

TENGELMANN WARENHANDELSGESELLSCHAFT KG
Form SC 13D/A
December 11, 2007

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No. 39)*

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
(Name of Issuer)

COMMON STOCK, Par Value \$1 Per Share
(Title of Class of Securities)

390064 10 3
(CUSIP Number)

John D. Barline, Esq.
Williams, Kastner & Gibbs, LLP
1301 A Street, Suite 900
Tacoma, Washington 98402
(253) 552-4081

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

Copy to:
Sarkis Jebejian, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

December 3, 2007
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Sections 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the

following box [].

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Section 240.13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
Tengelmann Warenhandelsgesellschaft KG
51-0235841
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
(a) []
(b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
WC
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
Federal Republic of Germany
- | | |
|---------------------|-------------------------------|
| NUMBER OF | (7) SOLE VOTING POWER |
| SHARES BENEFICIALLY | (8) SHARED VOTING POWER |
| OWNED BY | 21,995,371 |
| EACH | (9) SOLE DISPOSITIVE POWER |
| REPORTING | (10) SHARED DISPOSITIVE POWER |
| PERSON | 21,995,371 |
| WITH | |
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
21,995,371
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
(See Instructions) [x]
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
45.1%
- (14) TYPE OF REPORTING PERSON (See Instructions)
PN

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
Tengelmann Verwaltungs-und Beteiligungs GmbH
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
(a) []
(b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
AF
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
Federal Republic of Germany
- | | |
|---------------------|-------------------------------|
| NUMBER OF | (7) SOLE VOTING POWER |
| SHARES BENEFICIALLY | |
| OWNED BY | (8) SHARED VOTING POWER |
| EACH | 21,995,371 |
| REPORTING | (9) SOLE DISPOSITIVE POWER |
| PERSON | |
| WITH | (10) SHARED DISPOSITIVE POWER |
| | 21,995,371 |
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
21,995,371
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
(See Instructions) [x]
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
45.1%
- (14) TYPE OF REPORTING PERSON (See Instructions)
CO

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
Christian Wilhelm Erich Haub
###-##-####
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
(a) []
(b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
AF and PF
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
United States and Federal Republic of Germany
NUMBER OF (7) SOLE VOTING POWER
SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH
589,047^A
(8) SHARED VOTING POWER
21,995,371^B
(9) SOLE DISPOSITIVE POWER
589,047^A
(10) SHARED DISPOSITIVE POWER
21,995,371^B
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
22,584,418^{A, B}
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
(See Instructions) [x]
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
46.3%
- (14) TYPE OF REPORTING PERSON (See Instructions)
IN

^A INCLUSIVE OF OPTIONS TO PURCHASE 456,135 SHARES OF THE COMPANY'S COMMON STOCK.

^B INCLUSIVE OF 21,995,371 SHARES OF THE COMPANY'S COMMON STOCK HELD BY TENGELMANN (AS DEFINED BELOW), BUT EXCLUSIVE OF 500 SHARES OF THE COMPANY'S COMMON STOCK HELD BY THE WIFE OF CH (AS DEFINED BELOW) IN RESPECT OF WHICH CH DISCLAIMS ANY POWER TO VOTE, OR TO DIRECT VOTING, AND ANY POWER TO DISPOSE, OR TO DIRECT DISPOSITION.

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
Karl-Erivan Warder Haub
###-##-####
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
(a) []
(b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
AF
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
United States and Federal Republic of Germany
NUMBER OF (7) SOLE VOTING POWER
SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH (8) SHARED VOTING POWER
21,995,371
(9) SOLE DISPOSITIVE POWER
(10) SHARED DISPOSITIVE POWER
21,995,371
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
21,995,371
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) [x]
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
45.1%
- (14) TYPE OF REPORTING PERSON (See Instructions)
IN

CUSIP No. 390064 10 3

- (1) NAME OF REPORTING PERSONS
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)
Erivan Karl Haub
###-##-####
- (2) CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)
(a) []
(b) []
- (3) SEC USE ONLY
- (4) SOURCE OF FUNDS (See Instructions)
AF and PF
- (5) CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) []
- (6) CITIZENSHIP OR PLACE OF ORGANIZATION
Federal Republic of Germany
- | | |
|---------------------|-------------------------------|
| NUMBER OF | (7) SOLE VOTING POWER |
| SHARES BENEFICIALLY | 160,100 |
| OWNED BY | (8) SHARED VOTING POWER |
| EACH | 21,995,371^A |
| REPORTING | (9) SOLE DISPOSITIVE POWER |
| PERSON | 160,100 |
| WITH | (10) SHARED DISPOSITIVE POWER |
| | 21,995,371^A |
- (11) AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
22,155,471
- (12) CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
(See Instructions) [x]
- (13) PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
45.5%
- (14) TYPE OF REPORTING PERSON (See Instructions)
IN

