NexCen Brands, Inc.
Form 10-Q
November 05, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

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

For the Quarterly Period Ended June 30, 2009

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)	20-2783217 (IRS Employer Identification Number)
1330 Avenue of the Americas, 34th Floor, New York, NY (Address of principal executive offices)	10019-5400 (Zip Code)

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

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 o No x

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 x

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	¨	Accelerated filer	¨
Non-accelerated filer	x	Smaller reporting company	¨

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

As of October 31, 2009, 56,951,730 shares of the registrant's common stock, $.01 par value per share, were outstanding.

NEXCEN BRANDS, INC.

QUARTERLY REPORT ON FORM 10-Q
THE QUARTER ENDED JUNE 30, 2009

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PART I - FINANCIAL INFORMATION
ITEM 1: FINANCIAL STATEMENTS

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

	June 30, 2009 (Unaudited)	December 31, 2008
ASSETS		
Cash and cash equivalents	$ 8,037	$ 8,293
Trade receivables, net of allowances of $1,469 and $1,367, respectively	4,158	5,617
Other receivables	940	834
Inventory	1,268	1,232
Prepaid expenses and other current assets	1,951	2,439
Total current assets	16,354	18,415
Property and equipment, net	3,278	4,395
Investment in joint venture	389	87
Trademarks and other non-amortizable intangible assets	78,422	78,422
Other amortizable intangible assets, net of amortization	5,668	6,158
Deferred financing costs and other assets	4,816	5,486
Long-term restricted cash	740	940
Total assets	$ 109,667	$ 113,903
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Accounts payable and accrued expenses	$ 7,692	$ 9,220
Restructuring accruals	7	153
Deferred revenue	2,884	4,044
Current portion of long-term debt, net of debt discount of $514 and $541, respectively	1,768	611
Acquisition related liabilities	1,330	4,689
Total current liabilities	13,681	18,717
Long-term debt, net of debt discount of $605 and $852, respectively	139,714	140,262
Acquisition related liabilities	298	480
Other long-term liabilities	3,506	3,937
Total liabilities	157,199	163,396
Commitments and Contingencies		
Stockholders' deficit:		
Preferred stock, $0.01 par value; 1,000,000 shares authorized; 0 shares issued and outstanding as of June 30, 2009 and December 31, 2008, respectively	—	—
Common stock, $0.01 par value; 1,000,000,000 shares authorized; 56,951,730 and 56,670,643 shares issued and outstanding as of June 30, 2009 and December 31, 2008, respectively	571	569
Additional paid-in capital	2,684,840	2,681,600
Treasury stock	(1,757)	(1,757)
Accumulated deficit	(2,731,186)	(2,729,905)

Total stockholders’ deficit		(47,532)		(49,493)
Total liabilities and stockholders’ deficit	$	109,667	$	113,903

See accompanying notes to unaudited condensed consolidated financial statements.

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NEXCEN BRANDS, INC
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT SHARE DATA)
(UNAUDITED)

	Three Months Ended June 30, 2009	Three Months Ended June 30, 2008	Six Months Ended June 30, 2009	Six Months Ended June 30, 2008
Revenues:				
Royalty revenues	$ 6,144	$ 6,452	$ 11,986	$ 11,811
Factory revenues	4,320	4,761	8,777	7,736
Franchise fee revenues	1,066	397	2,396	1,980
Licensing and other revenues	251	314	582	622
Total revenues	11,781	11,924	23,741	22,149
Operating Expenses:				
Cost of sales	(2,670)	(2,974)	(5,507)	(5,296)
Selling, general and administrative expenses:				
Franchising	(3,470)	(4,335)	(6,561)	(8,663)
Corporate	(1,912)	(3,468)	(3,996)	(7,834)
Professional fees:				
Franchising	(560)	(354)	(970)	(630)
Corporate	(652)	(1,010)	(1,489)	(2,008)
Special investigations	(52)	(1,932)	(85)	(1,932)
Impairment of intangible assets	-	(109,733)	-	(109,733)
Depreciation and amortization	(863)	(674)	(1,725)	(1,165)
Restructuring charges	-	(815)	-	(815)
Total operating expenses	(10,179)	(125,295)	(20,333)	(138,076)
Operating income (loss)	1,602	(113,371)	3,408	(115,927)
Non-Operating income (expense):				
Interest income	47	84	102	334
Interest expense	(2,749)	(2,472)	(5,583)	(4,751)
Financing charges	31	(889)	(2)	(926)
Other income (expense), net	372	(193)	720	(676)
Total non-operating expense	(2,299)	(3,470)	(4,763)	(6,019)
Loss from continuing operations before income taxes	(697)	(116,841)	(1,355)	(121,946)
Income taxes:				
Current	(81)	(107)	(155)	(184)
Deferred	-	4,126	-	2,936
Loss from continuing operations	(778)	(112,822)	(1,510)	(119,194)
Income (loss) from discontinued operations, net of taxes of $0, $14,916, $0, $15,083, respectively	362	(83,027)	229	(81,960)
Net loss	$ (416)	$ (195,849)	$ (1,281)	$ (201,154)
Loss per share (basic and diluted) from continuing operations	$ (0.01)	$ (1.99)	$ (0.03)	$ (2.10)
	0.00	(1.47)	0.00	(1.45)

