact on the consolidated results of operations. Because international development fees and store opening fees are paid in U.S. dollars, our primary foreign currency exchange exposure involves continuing royalty revenue from our international franchisees, which as of December 31, 2008 was approximately \$3.3 million or 7.1% of our total revenues.



ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders  
NexCen Brands, Inc.:

We have audited the accompanying consolidated balance sheets of NexCen Brands, Inc. and subsidiaries (the Company) as of December 31, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2008. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of NexCen Brands, Inc. and subsidiaries as of December 31, 2008 and 2007, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company faces certain liquidity uncertainties that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ KPMG LLP

New York, New York  
October 6, 2009

NEXCEN BRANDS, INC.  
CONSOLIDATED BALANCE SHEETS  
(IN THOUSANDS, EXCEPT SHARE DATA)

	DECEMBER 31,	
	2008	2007
<b>ASSETS</b>		
Cash and cash equivalents	\$ 8,293	\$ 46,569
Restricted cash	—	5,174
Trade receivables, net of allowances of \$1,367 and \$1,401, respectively	5,617	4,710
Other receivables	834	2,673
Inventory	1,232	—
Prepaid expenses and other current assets	2,439	2,873
Total current assets	18,415	61,999
Property and equipment, net	4,395	3,941
Investment in joint venture	87	—
Goodwill	—	47,514
Trademarks and other non-amortizable intangible assets	78,422	115,850
Other intangible assets, net of amortization	6,158	6,541
Deferred financing costs, net and other assets	5,486	2,926
Restricted cash	940	1,656
Assets held for sale	—	119,183
Total Assets	\$ 113,903	\$ 359,610
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Accounts payable and accrued expenses	\$ 9,220	\$ 7,207
Restructuring accruals	153	13
Deferred revenue	4,044	4,033
Current portion of long-term debt, net of debt discount of \$541 and \$0, respectively	611	6,340
Acquisition related liabilities	4,689	7,360
Total current liabilities	18,717	24,953
Long-term debt, net of debt discount of \$852 and \$0, respectively	140,262	103,238
Deferred tax liability	—	26,607
Acquisition related liabilities	480	3,915
Other long-term liabilities	3,937	3,412
Liabilities held for sale	—	1,482
Total liabilities	163,396	163,607
<b>Commitments and Contingencies</b>		
Minority Interest	—	3,040
<b>Stockholders' equity (deficit):</b>		
Preferred stock, \$0.01 par value; 1,000,000 shares authorized; 0 shares issued and outstanding as of December 31, 2008 and 2007, respectively	—	—
Common stock, \$0.01 par value; 1,000,000,000 shares authorized; 56,670,644 and 55,517,475 shares issued and outstanding as of December 31, 2008 and 2007, respectively	569	557

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Additional paid-in capital	2,681,600	2,668,289
Treasury stock	(1,757)	(1,757)
Accumulated deficit	(2,729,905)	(2,474,126)
Total stockholders' equity (deficit)	(49,493)	192,963
Total liabilities and stockholders' equity (deficit)	\$ 113,903	\$ 359,610

See accompanying notes to consolidated financial statements.

NEXCEN BRANDS, INC.  
CONSOLIDATED STATEMENTS OF OPERATIONS  
(IN THOUSANDS, EXCEPT PER SHARE DATA)

	YEAR ENDED DECEMBER 31,		
	2008	2007	2006
<b>Revenues:</b>			
Royalty revenues	\$ 24,735	\$ 15,722	\$ 1,175
Factory revenues	17,310	—	—
Franchise fee revenues	3,616	3,447	749
Licensing and other revenues	1,295	419	—
Total revenues	46,956	19,588	1,924
<b>Operating expenses:</b>			
Cost of sales	(11,484)	—	—
<b>Selling, general and administrative expenses:</b>			
Franchising	(16,958)	(10,688)	(454)
Corporate	(15,460)	(11,753)	(694)
<b>Professional fees:</b>			
Franchising	(1,685)	(1,204)	(115)
Corporate	(2,696)	(1,672)	(1,034)
Special Investigations	(3,897)	—	—
Impairment of intangible assets	(137,881)	—	—
Depreciation and amortization	(3,016)	(1,379)	(221)
Restructuring charges	(1,096)	—	(1,079)
Total operating expenses	(194,173)	(26,696)	(3,597)
Operating loss	(147,217)	(7,108)	(1,673)
<b>Non-operating (expense) income:</b>			
Interest income	439	2,028	1,450
Interest expense	(10,690)	(2,896)	—
Financing charges	(1,814)	—	—
Other (expense) income, net	(284)	11	552
Total non-operating income (expense)	(12,349)	(857)	2,002
(Loss) income from continuing operations before income taxes	(159,566)	(7,965)	329
<b>Income taxes (expense) benefit:</b>			
Current	(337)	1,562	(299)
Deferred	6,331	(2,481)	—
(Loss) income from continuing operations	(153,572)	(8,884)	30
Net loss from discontinued operations, net of taxes of \$19,923, (\$2,383) and (\$64):	(102,207)	4,016	(2,150)
Net loss	\$ (255,779)	\$ (4,868)	\$ (2,120)
Loss per share (basic and diluted) from continuing operations	\$ (2.71)	\$ (0.17)	\$ 0.00
(Loss) income per share (basic and diluted) from discontinued operations	(1.81)	0.08	(0.05)

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Net loss per share – basic and diluted	\$	(4.52)	\$	(0.09)	\$	(0.05)
Weighted average shares outstanding - basic and diluted		56,550		51,889		45,636

See accompanying notes to consolidated financial statements.