^AINCLUSIVE OF 21,995,371 SHARES OF THE COMPANY'S COMMON STOCK HELD BY TENGELMANN (AS DEFINED BELOW), BUT EXCLUSIVE OF 11,259 SHARES OF THE COMPANY'S COMMON STOCK AND OPTIONS TO PURCHASE 3,291 SHARES OF THE COMPANY'S COMMON STOCK HELD BY THE WIFE OF EKH (AS DEFINED BELOW) IN RESPECT OF WHICH EKH DISCLAIMS ANY POWER TO VOTE, OR TO DIRECT VOTING, AND ANY POWER TO DISPOSE, OR TO DIRECT DISPOSITION.

This Amendment No. 39 relates to reporting a change in the facts set forth in the Schedule 13D required by Rule 13d-1(a), and is intended to amend and restate the entire text of the statement on Schedule 13D (the “Statement”) to update the information presented therein and create a composite Statement presenting such information in one document. Accordingly, the Statement is hereby amended and restated in its entirety to read as follows:

Item 1. Security and Issuer

This Statement relates to the Common Stock, par value \$1 per share (the “Common Stock”), of The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation (the “Company”). The principal executive offices of the Company are located at 2 Paragon Drive, Montvale, New Jersey 07645.

Item 2. Identity and Background

(a) - (c); (f)

The names of the persons filing this Statement (the “Reporting Parties”) are the following: Tengelmann Warenhandelsgesellschaft KG, a limited partnership organized under the laws of the Federal Republic of Germany (“Tengelmann”); Tengelmann Verwaltungs-und Beteiligungs GmbH, a limited liability company authorized under the laws of the Federal Republic of Germany (“TVB”); Erivan Karl Haub (“EKH”); Karl-Erivan Warder Haub (“KEH”); and Christian Wilhelm Erich Haub (“CH”). The address of the principal office of both Tengelmann and TVB is Wissollstrasse 5-43, 45478 Muelheim an der Ruhr, Federal Republic of Germany. EKH is a citizen of the Federal Republic of Germany whose business address is Wissollstrasse 5-43, 45478 Muelheim an der Ruhr, Federal Republic of Germany. KEH is a citizen of the United States and the Federal Republic of Germany whose business address is Wissollstrasse 5-43, 45478 Muelheim an der Ruhr, Federal Republic of Germany. CH is a citizen of the United States and the Federal Republic of Germany whose business address is 2 Paragon Drive, Montvale, New Jersey 07645.

Tengelmann is engaged in general retail marketing. It owns, operates and has investments in, through affiliated companies and subsidiaries, several chains of stores, which principally sell grocery and department store items throughout the Federal Republic of Germany, other European countries and the United States. The general partners of Tengelmann are TVB, and two of EKH’s sons: KEH and CH. KEH and CH are co-Chief Executive Officers and Managing Directors of Tengelmann. Tengelmann’s limited partners are EKH and Georg Rudolf Otto Haub (“GH”), EKH’s third son. GH is a Managing Director of a company affiliated with Tengelmann and a citizen of the United States and the Federal Republic of Germany whose business address is Wissollstrasse 5-43, 45478 Muelheim an der Ruhr, Federal Republic of Germany. 6% of the economic and voting interests of Tengelmann are owned by EKH, with the remainder equally divided among KEH, CH and GH.

TVB is the sole managing partner of Tengelmann. By virtue of the articles of association of Tengelmann, TVB has the exclusive right to direct Tengelmann and is solely responsible for its conduct. TVB, whose only shareholders are EKH and his three sons, is not an operating company. KEH and CH are the only Managing Directors (“Co-CEOs”) of TVB.

CH is and has been a member of the Board of Directors of the Company since December 3, 1991. CH has served as Chairman of the Board of Directors of the Company since May 1, 2001 and Chair of the Executive Committee of the Company since August 15, 2005. CH served as Chief Executive Officer of the Company from May 1, 1998 through August 15, 2005. In addition, CH served as President of the Company from December 7, 1993 through February 24, 2002, and from November 4, 2002 through November 15, 2004.