Income (loss) per share (basic and diluted) from discontinued operations								
Net loss per share - basic and diluted	$	(0.01)	$	(3.46)	$	(0.03)	$	(3.55)
Weighted average shares outstanding – basic and diluted		56,952		56,621		56,812		56,444

See accompanying notes to unaudited condensed consolidated financial statements.

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

	Preferred Stock	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Treasury Stock	Total
Balance at December 31, 2007	$ -	$ 557	$ 2,668,289	$ (2,474,126)	$ (1,757)	$ 192,963
Net loss	-	-	-	(201,154)	-	(201,154)
Total comprehensive loss						(201,154)
Exercise of options and warrants	-	1	4	-	-	5
Stock-based compensation	-	-	4,617	-	-	4,617
Common stock issued	-	10	4,649	-	-	4,659
Balance at June 30, 2008	$ -	$ 568	$ 2,677,559	$ (2,675,280)	$ (1,757)	$ 1,090
Balance at December 31, 2008	$ -	$ 569	$ 2,681,600	$ (2,729,905)	$ (1,757)	$ (49,493)
Net loss	-	-	-	(1,281)	-	(1,281)
Total comprehensive loss						(1,281)
Stock-based compensation	-	-	288	-	-	288
Common stock issued	-	2	2,952	-	-	2,954
Balance at June 30, 2009	$ -	$ 571	$ 2,684,840	$ (2,731,186)	$ (1,757)	$ (47,532)

See accompanying notes to unaudited condensed consolidated financial statements.

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

(UNAUDITED)

	Six Months Ended June 30, 2009	Six Months Ended June 30, 2008
Cash flow from operating activities:		
Net loss	$ (1,281)	$ (201,154)
Add: net (income) loss from discontinued operations	(229)	81,960
Net loss from continuing operations	(1,510)	(119,194)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Impairment of intangible assets	-	109,733
Restructuring	-	443
Depreciation and amortization	1,793	1,165
Stock based compensation	288	2,230
Deferred income taxes	-	(2,936)
Unrealized (gain) loss on investment in joint venture	(260)	220
Amortization of debt discount	274	224
Amortization of deferred financing costs	483	845
Accrued interest on Deficiency Note	1,109	-
Changes in assets and liabilities, net of acquired assets and liabilities:		
Decrease (increase) in trade receivables, net of allowances	1,459	(1,193)
(Increase) decrease in other receivables	(147)	1,129
(Increase) decrease in inventory	(36)	410
Decrease (increase) in prepaid expenses and other assets	685	(1,070)
(Decrease) increase in accounts payable and accrued expenses	(2,416)	2,795
(Decrease) increase in restructuring accruals	(146)	327
Decrease in deferred revenues	(1,161)	(637)
Net cash provided by (used in) operating activities from continuing operations	415	(5,509)
Net cash provided by (used in) operating activities from discontinued operations	229	(127)
Net cash provided by (used in) operating activities	644	(5,636)
Cash flows from investing activities:		
Decrease in restricted cash	190	5,151
Purchases of property and equipment	(185)	(477)
Investment in joint venture	-	(725)
Purchase of trademarks, including registration costs	-	(46)
Distributions from joint venture	-	216
Acquisitions, net of cash acquired	(131)	(95,000)
Cash used in discontinued operations for investing activities	-	(765)
Net cash used in investing activities	(126)	(91,646)
Cash flows from financing activities:		
Proceeds from debt borrowings	-	70,000
Financing costs	-	(1,670)
Principal payments on debt	(774)	(3,918)
Proceeds from the exercise of options and warrants	-	5

Cash used in discontinued operations for financing activities		-		(1,100)
Net cash (used in) provided by financing activities		(774)		63,317
Net decrease in cash and cash equivalents		(256)		(33,965)
Cash and cash equivalents, at beginning of period		8,293		46,569
Cash and cash equivalents, at end of period	$	8,037	$	12,604
Cash paid for interest	$	3,702	$	4,862
Cash paid for taxes	$	203	$	135

See accompanying notes to unaudited condensed consolidated financial statements.

