

NexCen Brands, Inc.  
Form 10-Q  
November 09, 2007

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

**FORM 10-Q**

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

**For the Quarterly Period Ended September 30, 2007**

**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, 34<sup>th</sup> Floor, New York,  
NY**

(Address of principal executive offices)

**10019-5400**

(Zip Code)

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

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(Former name, former address and former fiscal year, if changed since last report)

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 is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

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

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, 2007, 54,943,475 shares of the Registrant's common stock, \$.01 par value per share, were outstanding.

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**NEXCEN BRANDS, INC.**

**QUARTERLY REPORT ON FORM 10-Q  
THE QUARTER ENDED SEPTEMBER 30, 2007**

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**PART I—FINANCIAL INFORMATION****ITEM I: FINANCIAL STATEMENTS**

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

**September 30,**  
**2007**  
**(Unaudited)**

**December 31,**  
**2006**

**ASSETS**

Cash and cash equivalents	\$	29,432	\$	83,536
Restricted cash		5,222		-
Trade receivables, net of allowances of \$877 and \$530		6,793		2,042
Interest and other receivables		2,110		511
Prepaid expenses and other current assets		3,275		2,210
<b>Total current assets</b>		<b>46,832</b>		<b>88,299</b>
Property and equipment, net		3,113		389
Goodwill		84,825		15,607
Trademarks		191,100		49,000
Other intangible assets, net of amortization		7,949		3,792
Deferred financing costs and other assets		2,093		-
Restricted cash		1,818		1,298
<b>Total Assets</b>	<b>\$</b>	<b>337,730</b>	<b>\$</b>	<b>158,385</b>

**LIABILITIES, MINORITY INTEREST AND STOCKHOLDERS' EQUITY**

Accounts payable and accrued expenses	\$	8,712	\$	5,197
Deferred revenue		5,033		40
Current portion of long-term debt		4,273		-
Acquisition related liabilities		9,415		4,000
<b>Total current liabilities</b>		<b>27,433</b>		<b>9,237</b>

Long-term debt		87,055		-
Deferred tax liability		21,716		218
Acquisition related liabilities		2,430		-
Other long-term liabilities		2,077		2,317
<b>Total Liabilities</b>		<b>140,711</b>		<b>11,772</b>

Minority interest		3,038		-
<b>Commitments and Contingencies</b>				

**Stockholders' Equity**

Preferred stock, \$0.01 par value; 1,000,000 shares authorized; 0 shares issued and outstanding at September 30, 2007 and December 31, 2006.		-		-
		551		481

Common stock, \$0.01 par value; 1,000,000,000  
 shares authorized; 54,918,475 and 47,966,085  
 shares issued and outstanding at September 30,  
 2007 and December 31, 2006

Additional paid-in capital	2,664,771		2,615,742
Treasury stock	(1,757)		(352)
Accumulated deficit	(2,469,584)		(2,469,258)
Total stockholders' equity	193,981		146,613
Total liabilities, minority interest and stockholders' equity	\$	337,730	\$
			158,385

See accompanying notes to unaudited condensed consolidated financial statements.

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

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>September 30,</b>		<b>September 30,</b>	
	<b>2007</b>	<b>2006</b>	<b>2007</b>	<b>2006</b>
<i>Revenues:</i>				
Royalty revenues	\$ 4,899	\$ -	\$ 10,588	\$ -
Licensing revenues	4,963	-	10,749	-
Franchise fee revenues	1,467	-	2,728	-
Total Revenues	11,329	-	24,065	-
<i>Operating Expenses:</i>				
Selling, general and administrative expenses:				
Brands	4,709	-	10,043	-
Corporate	2,076	1,569	6,242	3,417
Professional fees:				
Brands	356	-	767	-
Corporate	310	324	1,109	645
Depreciation and amortization	390	207	895	256
Stock based compensation	848	388	2,219	1,084
Restructuring charges	-	80	-	869
Total Operating Expenses	8,689	2,568	21,275	6,271
Operating Income (loss)	2,640	(2,568)	2,790	(6,271)
<i>Non-Operating income (expense):</i>				
Interest income	320	733	1,481	1,631
Interest expense	(1,579)	-	(2,767)	-
Other income, net	51	469	291	562
Minority interest	(56)	-	(198)	-
Total non-operating income (expense)	(1,264)	1,202	(1,193)	2,193
Income (loss) from continuing operations before income taxes	1,376	(1,366)	1,597	(4,078)
Provision for income taxes:				
Current	74	-	191	-
Deferred	1,179	-	1,279	-
Total provision for income taxes	1,253	-	1,470	-
Income (loss) from continuing operations	123	(1,366)	127	(4,078)
Income (loss) from discontinued operations, net of taxes	(6)	544	(453)	1,603
Net income (loss)	117	(822)	(326)	(2,475)

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<b>Other comprehensive income:</b>				
Unrealized holding gain on investments available for sale	-	555	-	555
<b>Comprehensive loss</b>	<b>\$ 117</b>	<b>\$ (267)</b>	<b>\$ (326)</b>	<b>\$ (1,920)</b>
Income (loss) per share (basic and diluted) from continuing operations	\$ 0.00	\$ (0.03)	\$ 0.00	\$ (0.09)
Income (loss) per share (basic and diluted) from discontinuing operations	0.00	0.01	(0.01)	0.04
<b>Net income (loss) per share - basic and diluted</b>	<b>\$ 0.00</b>	<b>\$ (0.02)</b>	<b>\$ (0.01)</b>	<b>\$ (0.05)</b>
Weighted average shares outstanding - basic	52,384	46,534	50,801	45,098
Weighted average shares outstanding - diluted	54,250	48,056	53,400	45,454

See accompanying notes to unaudited condensed consolidated financial statements.