(d) - (e)

None of the Reporting Parties nor, to the best knowledge of the Reporting Parties, any director of TVB or any partner of Tengelmann, during the last five years, has been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) or been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was, or is subject to, a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 3. Source and Amount of Funds or Other Consideration

Since March 5, 2007, EKH has acquired 10,000 shares of Common Stock for an aggregate purchase price of \$326,690. Since March 5, 2007, CH has acquired 126,412 shares of Common Stock for an aggregate purchase price of \$2,774,907. The funds used by both EKH and CH to purchase all such shares consisted of their respective personal funds.

The shares of Common Stock referred to in Item 5(a) hereof as being beneficially owned by Tengelmann, TVB, KEH, CH, and EKH (other than the shares referred to in the previous paragraph) were acquired by Tengelmann, KEH, CH and EKH in transactions which have been previously described in filings pursuant to Rule 13d-1 and Rule 13d-2 under the Act on Schedule 13D.

Item 4. Purpose of Transaction

Tengelmann holds the shares of Common Stock it owns as an investment. Except for CH serving as Executive Chairman of the Company, and Dr. Andreas Guldin (who was from July 2005 until April 2007 Senior Executive Vice President (Corporate Finance) and Co-chief financial officer of Tengelmann, and since May 2007 has been Managing Director of US Corporate Development of Tengelmann), serving as Executive Managing Director, Strategy & Corporate Development and a member of the Board of Directors of the Company, Tengelmann does not participate in the day-to-day management of the Company, and it does not have any present intention to increase its participation. Tengelmann reserves the right, however, to increase its participation in the day-to-day management of the Company, to the extent it deems such participation appropriate, and the size of its holdings of Common Stock gives it power to do so.

Of the nine current directors of the Company, the following four were nominated by Tengelmann:

John D. Barline (“JDB”)
Dr. Jens-Juergen Boeckel (“JJB”)
Christian Wilhelm Erich Haub
Dr. Andreas Guldin (“AG”)

Tengelmann expects to continue to nominate persons for election as directors of the Company in accordance with the corporate governance provisions of the Stockholder Agreement. In addition, while it has no present intention of doing so, Tengelmann reserves the right to seek to influence the composition of the Board of Directors of the Company (the “Board”) (including by nominating, voting for and soliciting votes in favor of candidates for the Board) and the corporate governance and management and strategy of the Company in general, subject to the corporate governance provisions of the Stockholder Agreement.

On March 4, 2007, the Company, a wholly owned subsidiary of the Company and Pathmark Stores, Inc. (“Pathmark”), entered into a merger agreement pursuant to which the Company has agreed to acquire Pathmark (the “Pathmark Acquisition”). Simultaneously with the execution and delivery of the Merger Agreement, the Company and Tengelmann entered into a stockholder agreement (the “Stockholder Agreement”) as an inducement for Tengelmann to support the Pathmark Acquisition, as further described below in Item 6. As described in Item 6, the corporate governance provisions of the Stockholder Agreement became effective upon consummation of the Pathmark Acquisition on December 6, 2007. The description of the Stockholder Agreement set forth in Item 6 is incorporated herein by reference in its entirety and is qualified by reference to the full text of the Stockholder Agreement, a copy of which was filed as Exhibit 1 to Amendment 38 to the Statement and is incorporated herein by reference in its entirety.

Subject to the corporate governance provisions of the Stockholder Agreement, the Reporting Parties may in the future exercise any and all of their respective rights as shareholders of the Company, including to cause or facilitate one or more of the events referred to in paragraphs (a) through (j), inclusive, of Item 4 of Schedule 13D. For example, the Reporting Parties may purchase or sell shares of Common Stock in the open market or in private transactions or launch a tender offer for shares of Common Stock. Subject to the corporate governance provisions of the Stockholder Agreement, the Reporting Parties may also encourage, solicit or vote shares of Common Stock to approve:

an extraordinary transaction;

a change to the composition or size of the Board or the terms to be served by directors or a nomination to fill an existing vacancy on the Board or a change to the Company’s management;

a change to the Company’s business or corporate structure;

a change to the Company’s charter or bylaws, including a change which may impede or facilitate the acquisition of control of the Company by any person; or

causing the Common Stock, or any other securities of the Company that may be listed on the New York Stock Exchange or any other national securities exchange or quoted on any inter-dealer quotation system, to be delisted from such exchange or no longer be authorized to be quoted on such system, or the registration of any such securities under federal securities laws to be terminated.