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NEXCEN BRANDS, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(1) BUSINESS AND BASIS OF PRESENTATION

(a) BUSINESS

NexCen Brands, Inc. ("NexCen," "we," "us," "our," or the "Company") is a strategic brand management company that owns a 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 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. 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.

(b) BASIS OF PRESENTATION

The Condensed Consolidated Balance Sheet as of June 30, 2009, and the Condensed Consolidated Statements of Operations for the three and six month periods ended June 30, 2009 and 2008, and the Condensed Consolidated Statements of Stockholders' Equity/(Deficit) and the Condensed Consolidated Statements of Cash Flows for the six month periods ended June 30, 2009 and 2008, are unaudited. The Unaudited Condensed Consolidated Financial Statements include the accounts of the Company and our majority-owned subsidiaries. In the opinion of management, all adjustments have been made, including normal recurring adjustments, necessary to fairly present the Unaudited Condensed Consolidated Financial Statements. Operating results for the three and six month periods ended June 30, 2009 are not necessarily indicative of the operating results for the full year. These statements have been prepared on a basis that is substantially consistent with the accounting principles applied in our Annual Report on Form 10-K for the year ended December 31, 2008 (the "2008 10-K"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles ("GAAP") have been condensed or omitted. The Company believes that the disclosures provided in this Report are adequate to make the information presented not misleading. These Unaudited Condensed Consolidated Financial Statements should be read in conjunction with the Audited Consolidated Financial Statements and related notes included in the Company's 2008 10-K.

(c) LIQUIDITY AND GOING CONCERN

As of June 30, 2009, we had a total of approximately $8 million of cash on hand. As of June 30, 2009, we also had long-term restricted cash of $0.7 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 raise substantial doubt about our ability to continue as a going concern. We are highly leveraged; we have no additional borrowing capacity under our credit facility with BTMU Capital Corporation (the "BTMUCC Credit Facility"); and the BTMUCC Credit Facility imposes restrictions on our ability to freely access the capital markets. In addition, the BTMUCC 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 annual limits, which are not permitted to be paid out of cash generated from operations under the terms of the BTMUCC Credit Facility, but instead must be paid out of cash on hand. These limits do not apply to certain expenses associated with our manufacturing facility such as cost of goods. 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 BTMU Capital Corporation (“BTMUCC”) would agree to any further restructuring or refinancing plans. (See Note 7 – Long-Term Debt to Unaudited Condensed Consolidated Financial Statements for a description of the BTMUCC Credit Facility.)

Our current projections indicate that we may exceed the expense limits noted above prior to our December 31, 2009 year end. We are in discussions with BTMUCC to increase the 2009 expense limits. However, if our lender declines to increase our expense limits, we may be required to defer payment of some 2009 expenses until the expense limits reset in January 2010 and/or use some or all of our available cash on hand in December to cover expenses.

The accompanying Unaudited Condensed 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.

(d) 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 intangible assets and estimated useful lives of identifiable intangible assets, accrued revenues, allowance for doubtful accounts, 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.

(2) ACCOUNTING POLICIES AND PRONOUNCEMENTS

(a) 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):

	June 30, 2009	December 31, 2008
Cash	$ 5,768	$ 6,632
Money market account	2,269	1,661
Total	$ 8,037	$ 8,293

The cash balances at June 30, 2009 and December 31, 2008 include approximately $4.4 million and $5.1 million, respectively, of cash received from franchisees and licensees that is being held in “lockbox accounts” established in connection with the BTMUCC Credit Facility to perfect the lender’s security interest in such cash receipts. These funds are applied to the principal and interest on the debt associated with our BTMUCC 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. See Note 7 – Long-Term Debt.

(b) 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 $1.5 million as of June 30, 2009 and $1.4 million as of December 31, 2008. 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 Unaudited Condensed Consolidated Statements of Cash Flows.