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

	Preferred Stock	Common Stock	Additional Paid -in Capital	Accumulated Deficit	Treasury Stock	Unrealized Gain on Investment	Total
Balance at December 31, 2005	\$ -	\$ 440	\$ 2,593,085	\$ (2,467,138)	\$ -	-	\$ 126,387
Exercise of options and warrants	-	-	1	-	-	-	1
Stock compensation expense	-	-	1,966	-	-	-	1,966
Common stock issued	-	26	10,225	-	-	-	10,251
Common stock repurchased	-	-	-	-	(352)	-	(352)
Unrealized gain on investments available for sale	-	-	-	-	-	555	555
Net loss	-	-	-	(2,475)	-	-	(2,475)
Balance at September 30, 2006	\$ -	\$ 466	\$ 2,605,277	\$ (2,469,613)	\$ (352)	555	\$ 136,333
Balance at December 31, 2006	\$ -	\$ 481	\$ 2,615,742	\$ (2,469,258)	\$ (352)	-	\$ 146,613
Surrender of shares from cashless exercise of warrants	-	-	-	-	(1,405)	-	(1,405)
Exercise of options and warrants	-	10	3,548	-	-	-	3,558
Stock compensation expense	-	-	2,340	-	-	-	2,340
Common stock issued	-	60	43,141	-	-	-	43,201



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Net loss	-	-	-	(326)	-	-	(326)
Balance at September 30, 2007	\$ -	\$ 551	\$ 2,664,771	\$ (2,469,584)	\$ (1,757)	\$ -	\$ 193,981

See accompanying notes to unaudited condensed consolidated financial statements.

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

	<b>Nine Months Ended September,</b>	
	<b>2007</b>	<b>2006</b>
<i>Cash flow from operating activities:</i>		
Net income (loss) from continuing operations	\$ 127	\$ (4,078)
Adjustments to reconcile net loss from continuing operations to net cash used in operating activities:		
Depreciation and amortization	895	256
Stock based compensation	2,219	1,084
Deferred income taxes	1,279	-
Minority interest	198	-
Changes in assets and liabilities, net of acquired assets and liabilities:		
(Increase) decrease in trade receivables, net of allowances	(4,230)	630
Increase in interest and other receivables	(550)	-
(Increase) decrease in prepaid expenses and other current assets	(2,221)	19
Decrease in accounts payable and accrued expenses	(339)	(1,448)
Increase in accrued restructuring costs and other liabilities	-	763
Decrease in deferred revenues	(1,278)	-
Cash (used in) provided by discontinued operations	(1,082)	2,645
Net cash used in operating activities	(4,982)	(129)
<i>Cash flows from investing activities:</i>		
Increase in restricted cash	(5,742)	-
Purchases of property and equipment	(2,764)	-
Acquisitions, net of cash acquired	(136,868)	(3,296)
Cash provided by discontinued operations	-	173,168
Net cash (used in) provided by investing activities	(145,374)	169,872
<i>Cash flows from financing activities:</i>		
Proceeds from sale of minority interest	2,771	-
Increase in debt from borrowings	91,800	-
Principal payments on debt	(472)	-
Proceeds from the exercise of options and warrants	2,153	2
Purchase of treasury stock	-	(352)
Cash used in discontinued operations	-	(133,924)
Net cash provided by (used in) financing activities	96,252	(134,274)
Net (decrease) increase in cash and cash equivalents	(54,104)	35,469
Cash and cash equivalents, at beginning of period	83,536	1,092
Cash and cash equivalents, at end of period	\$ 29,432	\$ 36,561
<i>Supplemental disclosure of cash flow information:</i>		
Cash paid during the period for interest	\$ 1,184	\$ -
Cash paid during the period for taxes	\$ 588	\$ -

Supplemental disclosure of non-cash investing and financing activities:

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For the nine months ended September 30, 2007, the Company issued 5,923,732 shares of its common stock and 50,000 warrants to acquire shares of stock with an aggregate value of \$43,312,000 in connection with brand acquisitions. For the nine months ended September 30, 2006, the Company issued 2,500,000 shares of its common stock, 440,000 warrants and options to acquire 106,236 shares of stock with an aggregate fair value of \$11,077,000 in connection with the UCC acquisition.

See accompanying notes to unaudited condensed consolidated financial statements.

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

**(1) ORGANIZATION, DESCRIPTION OF THE BUSINESS, AND BASIS OF PRESENTATION**

**(a) ORGANIZATION AND DESCRIPTION OF THE BUSINESS**

NexCen Brands, Inc. (“NexCen” or the “Company”) engages in the acquisition and management of established consumer brands in intellectual property-centric industries. NexCen’s goal is to be a world leader in brand management for the 21st century. Our business is focused on acquiring, managing and developing intellectual property, which we refer to as IP and IP-centric businesses. IP that we have acquired and expect to acquire in the future includes trademarks, trade names, copyrights, franchise rights, patents, trade secrets, know-how and other similar, valuable property, primarily used in the retail and consumer branded products and franchise businesses. In building our IP business, we focus on three segments: retail franchising, consumer branded products and quick service restaurant franchising (which we refer to as “QSR” franchising).

We commenced our IP business in June 2006, when we acquired UCC Capital Corporation, which we refer to as UCC. In November 2006, we entered the retail franchising business by acquiring Athlete’s Foot Brands, LLC, (“TAF” or “The Athlete’s Foot”) along with an affiliated company and certain related assets. As a result of this acquisition, we are now the owner of The Athlete’s Foot® brand and related marks. The Athlete’s Foot is an athletic footwear and apparel franchisor with 620 stores in over 38 countries.

In February 2007, we entered the consumer branded products business by acquiring Bill Blass Holding Co., Inc. and two affiliated businesses (“Blass”). The Bill Blass label represents timeless modern American style and is an American legacy brand in the fashion industry.