NEXCEN BRANDS, INC.  
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)  
(IN THOUSANDS)

	PREFERRED STOCK	COMMON STOCK	ADDITIONAL PAID-IN CAPITAL	ACCUMULATED DEFICIT	TREASURY STOCK	TOTAL
Balance as of December 31, 2005	\$ -	\$ 440	\$ 2,593,085	\$ (2,467,138)	\$ -	\$ 126,387
Net loss	-	-	-	(2,120)	-	(2,120)
Total comprehensive loss						(2,120)
Exercise of options and warrants	-	-	1	-	-	1
Stock based compensation	-	-	3,177	-	-	3,177
Common stock issued	-	41	19,479	-	-	19,520
Common stock repurchased	-	-	-	-	(352)	(352)
Balance as of December 31, 2006	-	481	2,615,742	(2,469,258)	(352)	146,613
Net loss	-	-	-	(4,868)	-	(4,868)
Total comprehensive loss						(4,868)
Surrender of shares from cashless exercise of warrants	-	-	-	-	(1,405)	(1,405)
Exercise of options and warrants	-	16	4,702	-	-	4,718
Stock based compensation	-	-	4,704	-	-	4,704
Common stock issued	-	60	43,141	-	-	43,201
Balance as of December 31, 2007	-	557	2,668,289	(2,474,126)	(1,757)	192,963
Net loss	-	-	-	(255,779)	-	(255,779)
Total comprehensive loss						(255,779)
Exercise of options and warrants	-	1	4	-	-	5
Stock based compensation	-	-	8,657	-	-	8,657
Common stock issued	-	11	4,650	-	-	4,661
Balance as of December 31, 2008	\$ -	\$ 569	\$ 2,681,600	\$ (2,729,905)	\$ (1,757)	\$ (49,493)

See accompanying notes to consolidated financial statements.

NEXCEN BRANDS, INC.  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(IN THOUSANDS)

	2008	2007	2006
<b>Cash flows from operating activities:</b>			
Net loss	\$ (255,779)	\$ (4,868)	\$ (2,120)
Add: net loss (income) from discontinued operations	102,207	(4,016)	2,150
Net (loss) income from continuing operations	(153,572)	(8,884)	30
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:			
Impairment of intangible assets	137,881	—	—
Depreciation and amortization	3,016	1,379	221
Deferred income taxes	(6,331)	3,019	—
Stock based compensation	5,291	4,287	1,632
Amortization of loan costs and debt discount	2,571	—	—
Accrued interest	41	—	—
Restructuring	443	—	—
Loss on investment in Shoebox New York	266	—	—
Amortization of loan fees	—	319	—
Other non-cash expenses	—	27	—
Changes in assets and liabilities, net of acquired assets and liabilities:			
Increase in trade receivables, net of allowances	(907)	(2,851)	(791)
Decrease in inventory	427	—	—
Increase in prepaid expenses and other assets	(1,530)	(1,348)	(1,096)
Decrease (increase) in interest and other receivables	3,378	(1,025)	663
Increase (decrease) in accounts payable and accrued expenses	1,401	273	(249)
Increase in restructuring accruals and other liabilities	140	—	314
Decrease in deferred revenue	(400)	(1,385)	—
Net cash provided by operating activities from continuing operations	(7,885)	(6,189)	724
Net cash provided by operating activities from discontinued operations	(2,524)	2,782	(1,614)
Net cash used in operating activities	(10,409)	(3,407)	(890)
<b>Cash flows from investing activities:</b>			
Decrease (increase) in restricted cash	5,890	(5,532)	7,335
Purchase of trademarks, including registration costs	(46)	(123)	—
Purchases of property and equipment	(676)	(3,930)	(151)
Acquisitions, net of cash acquired	(95,000)	(49,518)	(43,135)
Investment in Shoebox New York	(725)	—	—
Distributions from Shoebox New York	371	—	—
Cash provided by discontinued operations for investing activities	33,585	(87,070)	253,560
Net cash (used in) provided by investing activities	(56,601)	(146,173)	217,609
<b>Cash flows from financing activities:</b>			
Proceeds from debt borrowings	70,000	110,801	—
Financing costs	(2,549)	(3,049)	—
Principal payments on debt	(37,353)	(1,223)	—
Exercise of options and warrants	5	3,313	1



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Purchase of treasury stock	—	—	(352)
Cash used in discontinued operations for financing activities	(1,369)	2,771	(133,924)
Net cash provided by (used in) financing activities	28,734	112,613	(134,275)
Net (decrease) increase in cash and cash equivalents	(38,276)	(36,967)	82,444
Cash and cash equivalents, at beginning of period	46,569	83,536	1,092
Cash and cash equivalents, at end of period	\$ 8,293	\$ 46,569	\$ 83,536

See accompanying notes to consolidated financial statements

NEXCEN BRANDS, INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(1) ORGANIZATION AND DESCRIPTION OF THE BUSINESS

NexCen is a strategic brand management company that owns and manages a portfolio of seven franchised brands, operating in a single business segment: Franchising. Five of our brands (Great American Cookies, Marble Slab Creamery, MaggieMoo's, Pretzel Time and Pretzelmaker) are in the QSR industry. The other two brands (The Athlete's Foot and Shoebox New York) are in the retail footwear and accessories industry. All seven franchised brands are managed by NexCen Franchise Management, Inc. ("NFM"), a wholly owned subsidiary of NexCen Brands. Our franchise network, across all of our brands, consists of approximately 1,750 retail stores in approximately 40 countries.