(c) INVENTORY

We value our inventories related to cookie dough manufacturing at the lower of cost (computed on the first-in, first-out method) or net realizable value.

Inventories consisted of the following at (in thousands):

	June 30, 2009	December 31, 2008
Raw materials	$ 756	$ 728

Finished goods	512	504
Total	$ 1,268	$ 1,232

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(d) FAIR VALUE OF FINANCIAL INSTRUMENTS

Effective January 1, 2008, the Company adopted SFAS No. 157, "Fair Value Measurements," which defines fair value and establishes a framework for measuring fair value and expands disclosures about fair value measurements. The effective date of SFAS No. 157 to 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 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 7 – Long-Term Debt, is based on the fair value of similar instruments as well as model-derived valuations whose inputs are observable (Level 2). These inputs include estimates of the Company's credit rating and the returns required for similar instruments by market participants. Management used these inputs to determine discount factors ranging from 13.5% to 40.0% and applied these factors to the forecasted payment streams to determine the fair value of debt as of June 30, 2009. A 1% increase in the discount factors would result in a decrease in the fair value of approximately $2.9 million.

(e) PROPERTY AND EQUIPMENT, NET

Property and equipment are stated at cost, net of accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets, which range from three to twenty-five 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.

(f) TRADEMARKS AND OTHER INTANGIBLE ASSETS

Trademarks represent the value of expected future royalty income associated with the ownership of the Company's brands, namely, the Great American Cookies, MaggieMoo's, Marble Slab Creamery, Pretzel Time, Pretzelmaker and

The Athlete's Foot (TAF) trademarks. Other intangible assets are comprised primarily of the customer/supplier relationship with Great American Cookies franchisees, which are non-amortizable, as well as franchise agreements, which are being 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. Trademarks and the customer/supplier relationship 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, "Goodwill and Other Intangible Assets." At each reporting period, we assess trademarks and other non-amortizable intangible assets to determine if facts and circumstances have changed, requiring a re-evaluation of the estimated value. We capitalize the material costs associated with registering and maintaining trademarks.

(g) 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.

(h) REVENUE RECOGNITION

Royalties represent 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 revenue, 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). The opening of a franchisee's store is dependent on, among other things, real estate availability, construction build-out, and financing, which can cause variability of the revenues associated with franchise fees. Licensing revenues represent 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.

(i) 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 generally require domestic franchisees to remit up to 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 Unaudited Condensed Consolidated Financial Statements. Franchisee contributions to these Marketing Funds totaled approximately $1.1 million and $1.3 million for the three month periods ended June 30, 2009 and 2008, respectively. For the six month periods ended June 30, 2009 and 2008, franchisee contributions to these Marketing Funds totaled approximately $2.2 million and $2.3 million, respectively. At June 30, 2009, the Unaudited Condensed Consolidated Financial Statements of the Company included loans and advances receivable of $1.5 million due from The Athlete's Foot Marketing Support Fund, LLC ("TAF MSF"). As of June 30, 2009 and 2008, respectively, the Company did not have any outstanding loans and advances from any other Marketing Fund. In December 2008, 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. For the three month and six month periods ended June 30, 2009, the Company contributed approximately $0.1 million and $0.2 million, respectively, in matching funds to the TAF MSF.

(j) INVESTMENTS IN UNCONSOLIDATED ENTITIES

The Company has an investment in Shoe Box Holdings, LLC (See Note 5 – 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 our proportionate share of the profits and losses of the entity. The joint venture agreement specifies the distributions of capital, profit and losses.

(k) SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES

For the six months ended June 30, 2009, the Company released approximately 281,000 shares of our common stock (valued at $10.51 per share at the time of issuance) for an aggregate value as calculated at the time of issuance of approximately $3.0 million in connection with the 2007 acquisition of MaggieMoo's.

For the six months ended June 30, 2008, the Company issued 1.1 million shares of our common stock (valued at $4.23 per share at the time of issuance) and 300,000 warrants with an aggregate value of $5.6 million as calculated at the time of issuance in connection with the acquisition of Great American Cookies. The Company also issued 200,000 warrants to BTMUCC with an aggregate value of $0.9 million at the time of issuance in connection with the financing of the acquisition of Great American Cookies.

On February 29, 2008, the Company applied restricted cash of approximately $3.7 million to pay principal and interest on a note issued in connection with the acquisition of Marble Slab. The restricted cash was held in escrow and was paid directly to the noteholders.