Also, in February 2007, we acquired Maggie Moo’s International, LLC (“Maggie Moo’s”) and the assets of Marble Slab Creamery, Inc. (“Marble Slab”), two well known and established brands within the hand-mixed premium ice cream category. These acquisitions mark NexCen’s entry into the QSR franchising sector. Together, Maggie Moo’s and Marble Slab have 565 stores throughout the United States, Canada, Puerto Rico and the United Arab Emirates.

In May 2007, we expanded our presence in the consumer branded products business when we acquired the Waverly brand from F. Schumacher & Co.. Waverly is a home décor lifestyle brand for harmonious and tasteful decorating.

In August 2007, we expanded our QSR operations when we acquired the Pretzel Time and Pretzelmaker brands from Mrs. Fields Famous Brands, LLC for approximately \$30 million. Pretzel Time and Pretzelmaker are established brands in the freshly made, soft baked hot pretzel category. Together, the Pretzel Time and Pretzelmaker brands have 377 franchised locations at September 30, 2007.

We are actively in discussions to acquire additional IP-centric businesses. Our operating strategy is to generate revenue from licensing and other commercial arrangements with third parties who want to use the IP that we acquire. These third parties will pay us licensing and other contractual fees and royalties for the right to use our IP on either an exclusive or non-exclusive basis. Our contractual arrangements may apply to a specific product market, a specific geographic market or to multiple markets.

Licensing and other contractual fees paid to us include a mixture of upfront payments, required periodic minimum payments (regardless of sales volumes), and volume-dependent periodic royalties and license fees (based upon the number or dollar amount of branded products and services sold). Accordingly, our revenues reflect both recurring and non-recurring payment streams.

(b) BASIS OF PRESENTATION

The Condensed Consolidated Financial Statements include the accounts of the Company and its wholly and majority-owned subsidiaries. The Condensed Consolidated Balance Sheet as of September 30, 2007, and the Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2007 and 2006, and the Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2007 and 2006, are unaudited. In the opinion of management, all adjustments have been made, which include normal recurring adjustments necessary to present fairly the Condensed Consolidated Financial Statements. Operating results for the three and nine month periods ended September 30, 2007 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/A for the year ended December 31, 2006. Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles have been condensed or omitted. The Company believes that the disclosures provided are adequate to make the information presented not misleading. These Condensed Consolidated Financial Statements should be read in conjunction with the Audited Consolidated Financial Statements and related notes included in the Company's Annual Report on Form 10-K/A for the year ended December 31, 2006.

**(c) RECLASSIFICATIONS**

Certain 2006 amounts have been reclassified to conform to the current year presentation. All 2006 activity related to our mortgage-backed securities (“MBS”) business has been classified as discontinued operations. None of these reclassifications had a material effect on the Company’s consolidated financial statements.

**(d) USE OF ESTIMATES**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the dates of the consolidated financial statements and reported amounts of revenue and expenses during the reporting period. Estimates are used in accounting for, among other things, valuation of goodwill and intangible assets and estimated useful lives of identifiable intangible assets, depreciation, tax valuation allowances and contingencies. The level of uncertainty in estimates and assumptions increases with the length of time until the underlying transactions are complete. 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.

**OUR SIGNIFICANT INTERIM ACCOUNTING POLICIES INCLUDE THE FOLLOWING:****(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:

<b>(in thousands)</b>	<b>September 30, 2007</b>	<b>December 31, 2006</b>
Cash	\$ 9,228	\$ 10,694
Money market accounts	20,204	72,842
<b>Total</b>	<b>\$ 29,432</b>	<b>\$ 83,536</b>

The cash balance at September 30, 2007, includes approximately \$6.4 million of cash received from franchisees and licensees that is being held in trust in accordance with the terms of our BTMU loan agreements (*See Note 16 Debt*). These funds are applied to the quarterly payments of principal and interest on the BTMU debt and the excess is released to the Company for general corporate purposes.

**(b) REVENUE RECOGNITION**

Royalties from franchising operations are recorded as revenues as they are earned and become receivable from franchisees. Franchise fee revenue is recognized when all initial required services are performed, which is generally considered to be upon the opening of the franchisee’s store. Royalties from licensing operations are recorded as revenues as they are earned and become receivable from the licensees.

**(c) GOODWILL, TRADEMARKS, AND OTHER INTANGIBLE ASSETS**

Goodwill represents the excess of costs over the fair value of assets related to acquired businesses, and trademarks represents the value of future royalty income associated with the ownership of The Athlete’s Foot, Bill Blass, Marble Slab, MaggieMoo’s, Waverly, Pretzel Time and Pretzelmaker trademarks. Other identifiable intangible assets include the value of non-compete agreements of key executives, and franchise agreements and master development agreements of acquired businesses that 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. 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, "*Goodwill and Other Intangible Assets*." At each reporting period, we assess trademarks to determine if facts and circumstances have changed, requiring a re-evaluation of the estimated life of the trademarks.

(d) TRADE RECEIVABLES AND ALLOWANCE FOR DOUBTFUL ACCOUNTS

Trade receivables consist of amounts the Company expects to collect from franchisees for royalties and franchise fees, and from licensees for license fees, net of allowance for doubtful accounts of \$877,000 and \$530,000, as of September 30, 2007 and December 31, 2006, respectively. The Company provides a reserve for uncollectible amounts based on its 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 statement of cash flows.