We earn revenues primarily from the franchising, royalty, licensing and other contractual fees that third parties pay us for the right to use the intellectual property associated with our brands and from the sale of cookie dough and other ancillary products to our Great American Cookies franchisees.

In 2008, we narrowed our business model to focus only on our franchised brands. Previously, we had owned and licensed two consumer products brands in the apparel and home goods industries: Bill Blass and Waverly. We sold the Waverly brand on October 3, 2008 and the Bill Blass brand on December 24, 2008. Prior to this restructuring, based on our holdings and our plans to acquire additional brands, we previously provided financial information for fiscal years 2007 and 2006 in four segments: QSR Franchising, Retail Franchising, Consumer Branded Products and Corporate. The following footnotes are presented based upon the Company's sole operating segment as of December 31, 2008: Franchising.

(2) BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

BASIS OF PRESENTATION:

We anticipate that cash generated from operations will provide us with sufficient liquidity to meet the expenses related to ordinary course operations, including our debt service obligations, for at least the next twelve months. Nonetheless, market and economic conditions may worsen and negatively impact our franchisees and our ability to sell new franchises. As a result, our financial condition and liquidity raise substantial doubt about our ability to continue as a going concern. We are highly leveraged; we have no additional borrowing capacity under the Current Credit Facility; and the Current Credit Facility imposes restrictions on our ability to freely access the capital markets. In addition, the Current Credit Facility imposes various restrictions on the use of cash generated by operations. Accordingly, we continue to have uncertainty with respect to our ability to meet non-ordinary course expenses or expenses beyond certain total limits, which are not permitted to be paid out of cash generated from operations under the terms of the Current Credit Facility, but instead must be paid out of cash on hand. If we are not able to generate sufficient cash from operations to pay our debt service obligations and our expenses, we would defer, reduce or eliminate certain expenditures, which may negatively impact our operations. Alternatively, we would seek to restructure or refinance our debt, but there can be no guarantee that BTMUCC would agree to any further restructuring or refinancing plans.

The accompanying Consolidated Financial Statements have been prepared assuming that the Company will continue as a going concern, and do not contain any adjustments that might result if we were unable to continue as a going concern.

(a) PRINCIPLES OF CONSOLIDATION

The Consolidated Financial Statements include the accounts of the Company and our majority-owned subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation. The Consolidated Financial Statements do not include the accounts or operations of certain brand and marketing funds. See Note 2 (n) - Advertising.

(b) RECLASSIFICATIONS AND REVISIONS

Certain 2007 amounts have been reclassified to conform to the current year presentation. All 2007 activity related to our Consumer Branded Products business and the UCC Capital business has been classified as discontinued operations.

(c) USE OF ESTIMATES

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the consolidated financial statements and the reported amounts of income and expenses during the reporting period. Actual results could differ from those estimates. Estimates are used in accounting for, among other things, valuation of goodwill and intangible assets, estimated useful lives of identifiable intangible assets, accrued revenues, guarantees, depreciation, restructuring accruals, valuation of deferred tax assets and contingencies. Estimates and assumptions are reviewed periodically and the effects of revisions are reflected in the consolidated financial statements in the period they are determined to be necessary.

## (d) CASH AND CASH EQUIVALENTS

Cash equivalents include all highly liquid investments purchased with original maturities of ninety days or less. Cash and cash equivalents consisted of the following:

(in thousands)	DECEMBER 31, DECEMBER 31,	
	2008	2007
Cash	\$ 6,632	\$ 12,764
Money market account	1,661	33,805
Total	\$ 8,293	\$ 46,569

The cash balance as of December 31, 2008 includes approximately \$5.3 million of cash received from franchisees and licensees that is being held in “lockbox accounts” established with our commercial bank in connection with the BTMUCC Credit Facility to perfect the lender’s security interest in such cash receipts. The cash received into the “lockbox accounts” from franchisees and licensees are first applied to pay our lender the principal and interest on the debt associated with our Current Credit Facility on a monthly basis then released from the “lockbox accounts” to the Company for general corporate purposes, and any excess is utilized to prepay the debt in accordance with the Current Credit Facility. See Note 9 – Long-Term Debt.

## (e) TRADE RECEIVABLES, NET OF ALLOWANCE FOR DOUBTFUL ACCOUNTS

Trade receivables consist of amounts the Company expects to collect from franchisees for royalties, franchise fees and cookie dough sales, and from licensees for license fees, net of allowance for doubtful accounts of approximately \$1.4 million, each as of December 31, 2008 and 2007. The Company provides a reserve for uncollectible amounts based on our assessment of individual accounts. Cash flows related to net changes in trade receivable balances are classified as increases or decreases in trade receivables in the consolidated statements of cash flows.