(l) RECENT ACCOUNTING PRONOUNCEMENTS

In April 2009, the FASB issued FSP FAS No. 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 No. 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 No. 157-4 includes guidance on identifying circumstances that indicate a transaction is not orderly. FSP FAS No. 157-4 is effective for the interim reporting period ending June 30, 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 No. 157-4 did not 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 No. 28, “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 SFAS 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 did 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 do not believe the adoption of this pronouncement will have a material impact on the financial condition or results of operations of the Company.

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. We do not believe the adoption of SFAS No. 168 will have a material impact on the financial condition or results of operations of the Company.

(3) PROPERTY AND EQUIPMENT, NET

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

	Estimated Useful Lives	June 30, 2009	December 31, 2008
Furniture and fixtures	7 - 10 Years	$ 749	$ 745
Computers and equipment	3 - 5 Years	1,655	1,591
Software	3 Years	714	699
Building	25 Years	966	966
Land	Unlimited	263	263
Leasehold improvements	Term of Lease or Economic Life	3,039	2,937
Total property and equipment		7,386	7,201
Less accumulated depreciation and amortization		(4,108)	(2,806)
Property and equipment, net of accumulated depreciation		$ 3,278	$ 4,395

Depreciation and amortization expense related to property and equipment for the three months ended June 30, 2009 and 2008 was $585,000 and $375,000, respectively. Depreciation and amortization expense related to property and equipment for the six months ended June 30, 2009 and 2008 was $1,302,000 and $587,000, respectively.

(4) TRADEMARKS AND OTHER INTANGIBLE ASSETS

In accordance with SFAS No. 142, the Company tests 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. 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.

Trademarks and other non-amortizable assets by brand as of June 30, 2009 and December 31, 2008 are as follows (in thousands):

	June 30, 2009	December 31, 2008
The Athlete's Foot	$ 11,350	$ 11,350
Great American Cookies	44,891	44,891
Marble Slab Creamery	9,062	9,062
MaggieMoo's	4,194	4,194
Pretzelmaker	8,925	8,925
Total	$ 78,422	$ 78,422

Other non-amortizable intangible assets consist of the customer/supplier relationships related to Great American Cookies franchisees.

Other amortizable intangible assets by brand as of June 30, 2009 and December 31, 2008 are as follows (in thousands):

	June 30, 2009	December 31, 2008
The Athlete's Foot	$ 2,600	$ 2,600
Great American Cookies	780	780
Marble Slab Creamery	1,229	1,229
MaggieMoo's	654	654
Pretzel Time	1,322	1,322
Pretzelmaker	788	788
Total Other Intangible Assets	7,373	7,373
Less: Accumulated Amortization	(1,705)	(1,215)
Total	$ 5,668	$ 6,158

Other amortizable intangible assets are comprised primarily of franchise agreements and the Pretzel Time trademarks. The Pretzel Time trademarks became amortizable during third quarter of 2008 as a result of the Company's plan to consolidate the Pretzel Time brand under the Pretzelmaker brand. These other intangible assets are being amortized generally on a straight-line basis over a period ranging from one to twenty years. Total amortization expense recorded by the Company for the three months ended June 30, 2009 and 2008 was $245,000 and $299,000, respectively. Total amortization expense recorded by the Company for the six months ended June 30, 2009 and 2008 was $490,000 and $578,000, respectively.

The following table presents the future amortization expense (in thousands) expected to be recognized over the amortization period of the other intangible assets outstanding as of June 30, 2009:

	Amortization Period (Years)	For the six months ended December 31, 2009	For the year ended December 31, 2010	2011	2012	2013	Thereafter
The Athlete's Foot	20	$ 65	$ 130	$ 130	$ 130	$ 130	$ 1,669
Great American Cookies	7	56	111	111	111	111	121
Marble Slab	20	31	61	61	61	61	811
MaggieMoo's	20	16	33	33	33	33	430
Pretzel Time	5	175	225	225	36	-	-
Pretzelmaker	5	83	166	166	53	-	-
Total Amortization		$ 426	$ 726	$ 726	$ 424	$ 335	$ 3,031

(5) JOINT VENTURE INVESTMENT – SHOEBOX NEW YORK

Shoe Box Holdings, LLC is a joint venture among the Company, the VCS Group, LLC ("VCS"), a premier women's fashion footwear company, and TSBI Holdings, LLC ("TSBI"), the originator of The Shoe Box, a multi-brand shoe retailer based in New York. In January 2008, Shoe Box Holdings, LLC acquired the trademarks and other intellectual property of TSBI for $500,000. The purpose of the joint venture is to franchise The Shoe Box's high-quality, high-fashion shoes and accessories concept under the Shoebox New York brand.