**(e) RECENT ACCOUNTING PRONOUNCEMENTS**

In June 2006, the FASB issued Interpretation No. 48 (FIN 48), "*Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109, Accounting for Income Taxes.*" FIN 48 establishes that the financial statement effects of a tax position taken or expected to be taken in a tax return are to be recognized in the financial statements when it is more likely than not, based on the technical merits, that the position will be sustained upon examination. It also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006, and was adopted by the Company in the first quarter of fiscal 2007. The impact of this standard on our consolidated results of operations, financial position, and cash flows is more fully explained in *Note 5 Income Taxes*.

In September 2006, the FASB issued SFAS No. 157, "*Fair Value Measurements,*" which applies to any accounting pronouncement that requires or permits fair value measurements. SFAS No. 157 provides a common definition of fair value as the price that would be received to sell an asset or paid to transfer a liability in a transaction between market participants. The new standard also provides guidance on the methods used to measure fair value and requires expanded disclosures related to fair value measurements. SFAS No. 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007. We are currently assessing the impact that this standard will have on our consolidated results of operations, financial position, or cash flows.

In February 2007, the FASB issued SFAS No. 159, "*The Fair Value Option for Financial Assets and Financial Liabilities.*" SFAS No. 159 permits entities to choose to measure most financial instruments and certain other items at fair value that are currently required to be measured at historical costs. Adoption of SFAS No. 159 is optional. We currently do not expect to adopt SFAS No. 159.

**(2) PROPERTY AND EQUIPMENT**

Property and equipment consists of the following:

<b>(in thousands)</b>	<b>Estimated Useful Lives</b>	<b>September 30, 2007</b>	<b>December 31, 2006</b>
Furniture and fixtures	7 - 10 Years	\$ 695	\$ 206
Computer and equipment	3 - 5 Years	376	126
Software	3 Years	254	112
Leasehold improvements	Term of Lease	2,527	393
<b>Total Property &amp; Equipment</b>		<b>3,852</b>	<b>837</b>
Less: Accumulated Depreciation and Amortization		(739)	(448)
<b>Property &amp; Equipment, Net</b>		<b>\$ 3,113</b>	<b>\$ 389</b>

Leasehold improvements at September 30, 2007 include \$2.0 million of costs for the build out of the Company's corporate offices in New York. Depreciation and leasehold amortization expense recorded for the three and nine month periods ended September 30, 2007 and 2006, was \$123,000, \$291,000, \$207,000, and \$256,000, respectively.

**(3) GOODWILL, TRADEMARKS, AND INTANGIBLE ASSETS**

The net carrying value of goodwill as of September 30, 2007 and December 31, 2006 by acquired entity is as follows (in thousands):

<b>September 30, 2007</b>	<b>December 31, 2006</b>
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UCC	\$	37,311	\$	10,135
The Athlete's Foot		2,433		5,472
Bill Blass		28,290		-
Marble Slab		4,726		-
MaggieMoo's		6,129		-
Waverly		4,906		-
Pretzel Time		429		-
Pretzelmaker		601		-
Total	\$	84,825	\$	15,607

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The decrease in the net carrying amount of goodwill for The Athlete's Foot is related to the Company not having to pay any additional consideration under the TAF purchase agreement as discussed in *Note 10 Acquisition of The Athlete's Foot*. The increase in goodwill for UCC resulted from contingent consideration paid in September 2007 in accordance with the terms of the UCC merger agreement discussed in *Note 9 Acquisition of UCC*.

Trademarks as of September 30, 2007 and December 31, 2006 by acquired entity are as follows (in thousands):

	September 30, 2007	December 31, 2006
The Athlete's Foot	\$ 49,000	\$ 49,000
Bill Blass	46,100	-
Marble Slab	20,000	-
MaggieMoo's	16,500	-
Waverly	32,000	-
Pretzel Time	17,000	-
Pretzelmaker	10,500	-
Total	\$ 191,100	\$ 49,000

The increase in trademarks from December 31, 2006 is a result of the Bill Blass, Marble Slab, MaggieMoo's, Waverly, Pretzel Time and Pretzelmaker acquisitions during the nine months ended September 30, 2007. Trademarks have an indefinite life and are analyzed for impairment on an annual basis or more frequently if events or circumstances indicate that the asset may be impaired.

Other intangible assets as of September 30, 2007 and December 31, 2006 by acquired entity are as follows (in thousands):

	September 30, 2007	December 31, 2006
UCC	\$ 1,370	\$ 1,370
The Athlete's Foot	2,600	2,600
Bill Blass	779	-
Marble Slab	1,109	-
MaggieMoo's	700	-
Waverly	433	-
Pretzel Time	970	-
Pretzelmaker	770	-
Total Other Intangible Assets	8,731	3,970
Less: Accumulated Amortization	(782)	(178)
Other Intangible Assets, net	\$ 7,949	\$ 3,792

Other intangibles is comprised of non-compete agreements of key executives and others, franchise agreements, license agreements and master development agreements, and are being amortized over a period ranging from one to twenty years. Total amortization expense recorded by the Company for the three and nine months ended September 30, 2007 was \$267,000 and \$604,000, 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 September 30, 2007:

Three Months Ending December 31,	Year Ending December 31, 2008	Year Ending December 31, 2009	Year Ending December 31, 2010	Thereafter
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**2007**

UCC	\$	68	\$	274	\$	274	\$	274	\$	118
The Athlete's Foot		33		130		130		130		2,058
Bill Blass		59		237		237		99		-
Marble Slab		14		55		55		55		897
MaggieMoo's		9		35		35		35		566
Waverly		25		102		102		102		61
Pretzel Time		51		202		202		202		279
Pretzelmaker		41		162		162		162		216
Total Amortization		300	\$	1,197	\$	1,197	\$	1,060	\$	4,195

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**(4) STOCK BASED COMPENSATION**