Details of activity in the allowance for doubtful accounts for each year ended December 31, is as follows:

(in thousands)	Beginning Balance	Acquisitions	Additions	Write-Offs	Ending Balance
2006	\$ -	\$ 530	\$ -	\$ -	\$ 530
2007	\$ 530	\$ 158	\$ 713	\$ -	\$ 1,401
2008	\$ 1,401	\$ -	\$ 1,816	\$ 1,850	\$ 1,367

## (f) INVENTORY

Inventories, consisting of finished goods and raw materials, are stated at the lower of cost (first-in, first-out method) or market value. In assessing the ability to realize inventories, the Company makes judgments as to future demand requirements and product expiration dates. The inventory requirements change based on projected customer demand, which changes due to fluctuations in market conditions and product life cycles. Inventories are comprised of the following (in thousands):

(in thousands)	DECEMBER 31, DECEMBER 31,	
	2008	2007
Finished goods	\$ 728	\$ -
Raw materials	504	-
Total	\$ 1,232	\$ -



(g) FAIR VALUE OF FINANCIAL INSTRUMENTS

Effective January 1, 2008, the Company adopted SFAS No. 157, "Fair Value," which defines fair value and established a framework for measuring fair value and expands disclosures about fair value measurements. The effective date of SFAS No. 157 for fiscal years beginning after November 15, 2007 is for financial assets and financial liabilities only.

The determination of the applicable level within the hierarchy of a particular asset or liability depends on the inputs used in valuation as of the measurement date, notably the extent to which the inputs are market-based (observable) or internally derived (unobservable). The three levels are defined as follows:

- Level 1 — inputs to the valuation methodology based on quoted prices (unadjusted) for identical assets or liabilities in active markets.
- Level 2 — inputs to the valuation methodology based on quoted prices for similar assets and liabilities in active markets for substantially the full term of the financial instrument; quoted prices for identical or similar instruments in markets that are not active for substantially the full term of the financial instrument; and model-derived valuations whose inputs or significant value drivers are observable.
- Level 3 — inputs to the valuation methodology based on unobservable prices or valuation techniques that are significant to the fair value measurement.

On January 1, 2009 as required, we adopted SFAS No. 157 for our nonfinancial assets and liabilities that are not required to be measured at fair value on a recurring basis. Our nonfinancial assets and liabilities include goodwill and our identifiable intangible assets. The adoption of SFAS No. 157 for our nonfinancial assets and liabilities did not have a significant effect on our results of operations or financial condition.

A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

The carrying amounts of cash and cash equivalents and restricted cash approximate their fair values due to their short-term nature (Level 1). The fair value of debt, as included in Note 9 – Long-Term Debt, is based on the fair value of similar instruments (Level 2).

(h) PROPERTY AND EQUIPMENT, NET

Property and equipment are stated at cost. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets, which range from 3 to 29 years. The costs of leasehold improvements are capitalized and amortized using the straight-line method over the shorter of the lease term or the estimated useful life of the asset.

In accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long Lived Assets," long-lived assets, such as property, plant, and equipment are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. Assets to be disposed of would be separately presented on the balance sheet and reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposed group classified as held for sale would be presented separately in the appropriate asset and liability sections of the balance sheet.

(i) GOODWILL, TRADEMARKS AND OTHER INTANGIBLE ASSETS

The Company accounts for recorded goodwill and other intangible assets in accordance with SFAS No. 142, “Goodwill and Other Intangible Assets.” This standard classifies intangible assets into three categories: (1) goodwill; (2) intangible assets with indefinite lives not subject to amortization; and (3) intangible assets with definite lives subject to amortization. In accordance with SFAS No. 142, we do not amortize goodwill and indefinite-lived intangible assets. We evaluate the remaining useful life of an intangible asset that is not being amortized each reporting period to determine whether events and circumstances continue to support an indefinite useful life. If an intangible asset that is not being amortized is subsequently determined to have a finite useful life, we amortize the intangible asset prospectively over its estimated remaining useful life. Amortizable intangible assets are amortized on a straight-line basis.

In accordance with the requirements of SFAS No. 142, goodwill has been assigned to reporting units for purposes of impairment testing. Our reporting unit is our operating segment. We evaluate goodwill for impairment on an annual basis or more often if an event occurs or circumstances change that indicate impairment might exist. Goodwill impairment tests consist of a comparison of each reporting unit's fair value with its carrying value. Fair value is the price a willing buyer would pay for a reporting unit, which we estimate using multiple valuation techniques. These include an income approach, based upon discounted expected future cash flows from operations, and a market approach, based upon business enterprise multiples of comparable companies. The discount rate used is our estimate of the required rate of return that a third-party buyer would expect to receive when purchasing from us a business that constitutes a reporting unit. We believe the discount rate is commensurate with the risks and uncertainty inherent in the forecasted cash flows.

If the carrying value of a reporting unit exceeds its fair value, goodwill is written down to its implied fair value. The implied fair value of goodwill is determined by allocating the fair value of the reporting unit to all of its assets and liabilities other than goodwill. The remaining value, after the fair value of the reporting unit has been allocated to the identifiable assets, is the implied fair value of goodwill.