As of the date of this Schedule 13D, none of the Reporting Parties nor, to the best knowledge of the Reporting Parties, any of the other persons named in Item 2 hereof has any present plan or intention which would result in or relate to any of the actions described in subparagraphs (a) through (j) of Item 4 of Schedule 13D.

Item 5. Interest in Securities of the Issuer

(a) - (c)

As of the close of business on December 3, 2007, EKH, TVB, CH, and KEH were the beneficial owners (through Tengelmann) of 21,995,371 shares of Common Stock, constituting approximately 45.1% of the outstanding shares of Common Stock (according to the Company, as of December 6, 2007, there were outstanding 48,745,850 shares of Common Stock) and share the power to vote, or direct the vote of, and the power to dispose and direct the disposition of, such shares. In addition, as of the close of business on December 3, 2007, EKH was the direct beneficial owner of 160,100 shares of Common Stock constituting approximately .3 % of the outstanding shares of Common Stock and has the sole power to vote and dispose of such shares. Also, as of December 3, 2007, CH was the direct beneficial owner of 132,912 shares of Common Stock in addition to options to purchase 456,135 shares of Common Stock constituting approximately 1.2% of the outstanding shares of Common Stock and has the sole power to vote and dispose of such shares.

As of the close of business on December 3, 2007 to the best knowledge of the Reporting Parties, the persons named in Item 2 hereof (other than the Reporting Parties) and the directors of the Company suggested for nomination by Tengelmann (other than CH, who is a Reporting Party) were the beneficial owners of shares of Common Stock as set forth in Appendix A hereto. JDB, a citizen of the United States whose business address is Williams, Kastner & Gibbs, LLP, 1301 A Street, Suite 900, Tacoma, Washington 98402, is an attorney of counsel at Williams, Kastner & Gibbs, LLP, a director and corporate secretary of Sun Mountain Resorts, Inc. and a director of Sun Mountain Lodge, Inc., Wissoll Trading Company, Inc., the Le May Automobile Museum and the Company. JJB, a citizen of the Federal Republic of Germany whose business address is Wissollstrasse 5-43, 45478 Muelheim an der Ruhr, Federal Republic of Germany, is the chief financial officer of Tengelmann, a member of the Supervisory Board of Kaiser's Tengelmann AG, chair of the Family Council, chairman of the advisory Board of Fahrzeug-Werke Lueg AG and a director of the Company. AG, a citizen of the Federal Republic of Germany, whose business address is 2 Paragon Drive, Montvale, NJ 07645, is an Executive Managing Director, Strategy & Corporate Development and a member of the Board of Directors of the Company. AG was previously a Senior Executive Vice President (Corporate Finance) and Co-chief financial officer of Tengelmann, a role which he held from July 2005 until April 2007, and from May 2007 has served as Tengelmann's Managing Director of US Corporate Development.

Except as described in the preceding paragraphs, neither the Reporting Parties nor, to the best knowledge of the Reporting Parties, any other person named in Item 2 hereof or any person who, together with any of the persons named in Item 2 hereof, comprise a group within the meaning of Section 13(d)(3) of the Act, owns beneficially any shares of Common Stock. Except as described in the preceding paragraphs, each of the Reporting Parties disclaim any power to vote, or to direct the voting of, or any power to dispose, or to direct the disposition of, the shares owned by the other Reporting Parties, JDB, AG, JJB or the wives of EKH or CH. Each of the Reporting Parties expressly declares that the filing of this statement shall not be construed as an admission that such reporting party is, for purposes of Section 13 of the Act, a beneficial owner of the shares of Common Stock owned by JDB, AG or JJB.

None of JDB, AG or JJB, during the last five years, have been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors) or been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

(d) - (e)

Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

Simultaneously with the execution and delivery of the Merger Agreement, the Company and Tengelmänn entered into the Stockholder Agreement as an inducement for Tengelmänn to support the Pathmark Acquisition. The corporate governance provisions of the Stockholder Agreement, described below, became effective upon consummation of the Pathmark Acquisition on December 3, 2007.

In accordance with and pursuant to the Stockholder Agreement, the Board has nine members, including four Directors nominated by Tengelmänn, and the number of directors may not be increased without the approval of at least 66.67% of the total number of Directors (assuming all seats are filled) or decreased without the consent of Tengelmänn and the approval of at least 66.67% of the total number of Directors (assuming all seats are filled).