Total stock-based compensation expense was approximately \$848,000, \$2,219,000, \$388,000 and \$1,084,000 for the three and nine months ended September 30, 2007, and 2006, respectively. A summary of stock option activity under the 2006 Plan, 1999 Plan, the 2000 Plan and warrants outstanding as of September 30, 2007 and changes during the nine months then ended is presented below:

	2006 Plan		1999 Plan		2000 Plan		Warrants		Total	
	Number of Shares (in thousands)	Weighted Average Exercise Price	Number of Shares (in thousands)	Weighted Average Exercise Price	Number of Shares (in thousands)	Weighted Average Exercise Price	Number of Shares (in thousands)	Weighted Average Exercise Price	Number of Shares (in thousands)	Weighted Average Exercise Price
Outstanding at January 1, 2007	426	\$ 6.88	4,689	\$ 4.19	123	\$ 3.23	1,936	\$ 3.60	7,174	\$ 4.17
Granted	1,273	8.06	-	-	-	-	183	9.86	1,456	8.29
Exercised	-	-	522	2.88	8	0.99	603	3.39	1,133	3.14
Forfeited	3	8.57	104	3.05	26	5.65	-	-	133	3.67
Expired	-	-	-	-	-	-	-	-	-	-
Outstanding at September 30, 2007	1,696	\$ 7.77	4,063	\$ 4.39	89	\$ 2.71	1,516	\$ 4.45	7,364	\$ 5.16

The total number of options and warrants issued by the Company since January 1, 2007 includes the following:

- On January 24, 2007, as part of bonuses distributed to employees for the year ended December 31, 2006, the Company issued options to employees exercisable through January 24, 2017 to purchase 51,500 shares of Company common stock at an exercise price of \$8.95.
- On February 15, 2007, in connection with the acquisition of Bill Blass, the Company issued warrants exercisable through February 15, 2017 to purchase 400,000 shares of Company common stock at exercise prices of \$8.89. The vesting of these warrants is contingent upon Blass meeting three earnings targets on September 30, 2008, December 31, 2009, and December 31, 2010. As of September 30, 2007, the first earnings target is the only one that has been deemed probable; therefore, the Company has only deemed the first tranche of 133,333 shares as outstanding. On February 21, 2007, the Company issued options exercisable through February 21, 2017 to purchase 5,000 shares of the Company common stock to an employee of Bill Blass at an exercise price of \$10.90 per share.
- During the three months ended June 30, 2007, in connection with their employment with the Company, the Company issued 107,500 options to employees exercisable through June 21, 2017 at exercise prices ranging from \$11.61 to \$12.87 per share. Additionally, the Company granted approximately 29,000 options to a member of the Board of Directors exercisable through May 4, 2017 at an exercise price of \$12.19 per share.
- On May 2, 2007, in connection with the acquisition of Waverly, the Company issued warrants exercisable through May 2, 2017 to purchase 50,000 shares of Company common stock at exercise prices of \$12.43. These warrants were immediately vested upon issuance. The warrant was priced at the market price on the date of grant and the related compensation expense has been included in the purchase price allocation.
- During the three months ended September 30, 2007, the Company issued options to purchase 305,000 common shares to employees which are exercisable through September 24, 2017 at exercise prices ranging from \$7.26 to \$10.00 per share. Additionally, the Company granted 775,000 options to members of the Board of Directors exercisable through September 6, 2017 at exercise prices of \$6.90 per share.

A summary of the status of the Company's outstanding grants of options, restricted stock and warrants that remain subject to vesting as of September 30, 2007, and changes during the nine months then ended is presented below:

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	2006 Plan		1999 Plan		2000 Plan		Warrants		Total	
	Weighted		Weighted		Weighted		Weighted		Weighted	
	-	-	-	-	-	-	-	-	-	-
	Number	Average	Number	Average	Number	Average	Number	Average	Number	Average
	of	Grant	of	Grant	of	Grant	of	Grant	of	Grant
	Shares	Date	Shares	Date	Shares	Date	Shares	Date	Shares	Date
	(in	Fair	(in	Fair	(in	Fair	(in	Fair	(in	Fair
	thousands)	Value	thousands)	Value	thousands)	Value	thousands)	Value	thousands)	Value
Non-Vested at January 1, 2007	426	\$ 2.19	3,619	\$ 1.32	87	\$ 2.28	125	\$ 1.20	4,257	\$ 1.43
Granted	1,273	3.53	-	-	-	-	183	4.17	1,456	3.61
Vested	25	2.31	1,206	1.32	34	2.69	92	1.75	1,357	1.40
Forfeited	3	3.10	-	-	26	1.78	-	-	29	1.89
Non-Vested at September 30, 2007	1,671	\$ 3.21	2,413	\$ 1.32	27	\$ 2.08	216	\$ 3.48	4,327	\$ 2.17

The total unrecognized compensation cost related to non-vested share-based compensation agreements granted under all stock option plans as of September 30, 2007 is approximately \$7.6 million. The cost is expected to be recognized over the weighted-average exercise period of approximately 9.10 years.