At each reporting period, we assess these non-amortizable intangible assets to determine if facts and circumstances have changed, requiring a re-evaluation of their estimated life. We capitalize the material costs associated with registering and maintaining trademarks. During the three month periods ended June 30, 2008 and September 30, 2008, we determined that goodwill, trademarks, and other non-amortizable intangible asset valuations associated with certain brands were impaired. We have recognized impairment charges for these amounts within the Statement of Operations for the year ended December 31, 2008. (See Note 6 - Goodwill, Trademarks and Other Intangible Assets.)

Intangible assets with estimable useful lives are amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment in accordance with SFAS No. 144. Amortizable intangible assets are comprised of franchise agreements and non-compete agreements of key executives and others, which are being amortized on a straight-line basis over a period ranging from one to twenty years.

#### (j) INCOME TAXES

The Company recognizes income taxes using the asset and liability method, in accordance with SFAS No. 109, "Accounting for Income Taxes." Under the asset and liability method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of a tax rate change on deferred tax assets and liabilities is recognized as income in the period that includes the enactment date. In assessing the likelihood of realization of deferred tax assets, the Company considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during periods in which these temporary differences become deductible.

#### (k) STOCK BASED COMPENSATION

As of January 1, 2006, the Company adopted SFAS No. 123 (revised 2004), "Share-Based Payments." SFAS No. 123R requires that new share-based payments, such as grants of stock options, restricted shares, warrants, and stock appreciation rights, be measured at fair value and reported as an expense in a company's financial statements over the requisite service period. For existing share-based payment awards granted prior to January 1, 2006, the Company has recognized, in current earnings, compensation expense over the remaining service period, if any, based on the grant date fair value of those awards as calculated for disclosure under SFAS No. 123R. However, in accordance with SFAS



No. 123R, the Company no longer recognizes forfeitures as they occur. Rather, forfeitures are estimated in calculating the fair value of each award. See Note 12 – Stock Based Compensation, for the assumptions used to calculate the stock compensation expense under the fair-value method discussed above.

(1) EARNINGS PER SHARE

The Company computes net income (loss) per share in accordance with SFAS No. 128, “Earnings Per Share.” Under the provisions of SFAS No. 128, basic net income (loss) per share is computed by dividing net income (loss) for the period by the weighted average number of common shares outstanding during the period. Diluted net income (loss) per share is computed by dividing the net income (loss) for the period by the weighted average number of common and dilutive common equivalent shares outstanding during the period. As the Company has had a net loss in each of the periods presented, basic and diluted net loss per share are the same. Options and warrants to purchase a total of 250,000, 4.2 million and 7.2 million shares of the Company’s common stock during 2008, 2007, and 2006, respectively, have been excluded from the calculation of diluted net loss per share because their inclusion would be anti-dilutive.

(m) REVENUE RECOGNITION

Royalties represents periodic fees received from franchisees that are determined as a percentage of franchisee net sales and are recognized as revenues when they are earned on an accrual basis. Franchise fee income, which represents initial fees paid by franchisees for franchising rights, is recognized when substantially all initial services required by the franchise agreements are performed, which is generally considered to be upon the opening of the franchisee's store (or the first franchised store under an area development agreement). Licensing revenues represents amounts earned from the use of the Company's trademarks and are recognized as revenues when they are earned on an accrual basis. Revenues from the sale of cookie dough that the Company produces and sells to certain franchisees are recognized at the time of shipment and are classified in factory revenues.

(n) ADVERTISING

The Company maintains advertising funds in connection with our franchise brands ("Marketing Funds"). These Marketing Funds are considered separate legal entities from the Company. The Marketing Funds are funded by franchisees pursuant to franchise agreements that require domestic franchisees to remit up to approximately 2% of gross sales to the applicable Marketing Fund. These funds are used exclusively for marketing of the respective franchised brands. The purpose of the Marketing Funds is to centralize the advertising of the respective franchise concept into regional and national campaigns. The Company serves as the administrator of the Marketing Funds, and is reimbursed on a cost-only basis for the amount spent by the Company for advertising expenses related to the franchised brands. Additionally, if the Marketing Funds are dissolved, any remaining cash in the fund would either be distributed back to the franchisees or spent on advertising.

Based on the foregoing, the Company has determined that the Marketing Funds are variable interest entities, as defined by FASB Interpretation No. 46(R) - "Variable Interest Entities." The Company is not the primary beneficiary of these variable interest entities and therefore these funds are excluded from the Consolidated Financial Statements of the Company. Franchisee contributions to these Marketing Funds totaled approximately \$4.5 million and \$2.2 million for the years ended December 31, 2008 and 2007, respectively. At December 31, 2008 and 2007, respectively, the Consolidated Financial Statements of the Company included loans and advances receivable of \$1.7 million and \$1.4 million due from The Athlete's Foot Marketing Support Fund, LLC ("TAF MSF"). As of December 31, 2008 and 2007, respectively, the Company did not have any outstanding loans and advances from any other Marketing Fund. The Company also established a matching contribution program with the TAF MSF whereby the Company has agreed to match certain franchisee contributions, not to exceed \$1.2 million over 12 quarters. The Company recorded an advertising expense of \$1.1 million in the fourth quarter of 2008 representing the expected net present value of these future contributions, which is included in the Company's Franchising SG&A expenses. For the year ended December 31, 2008, the Company contributed approximately \$0.5 million to the TAF MSF.