The Company and VCS each contributed $725,000 to Shoe Box Holdings, LLC. TSBI contributed its knowledge and expertise in retail operations. Until the Company and VCS are re-paid their respective initial investments of $725,000, the Company and VCS each owns 50% of the capital of the joint venture entity and each receive 50% of the profits and losses. Once the Company and VCS are re-paid, each party is entitled to share equally in joint venture entity profits.

A wholly owned subsidiary of Shoe Box Holdings, LLC holds the acquired intellectual property of TSBI and the intellectual property of the Shoebox New York franchise concept (collectively, the "Shoebox Intellectual Property"). The principal of TSBI was retained to assist in the development of the Shoebox New York concept pursuant to a consulting agreement (the "Consulting Agreement"), and TSBI was granted a non-exclusive license to the Shoebox Intellectual Property (the "License Agreement) to continue operating the existing The Shoe Box stores and to open additional stores under the Shoebox New York brand. If the License Agreement is terminated due to a breach by TSBI or if the Consulting Agreement is terminated due to a breach by the principal of TSBI, Shoe Box Holdings, LLC has the right to repurchase all of TSBI's ownership interest for $1.00. The terms of the transaction also include an option for TSBI to purchase all of the ownership units of Shoe Box Holdings, LLC in the event that 20 franchised stores are not opened and operating on or prior to the date that is 36 months from the transaction's second closing date (January 15, 2011) or the date that is 48 months from the transaction's second closing date (January 15, 2012, collectively, the "Trigger Dates"). TSBI also has an alternative option, in the event that 20 franchised stores are not opened and operating

on or prior to the either of the Trigger Dates, to withdraw from Shoe Box Holdings, LLC by surrendering its ownership units, terminating the License Agreement, and by ceasing all uses of the Shoebox Intellectual Property.

NexCen Franchise Management, Inc. ("NFM") manages the Shoebox New York brand, as it does NexCen's other brands, and receives a management fee for its services, in addition to any distributions that NexCen Brands may receive from the joint venture entity. During the three month periods ended June 30, 2009 and 2008, NFM received management fees of approximately $34,000 and $138,000, respectively, which is included in the Company's operating income. During the six month periods ended June 30, 2009 and 2008, NFM received management fees of approximately $108,000 and $272,000, respectively.

The joint venture, through its wholly owned subsidiary, executed in the six month period ended June 30, 2009, franchise agreements for the development of stores in Kuwait and Aruba. There are currently eight stores open in the United States and five stores open internationally in Vietnam, South Korea and Kuwait.

The Company's net investment in this joint venture was $389,000 and $87,000 at June 30, 2009 and December 31, 2008, respectively. The Company recorded equity loss of $7,000 and $116,000 for the three months ending June 30, 2009 and 2008, respectively. The Company recorded equity income (loss) of $260,000 and $(220,000) for the six months ending June 30, 2009 and 2008, respectively. The Company also received excess distributions for which it has recorded a $42,000 reimbursement payable to the joint venture which increased net investment by the same amount.

(6) ACCOUNTS PAYABLE, ACCRUED EXPENSES AND RESTRUCTURING ACCRUALS

(a) ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued expenses consist of the following (in thousands):

	June 30, 2009	December 31, 2008
Accounts payable	$ 4,819	$ 5,883
Accrued interest payable	246	353
Accrued professional fees	361	901
Deferred rent - current portion	51	80
Accrued compensation and benefits	310	106
Income taxes	410	429
Refundable franchise fees and gift cards	33	24
All other	1,462	1,444
Total accounts payable and accrued expenses	$ 7,692	$ 9,220

(b) RESTRUCTURING ACCRUAL

In 2008, in conjunction with cost cutting efforts and the sales of the Waverly and Bill Blass brands, we reduced the staff in the New York corporate office. The Company recorded charges to earnings from continuing operations related primarily to separation benefits. As the employee separation benefits are expected to be paid within one year of the restructuring announcement, the corresponding liability has not been discounted.

A roll forward of the restructuring accrual is as follows (in thousands):

	Employee Separation Benefits
Restructuring liability as of December 31, 2008	$ 153
2009 Restructuring:	
Charges to continuing operations	—
Cash payments and other	(146