The following table includes information on fully vested stock options, stock options outstanding for each plan, fully vested warrants and warrants outstanding as of September 30, 2007:

	2006 Plan		1999 Plan		2000 Plan		Warrants		Total	
	Stock Options Currently Outstanding		Stock Options Currently Outstanding		Stock Options Currently Outstanding		Warrants Currently Outstanding		Stock Options and Warrants Currently Outstanding	
	Exercisable and Vested	Exercisable and Vested	Exercisable and Vested	Exercisable and Vested	Exercisable and Vested	Exercisable and Vested	Exercisable and Vested	Exercisable and Vested	Exercisable and Vested	Exercisable and Vested
Number (in thousands)	1,696	25	4,063	1,650	89	62	1,516	1,300	7,364	3,037
Weighted - average exercise price	\$ 7.77	\$ 6.77	\$ 4.39	\$ 4.89	\$ 2.71	\$ 2.63	\$ 4.45	\$ 4.01	\$ 5.16	\$ 4.48
Aggregate intrinsic value (in thousands)	\$ (1,775)	\$ (1)	\$ 9,483	\$ 3,017	\$ 402	\$ 278	\$ 3,448	\$ 3,519	\$ 11,558	\$ 6,812
Weighted - average remaining contractual term	9.68	9.08	8.69	6.45	8.13	8.08	3.36	2.40	7.82	4.78

## (5) INCOME TAXES

In accordance with the provisions of Financial Accounting Standards Board Statement No. 109, "Accounting for Income Taxes" and related guidance thereto ("SFAS No. 109"), the Company is currently required to record a non-cash deferred tax expense principally as a result of the difference in accounting for certain intangible assets for book and

tax purposes. These intangible assets, which are indefinite lived assets for book purposes, are being amortized for tax purposes over a fifteen year period. As a result, the basis of these assets for income tax purposes will be different from the carrying value for financial reporting purposes. The Company is required to record a deferred tax liability with respect to this difference. The deferred tax liability resulting from these timing differences cannot be offset against the Company's deferred tax assets under US Generally Accepted Accounting Principles since it relates to indefinite lived assets and is not anticipated to reverse in the same period. In accordance with SFAS No. 109, the Company is required to record a combined federal, state and local deferred tax expense based on its anticipated annual effective tax rate (as that term is defined in SFAS No. 109) from continuing operations in effect for the year ended December 31, 2007, net of any current tax expense. The effective tax rate is evaluated each calendar quarter based on currently available data. For the year ending December 31, 2007, the anticipated effective tax rate is 92% as of September 30, 2007.

Simultaneously, SFAS No. 109 provides that the Company must provide a full valuation allowance against its deferred tax assets for financial reporting purposes. These assets, which consist principally of \$777 million of federal tax loss carryforwards that expire at various dates through December 31, 2021, total approximately \$446 million and are available to reduce or eliminate the Company's taxable income in calculating the amount of income tax actually paid. In addition, the Company is not permitted, in its statement of operations, to record a benefit relating to the deferred tax assets which would offset the deferred tax expense. However, the deferred tax assets remain available to the Company to reduce taxable income for tax (but not book) purposes, subject to time and other limitations contained in the Internal Revenue Code and related regulations. Consequently, the Company anticipates it will pay little or no current federal income tax other than alternative minimum taxes, and will be subject to certain state and local taxes.

The current provision for income taxes for the nine months ended September 30, 2007 of \$191,000 includes approximately \$181,000 of foreign taxes withheld on franchise royalties received from foreign based franchisees in accordance with tax treaties between the U.S. and the respective foreign countries, and \$10,000 of state income tax expense. The combined federal and state deferred tax expense is \$1,279,000 for the nine months ended September 30, 2007.

The Company adopted the provisions of Financial Standards Accounting Board Interpretation No. 48, "Accounting for Income Taxes" ("FIN 48") an interpretation of SFAS No. 109 on January 1, 2007. The Interpretation prescribes recognition threshold and measurement parameters for the financial statement recognition and measurement of tax positions taken or expected to be taken in the Company's tax return. For those benefits to be recognized, a tax position must be more-likely-than-not to be sustained upon examination by taxing authorities. The amount recognized is measured as the largest amount of benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement. At the adoption date of January 1, 2007 and at September 30, 2007, the Company had approximately \$73.7 million of total gross unrecognized tax benefits. If recognized, these tax benefits would be subject to a valuation allowance and would not affect our effective tax rate. There are no significant increases or decreases to unrecognized tax benefits anticipated within the next twelve months. As a result of adopting FIN 48, the Company's net amount of assets and liabilities recognized in the condensed consolidated balance sheet did not change. Therefore, the Company was not required to record a cumulative effect adjustment relating to the adoption.

The Company's practice is to recognize interest and/or penalties related to uncertain tax positions in income tax expense. The Company had no accrued interest or penalties as of December 31, 2006 and September 30, 2007. The Company is subject to U.S. federal income tax as well as income tax of multiple state and local jurisdictions. Tax returns for all years after 2003 are subject to future examination by tax authorities. Currently, no federal or state income tax returns are under examination.

## (6) PER SHARE DATA

Basic earnings 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 earnings 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. The dilutive effects of options, warrants and their equivalents are computed using the "treasury stock" method.

Information relating to the calculation of earnings per share is summarized as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
<u>(dollars are in thousands, except per share data)</u>				
Net income (loss)	\$ 117	\$ (822)	\$ (326)	\$ (2,475)



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Weighted-average shares outstanding-basic		52,384		46,534		50,801		45,098
Weighted-average shares outstanding-diluted		54,250		48,056		53,400		45,454
Income (loss) per share - basic and diluted from continuing operations	\$	0.00	\$	(0.03)	\$	0.01	\$	(0.09)
Income (loss) per share - basic and diluted from discontinued operations	\$	0.00	\$	0.01	\$	(0.01)	\$	0.04
Net loss per share - basic and diluted	\$	0.00	\$	(0.02)	\$	0.00	\$	(0.05)

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## **(7) RELATED PARTY TRANSACTIONS**

The Company receives legal services from Kirkland & Ellis LLP, which is considered a related party because a partner at this firm is a member of the Company's Board of Directors. For the three months ended September 30, 2007 and 2006, fees incurred relating to Kirkland & Ellis LLP were approximately \$187,000 and \$248,000, respectively. For the nine months ended September 30, 2007 and 2006, fees incurred relating to Kirkland & Ellis LLP were approximately \$1,103,000 and \$1,075,000, respectively. At September 30, 2007 and December 31, 2006, the Company had outstanding accounts payable due to Kirkland & Ellis LLP of approximately \$147,000 and \$172,000, respectively.