(o) INVESTMENTS IN UNCONSOLIDATED ENTITIES

The Company has an investment in Shoe Box Holdings, LLC (See Note 7 – Joint Venture Investments – Shoebox New York). Shoe Box Holdings, LLC is an unconsolidated joint venture, the purpose of which is to franchise high-quality and high-fashion shoes. The equity method of accounting is used for unconsolidated entities over which the Company has significant influence, generally representing ownership interests of at least 20% and not more than 50%. Under the equity method of accounting, the Company recognizes its proportionate share of the profits and losses of the entity. The joint venture agreement specifies the distributions of capital, profit and losses.

(p) RECENT ACCOUNTING PRONOUNCEMENTS

In December 2007, the FASB issued SFAS No. 141 (Revised 2007), "Business Combinations." Under Statement SFAS No. 141R, acquiring entities will recognize assets acquired and liabilities assumed in connection with business combinations at fair market value with limited exception. Among its provisions, SFAS No. 141R requires that: (a) acquisition costs will generally be expensed as incurred and not capitalized, (b) contingent consideration will be recognized at estimated fair value at the time of acquisition, and (c) noncontrolling interests will be valued at the fair value at the acquisition date. SFAS No. 141R is effective for annual periods beginning on or after December 15, 2008. SFAS No. 141R will impact the Company's accounting for future acquisitions, if any.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements - An Amendment of ARB No. 51." SFAS No. 160 provides that noncontrolling interests in a subsidiary (minority interests) are to be recorded as a component of equity, separate from the parent's equity. SFAS No. 160 also provides for changes in the way minority interest expense is recorded in the income statement, and will require expanded disclosure regarding the interests of the parent and its noncontrolling interest. SFAS No. 160 is effective for years and interim periods beginning on or after December 15, 2008. The Company adopted SFAS No. 160 as of January 1, 2009. SFAS No. 160 will impact the presentation and disclosure of minority interest, if any, in the Company's Consolidated Financial Statements.

In February 2008, the FASB issued FSP FAS No. 157-2, Effective Date of FASB Statement No. 157 (“FSP FAS No. 157-2”), that partially deferred the effective date of SFAS No. 157 for one year for non-financial assets and non-financial liabilities that are recognized or disclosed at fair value in the financial statements on a non-recurring basis. The Company adopted FSP FAS No. 157-2 on January 1, 2009. See Note 2(d) – Fair Value of Financial Instruments for additional disclosures required under FSP FAS No. 157-2 for non-financial assets and liabilities recognized or disclosed at fair value in the statements.

In April 2008, the FASB issued FSP No. 142-3, "Determination of the Useful Life of Intangible Assets." FSP No. 142-3 will improve the consistency between the useful life of a recognized intangible asset under SFAS No. 142 and the period of expected cash flows used to measure the fair value of the asset under FSP No. 141R, and other U.S. generally accepted accounting principles. FSP No. 142-3 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. The Company has adopted this standard as of January 1, 2009. The impact of adopting FSP No. 142-3 is expected to be immaterial to the Company’s Consolidated Financial Statements.

In April 2009, the FASB issued FSP FAS 157-4, “Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly” (“FSP FAS 157-4”), which provides additional guidance for estimating fair value in accordance with SFAS No. 157, “Fair Value Measurements,” when the volume and level of activity for the asset or liability have significantly decreased. FSP FAS 157-4 includes guidance on identifying circumstances that indicate a transaction is not orderly. FSP FAS 157-4 will be effective for interim reporting periods after June 15, 2009. FSP FAS 157-4 does not require disclosures in earlier periods presented for comparative purposes at initial adoption, and, in periods after initial adoption, comparative disclosures are only required for periods ending after initial adoption. The adoption of FSP FAS 157-4 is not expected to have a material impact on the financial condition or results of operations of the Company.

In April 2009, the FASB issued FSP FAS No. 107-1 and Accounting Principles Board (“APB”) 28-1 (“FSP FAS No. 107-1 and APB No. 28-1”), “Interim Disclosures about Fair Value of Financial Instruments,” which amends SFAS No. 107, “Disclosures about Fair Value of Financial Instruments,” and requires disclosures about the fair value of financial instruments for interim reporting periods of publically traded companies as well as in annual financial statements. FSP FAS No. 107-1 and APB No. 28-1 also amends APB Opinion, “Interim Financial Reporting,” to require those disclosures in summarized financial information at interim reporting periods. FSP FAS No. 107-1 and APB No. 28-1 are effective for interim reporting periods ending after June 15, 2009. FSP FAS No. 107-1 and APB No. 28-1 do not require disclosures for earlier periods presented for comparative purposes at initial adoption, and, in periods after initial adoption, comparative disclosures are only required for periods ending after initial adoption.

In May 2009, the FASB issued FSP FAS No. 165, “Subsequent Events,” which formalizes the recognition and non-recognition of subsequent events and the disclosure requirements not addressed in other generally accepted accounting guidance. This statement is effective for the Company’s financial statements beginning with the quarterly period ended on June 30, 2009. The adoption of SFAS No. 165 will not have an impact on the financial condition or results of operations of the Company.