The Stockholder Agreement provides that for so long as Tengelmänn and its affiliates beneficially own at least 10% of the voting power in the Company, Tengelmänn will have the right to designate for nomination director nominees in proportion to its ownership percentage and the Board has agreed to recommend these nominees for election and to use reasonable best efforts to solicit proxies in favor of these nominees. Tengelmänn has agreed to vote for all other director nominees, other than in contested elections, in a manner proportionate to unaffiliated stockholder votes. Tengelmänn has also agreed not to take any action to remove or oppose any Board member not nominated by Tengelmänn or to seek to change the size of the Board or otherwise seek to expand Tengelmänn's Board representation in a manner inconsistent with this voting obligation.

The Stockholder Agreement provides that for so long as Tengelmann and its affiliates beneficially own at least 25% (as calculated in accordance with the Stockholder Agreement) of the voting power in the Company, Tengelmann's approval will be required for specified Company actions including specified extraordinary corporate transactions, specified issuances of securities, changes to the Company's organizational documents and specified governance policies, takeover defenses and specified transactions with affiliates. During this period, the approval of a majority of the Tengelmann nominated directors will be required for other specified Company actions, including specified acquisition or disposition transactions, specified issuances or repurchases of securities, specified capital expenditures and debt incurrence, dividends, adoption and amendment of strategic and business plans, and the appointment or removal of the Company Chairman and appointment of the Company Chief Executive Officer. Prior to entering into the Stockholder Agreement, the Board adopted amendments to the Company's Bylaws which became effective upon the consummation of the Pathmark Acquisition to reflect the foregoing rights.

Pursuant to the Stockholder Agreement, the Company has agreed to register under the Securities Act of 1933 sales by Tengelmann and its affiliates of Company securities. Tengelmann may make up to two demand registrations in any 12 month period, and not more than three in any 24 month period, subject to specified limitations, including limitations on the value of securities to be registered and the timing of such registrations. Tengelmann and its affiliates may also sell their shares pursuant to registered sales by other Company stockholders or the Company, subject to similar limitations. In addition, the Stockholder Agreement grants Tengelmann preemptive rights in respect of specified equity issuances by the Company and the right to cause the Company to settle certain warrants to acquire Company securities with Company stock purchased from Tengelmann.

The preceding description of the Stockholder Agreement is qualified by reference to the full text of the Stockholder Agreement, a copy of which was filed as Exhibit 1 to Amendment 38 to the Statement and is incorporated herein by reference in its entirety.

In connection with Tengelmann's reservation of the right to acquire or sell shares of Common Stock from time to time in the open market and by private purchase or sale, UBS Warburg LLC has acted and presently acts as broker and agent for Tengelmann.

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

TENGELMANN WARENHANDELSGESELLSCHAFT KG,

by Tengelmann Verwaltungs-und Beteiligungs GmbH,
as Managing Partner

by /s/ Christian Wilhelm Erich Haub
Name: Christian Wilhelm Erich
Haub
Title: Co-CEO

TENGELMANN VERWALTUNGS-UND BETEILIGUNGS GMBH,

by /s/ Christian Wilhelm Erich Haub
Name: Christian Wilhelm Erich Haub
Title: Co-CEO

by /s/ Karl-Erivan Warder Haub
Name: Karl-Erivan Warder Haub

by /s/ Christian Wilhelm Erich Haub
Name: Christian Wilhelm Erich Haub

by /s/ Erivan Karl Haub
Name: Erivan Karl Haub
By John D. Barline
Attorney-in-Fact

The Powers of Attorney executed by EKH authorizing JDB to sign and file this Amendment on his behalf, which was filed as Exhibit 2 to Amendment No. 34 to the Statement filed with the Securities and Exchange Commission on May 15, 1997, by such Reporting Party is hereby incorporated by reference.

December 11, 2007

Appendix A

Persons Named in Item 5(a) (other than the Reporting Parties)*	Number of Shares**	Percentage of Outstanding Shares***
JDB	39,177	****
JJB	22,287	****
AG	74,154	****

* To the best knowledge of the Reporting Parties, each such person has the sole power to vote and dispose of his or her shares of Common Stock, other than 500 shares of Common Stock owned by JDB's mother.

** The amounts shown include all options and deferred compensation awards granted under Company plans regardless of whether exercisable within 60 days. The number of options included in the total number of owned shares are 465 for JDB, 15,942 for AG and 2,529 for JJB. The number of shares granted under deferred compensation plans included in the total number of owned shares are 22,267 for JDB, 52,786 for AG and 9,167 for JJB.

*** According to the Company, as of December 6, 2007 there were outstanding 48,745,850 shares of Common Stock.

**** Less than 1%.