The Company has an active agreement with Marvin Traub Associates, Inc., an entity owned by Mr. Traub (a member of the Board of Directors), to help the Company identify, approach, and negotiate a deal with a premier U.S. based big box retail chain so that such retailer might joint venture with, or purchase a license from, the Company to open MaggieMoo's ice cream locations within their stores. In July 2007, Marvin Traub Associates, Inc. received a one-time retainer fee of \$25,000 upon the agreement's execution. If the Company is successful in consummating a relationship with a third party, Marvin Traub Associates, Inc. will receive an additional \$100,000 success fee.

## **(8) COMMITMENTS AND CONTINGENCIES**

### **(a) LEGAL PROCEEDINGS**

IPO Litigation. NexCen 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 against 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 its 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 NexCen 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 because 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. NexCen believes the claims are without merit and is vigorously contesting these actions.

After initial procedural motions and the start of discovery in 2002 and 2003, the 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 District Court for approval. The proposed Issuer Settlement did not include the underwriter-defendants, and they have 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. Under terms of the proposed Issuer Settlement, NexCen has a reserve of \$465,000 for its estimated exposure. 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 District Court on the proposed Issuer Settlement, the U.S. Court of Appeals for the Second Circuit issued a ruling vacating class certification for certain plaintiffs in the actions against the remaining 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 has resumed and the parties have been meeting and conferring to negotiate (i) an acceptable discovery schedule, (ii) a schedule for amended complaints, and (iii) a schedule for revised motions for class certification in light of the Miles Decision.

Transportation Business Sale. On March 13, 2006, a complaint captioned Geologic Solutions, Inc., v. Aether Holdings, Inc. was filed against the Company in the Supreme Court for the State of New York, New York County. The complaint alleged that plaintiff Geologic was damaged as a result of certain alleged breaches of contract and fraudulent inducement arising out of NexCen's alleged misrepresentations and failure to disclose certain information in connection with the asset purchase agreement dated as of July 20, 2004 for the purchase and sale of our Transportation business. In July 2007, the Company settled all claims with the plaintiff for a payment of \$600,000. The case has been dismissed with prejudice. The Company's costs in connection with the defense of this case have been recorded against discontinued operations, further increasing the loss on the sale of the Transportation segment, and decreasing the amount of cash we have available for acquisitions and operations. The settlement amount has also been recorded against discontinued operations.

Legacy UCC Litigation. UCC and Mr. D’Loren in his capacity as president of UCC are parties along with unrelated parties to litigation resulting from a default on a loan to The Songwriter Collective, LLC (“TSC”), which UCC had referred to a third party. A shareholder of TSC filed a lawsuit in the U.S. District Court for the Middle District of Tennessee alleging, that certain misrepresentations by TSC and its agents (including UCC and D’Loren) induced the shareholder to contribute certain rights to musical compositions to TSC. The lawsuit, which is captioned *Tim Johnson v. Fortress Credit Opportunities I, L.P., et al.*, seeks declaratory judgment, reformation and rescission, and monetary damages relating to the loan and alleged loss of value on contributed assets. UCC and Mr. D’Loren have filed cross-claims against TSC and certain TSC officers claiming indemnity. TSC has filed various cross and third-party claims against UCC, Mr. D’Loren and another TSC shareholder, Annie Roboff. Roboff has filed a separate action in the Chancery Court in Davidson County, Tennessee, which is captioned *Roboff v. Mason, et al.*, as well as claims in the federal court lawsuit, against UCC, Mr. D’Loren, TSC and the other parties. The claims include fraud and negligent misrepresentation allegations against Mr. D’Loren, and UCC. Ms. Roboff previously made these same claims in a lawsuit that she filed in state court in New York. That lawsuit was dismissed on procedural grounds, and Ms. Roboff has appealed the dismissal. UCC believes these claims are without merit and is vigorously defending the actions. UCC’s insurance carrier is defending the litigation. The litigation is in discovery and the outcome cannot be estimated at this time; however, settlement discussions are being held. The loss, if any, could exceed existing insurance coverage and any excess could adversely affect our financial condition and results.

The Company and its subsidiaries are parties, from time to time, in actions for matters arising out of the normal course of business. The Company does not believe that these actions will have a material adverse effect on its consolidated financial position, results of operations, or liquidity.

#### (b) CONTRACTUAL COMMITMENTS

On October 23, 2006, the Company entered into a new lease for its corporate office having a 126 month term with monthly payments of \$70,896 per month starting in month seven and continuing thereafter for five years, and \$74,313 per month for the subsequent five years. The Company will record this expense on a straight-line basis of \$69,147 per month for each of the 126 months. The lease provides for a security deposit in the form of a letter of credit in the amount of \$549,000, which is secured by a cash deposit of equal sum and is included in long term restricted cash on the balance sheet of the Company at September 30, 2007 and December 31, 2006.

In connection with its existing businesses and as a result of businesses acquired during the nine months ended September 30, 2007, the Company is obligated under various leases for office space in New York City, Norcross, Georgia, and other locations which expire at various dates through 2017. These leases, all of which have original terms of more than one year, contain scheduled rent increases or escalation clauses. Certain leases also provide for security deposits in the form of a letter of credit. The aggregate amount of letters of credit outstanding is approximately \$1.3 million which are secured by restricted cash deposits of equal amounts and which have been included as long term restricted cash at September 30, 2007.

On March 12, 2007, NexCen Acquisition Corp. (“the Issuer”) entered into a master loan agreement with BTMU Capital Corporation. This master loan agreement provides for borrowings pursuant to the issuance of a single class of notes to the Issuer and its wholly-owned subsidiaries (“Co-Issuers”) which are jointly and severally liable for payments required under the notes (*See Note 16 Debt*).