In June 2009, the FASB issued SFAS No. 167, “Amendments to FASB Interpretation No. 46(R),” which changes the determination of when a variable interest entity (“VIE”) should be consolidated. Under SFAS No. 167, the determination of whether to consolidate a VIE is based on the power to direct the activities of the VIE that most significantly impact the VIE’s economic performance together with either the obligation to absorb losses or the right to receive benefits that could be significant to the VIE, as well as the VIE’s purpose and design. This statement is effective for fiscal years beginning after November 15, 2009. We believe the adoption of this pronouncement will not have a material impact on our Consolidated Financial Statements.

In June 2009, the FASB issued SFAS No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles – a replacement of FASB Statement No. 162." SFAS No. 168 states that the FASB Accounting Standards Codification will become the source of authoritative U.S. GAAP recognized by the FASB. Once effective, the Codification's content will carry the same level of authority, effectively superseding SFAS No. 162. The GAAP hierarchy will be modified to include only two levels of GAAP: authoritative and non-authoritative. This statement will be effective for the Company's financial statements beginning with the interim period ending September 30, 2009. The adoption of SFAS No. 168 will not impact the financial condition or results of operations of the Company.

(3) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES RELATED TO DISCONTINUED OPERATIONS

The following additional accounting principles have been used by management in the preparation of the Company's Consolidated Financial Statements and relate principally to the Company's discontinued operations:

(a) INVESTMENTS AVAILABLE FOR SALE INCLUDING MORTGAGE-BACKED SECURITIES ("MBS")

Investments available-for-sale consisted of highly liquid investments in U.S. Government Agency-sponsored MBS with original maturities greater than one year.

The Company invested in MBS representing interests in or obligations backed by pools of mortgage loans. Acquisitions of MBS were recorded on the trade date. Purchases of newly issued MBS were recorded when all significant uncertainties regarding the characteristics of the securities were removed. Realized gains and losses on sales of MBS were determined on the specific identification basis.

(b) REPURCHASE AGREEMENTS

The Company financed the acquisition of our MBS through the use of repurchase agreements with the MBS serving as collateral. Generally, the Company's borrowings were fixed rate repurchase agreements with original maturities of 28 days.

(c) FAIR VALUE OF FINANCIAL INSTRUMENTS

The carrying amounts of the Company's financial instruments, which included cash and cash equivalents, restricted cash, accounts receivable, accounts payable, and accrued expenses, approximate their fair value due to the relatively short duration of the instruments.

(d) REVENUE RECOGNITION - LICENSING

Revenues from license agreements represent income that is determined as the greater of a minimum fixed periodic fee or a percentage of licensee net sales as defined in the license agreements (whichever is greater). Revenues from licensees whose sales exceed contractual minimums are recognized when licensed products are sold or reported by the Company's licensees. For licensees whose sales do not exceed contractual sales minimums, licensing revenues are recognized ratably based on contractual minimums.

(e) ADVERTISING

Advertising and marketing costs paid by the Company in connection with Bill Blass and Waverly, our former Consumer Branded Products business, were expensed as incurred. Advertising expense was \$2.3 million for the year ended December 31, 2008. The Company received advertising contributions from licensees of the Bill Blass and Waverly brands, generally as a percentage of sales, to defray part or all of the advertising expense relating to those brands. Contributions from licensees were \$0.4 million, \$1.1 million and \$0 for the years ended December 31, 2008, 2007 and 2006, respectively.

(f) GOODWILL, TRADEMARKS AND OTHER INTANGIBLE ASSETS

Goodwill represents the excess of costs over the fair value of assets related to the Bill Blass and Waverly businesses, and trademarks represents the value of future licensing income associated with the ownership of the Bill Blass and Waverly trademarks as of December 31, 2008. Other identifiable intangible assets associated with Bill Blass and Waverly include the value of non-compete agreements of key executives and license agreements of acquired businesses, which were amortized on a straight-line basis over a period ranging from one to twenty years. Intangible assets with estimable useful lives are amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment in accordance with SFAS No. 144. Goodwill and trademarks acquired in a purchase business combination determined to have an indefinite useful life are not amortized, but instead are tested for impairment at least annually in accordance with the provisions of SFAS No. 142. At each reporting period, we assess these non-amortizable intangible assets to determine if facts and circumstances have changed, requiring a re-evaluation of their estimated life.

(4) SUPPLEMENTAL CASH FLOW INFORMATION

Interest paid for the years ended December 31, 2008, 2007 and 2006 was \$13,128, \$2,747 and \$1,403 (in thousands), respectively.

Taxes paid for the years ended December 31, 2008, 2007 and 2006 were \$368, \$697, and \$0 (in thousands), respectively.

Significant non-cash investing and financing activities are as follows:

For the year ended December 31, 2008, the Company issued 1,099,290 shares of our common stock and 500,000 warrants to acquire shares of common stock with an aggregate value of \$6.5 million in connection with the acquisition and financing of Great American Cookies.

For the year ended December 31, 2007, the Company issued 5,923,732 shares of our common stock and 50,000 warrants to acquire shares of common stock with an aggregate value of \$43.2 million in connection with brand acquisitions.

In November 2006 and in connection with the acquisition of TAF, the Company issued 1.4 million shares of common stock and 500,000 warrants to purchase shares of common stock with an aggregate fair value of approximately \$9.8 million.

In June 2006 and in connection with the acquisition of UCC Capital, the Company issued 2.5 million shares of common stock, 440,000 warrants and 106,236 options to acquire and shares of common stock with an aggregate fair value of approximately \$11 million.

#### (5) PROPERTY AND EQUIPMENT, NET

Property and equipment, net, consists of the following (in thousands):

	Estimated Useful Lives	2008	December 31, 2007
Furniture and fixtures	7 - 10 Years	\$ 745	\$ 661
Computers and equipment	3 - 5 Years	1,591	914
Software	3 Years	699	486
Building	29 Years	966	-
Land	Unlimited	263	-
Leasehold improvements	Term of Lease	2,937	2,772
<b>Total property and equipment</b>		<b>7,201</b>	<b>4,833</b>
Less accumulated depreciation and amortization		(2,806)	(892)
<b>Property and equipment, net of accumulated depreciation</b>		<b>\$ 4,395</b>	<b>\$ 3,941</b>

Depreciation and amortization expense related to property and equipment was \$1,924,000, \$444,000 and \$272,000 in 2008, 2007 and 2006, respectively.

#### (6) GOODWILL, TRADEMARKS AND OTHER INTANGIBLE ASSETS

On May 19, 2008, the Company disclosed issues related to our debt structure that materially and negatively affected the Company. Specifically, we disclosed previously undisclosed terms of the January 2008 Amendment, the substantial doubt about our ability to continue as a going concern, our inability to timely file our periodic report and our expected restatement of our Original 2007 10-K. The Company also announced that it was actively exploring all strategic alternatives to enhance its liquidity including the possible sale of one or more of our businesses. These disclosures had an immediate and significant adverse impact on our business. The price of our common stock dropped; the Company and certain current and former officers and directors of the Company were sued for various claims under the federal securities laws and certain state statutory and common laws; and we became the subject of a formal investigation by the Enforcement Division of the SEC. In addition, as a result of noncompliance with the listing requirements of NASDAQ, including delays in filing our periodic reports, our common stock was suspended from trading on NASDAQ on January 13, 2009 and delisted on February 13, 2009.

The events and circumstances described above all had swift, material and adverse affect on the value of our goodwill, trademarks and other intangibles which comprise our principal assets.

In accordance with SFAS No. 142, the Company tests goodwill, trademarks and other non-amortizable intangibles for potential impairment annually and between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit or the assets below its respective carrying amount. During 2008, the Company determined that it was necessary to evaluate goodwill and trademarks for impairment between annual tests due to the events and conditions discussed above. As a result of impairment testing, impairment charges related to goodwill, trademarks and other intangible assets of \$109.7 million and \$28.2 million, respectively, were recorded in the second and third quarters of 2008. Other non-amortizable assets consists of the customer/supplier relationship related to the acquired exclusive supply and customer relationship with Great American Cookies franchisees.



Inherent in our fair value determinations are certain judgments and estimates, including projections of future cash flows, the discount rate reflecting the risk inherent in future cash flows, the interpretation of current economic indicators and market valuations, and our strategic plans with regard to our operations. A change in these underlying assumptions would cause a change in the results of the tests, which could cause the fair value to be more or less than their respective carrying amounts. In addition, to the extent that there are significant changes in market conditions or overall economic conditions or our strategic plans change, it is possible that impairment charges related to reporting units, which are not currently impaired, may occur in the future.

A summary of impairment charges recorded during 2008 related to goodwill, trademarks and other non-amortizable intangible assets by acquired brand are as shown below (in thousands). See Note 15 Discontinued Operations for impairment charges of brands within discontinued operations.

	Balance at December 31, 2008	Impairments in 2008	Additions/Reclassifications in 2008	Balance at December 31, 2007
The Athlete's Foot	\$ 11,350	\$ (40,364)	\$ 45	\$ 51,669
Great American Cookies	44,891	(45,328)	90,219	-
Marble Slab Creamery	9,062	(15,174)	118	24,118
MaggieMoo's	4,194	(17,392)	-	21,586
Pretzel Time	-	(17,076)	(310)	17,386
Pretzelmaker	8,925	(2,166)	-	11,091
Subtotal:	78,422	(137,500) <sup>1</sup>	90,072	125,850
UCC2	-	(37,514)	-	37,514
Total	\$ 78,422	\$ (175,014)	\$ 90,072	\$ 163,364

1 Excludes approximately \$381,000 of impairment relating to a non-compete agreement recorded in other amortizable intangible assets.

2 The impairment of UCC non-amortizable intangible assets is included within discontinued operations in the Statements of Operations for the year ended December 31, 2008.

A summary of the carrying value of the Company's goodwill, trademarks and other non-amortizable intangible assets by acquired brand are as follows:

The net carrying value of goodwill is as follows (in thousands):

	December 31,	
	2008	2007
The Athlete's Foot	\$ -	\$ 2,546
Marble Slab Creamery	-	2,001
MaggieMoo's	-	5,086
Pretzel Time & Pretzelmaker	-	-