MaggieMoo’s International, LLC, a wholly owned subsidiary, is contingently liable under guarantees provided in connection with certain retail store lease obligations. The aggregate future minimum rentals due under the various leases is approximately \$5.9 million. The Company has made an evaluation of each lease obligation and assessed the probability of claims being filed in connection with the related guarantee. As a result, the Company has recorded a liability in the amount of \$3.4 million which represents the net present value of expected future payments under these guarantees.

(c) RESTRICTED CASH

Restricted cash of \$5.2 million at September 30, 2007 includes funds held in escrow related to the Marble Slab acquisition. This amount will be paid one year from the acquisition date, on February 28, 2008. Long term restricted cash of \$1.8 million includes security deposits relating to letters of credit which secure the facility leases of Bill Blass, Waverly, a facility lease in Norcross, Georgia and the Company's headquarters in New York City, as well as a security deposit held by the Company for a sub-lease with the buyer of a former business owned by the Company.

At December 31, 2006, the Company had restricted cash of \$1.3 million relating to funds held in money market accounts as security for outstanding letters of credit established for the facility leases of a facility in Massachusetts formerly used by one of the businesses we sold in 2004 (which the Company sub leases), and the Company's headquarters in New York City.

## **(9) ACQUISITION OF UCC**

On June 6, 2006, NexCen acquired UCC for 2.5 million shares of common stock, plus the right to contingent consideration (in the form of an earn-out) of up to an additional 2.5 million shares of common stock and up to \$10 million in cash if future performance targets were met following the closing.

On September 5, 2007, the Board of Directors determined that based on the Company's stock performance and an adjusted annualized earnings calculation (based on the financial statements included in the Quarterly Report Form 10-Q for the period ended June 30, 2007), all performance targets had been satisfied. As a result, the former UCC securityholders received the contingent consideration of 2.5 million shares of common stock (900,000 of which had been held in an escrow account) and \$10 million in cash in September 2007.

The Company allocated the initial purchase price of the assets acquired and liabilities assumed at the estimated fair values at the acquisition date. The contingent consideration was recorded as additional goodwill at the fair value of the consideration on the date approved by the Board of Directors. The contingent consideration included a cash payment of \$10 million and the issuance of 2.5 million shares of common stock valued at \$6.87 per share (which is the average share price for the 5 day period beginning two days prior to the approval date and ending two days after) totaling approximately \$27.2 million. The recorded goodwill will not be deductible for tax purposes.

## **(10) ACQUISITION OF THE ATHLETE'S FOOT**

On November 7, 2006, our NexCen Acquisition Corp. subsidiary acquired Athlete's Foot Brands, LLC, along with an affiliated advertising and marketing fund, and certain nominal fixed assets owned by an affiliated company. The Athlete's Foot is an athletic footwear and apparel franchisor with 620 retail locations in over 38 countries. The business also provides advertising and marketing support for the benefit of the franchisees, using a portion of the royalties it receives from franchisees. This business operates in our retail franchising segment. The purchase price for this acquisition, excluding contingent consideration, was \$53.1 million, consisting of approximately \$42.1 million in cash and \$9.2 million in our common stock (approximately 1.4 million shares which were valued at \$6.55 per share), and \$1.8 million in other deal related costs. At the closing on November 7, 2006, we also issued to one of the sellers a three-year warrant to purchase an additional 500,000 shares of our common stock at a per share price of \$6.49. On March 12, 2007, we borrowed \$26.5 million under a new senior credit facility secured by the assets of The Athlete's Foot. The purchase agreement required a stand-alone audit of the 2006 financial results of Athlete's Foot Brands, LLC to determine the amount of contingent consideration to be paid to the sellers. Based on the 2006 financial results of TAF, no contingent consideration was earned and therefore none was paid.

Prior to this acquisition, there were executory contracts between UCC and TAF. UCC provided financial advisory services to TAF. UCC earned advisory and loan servicing revenues during the course of the arrangement, which terminated with the acquisition. The estimated fair value of these agreements was recorded when we acquired UCC and the amounts were included in intangible assets. The settlement of these agreements was recorded in purchase accounting at fair value without recognition of any amounts in our statement of operations.

The Company allocated the initial purchase price of the assets and liabilities assumed at the estimated fair values resulting in goodwill of approximately \$5.5 million, trademarks of \$49 million, and franchise and master development agreements valued at approximately \$2.6 million. At September 30, 2007, goodwill had decreased to approximately \$2.4 million. The reduction in initial goodwill is principally attributable to the reversal of the contingent consideration that will not be paid. The recorded goodwill and trademarks are deductible for tax purposes.

## **(11) ACQUISITION OF BILL BLASS**

On February 15, 2007 the Company, through its subsidiary Blass Acquisition Corp., completed the purchase of all of the outstanding equity interests of Blass. The Bill Blass label represents timeless and modern American style and is an American legacy brand. The Bill Blass brand has from its inception offered women modern, sophisticated and tailored clothing. This business operates in our consumer brands segment. The purchase price for the Blass acquisition included initial consideration of \$54.6 million, consisting of \$39.1 million in cash and \$15.6 million in our common stock (approximately 2.2 million shares which are valued at \$7.09 per share). For financial reporting purposes, and in accordance with SFAS 141 and related guidance thereto, the value of shares issued as consideration in connection with the stock purchase agreement is determined by multiplying the number of shares issued by the average closing quoted market price of the shares for the five day period beginning two days prior to the effective date (the date that principal terms of the acquisition were agreed to and announced) of the stock purchase agreement and ending two days after the effective date, or \$7.11. Under the terms of the stock purchase agreement, the former stockholders may be entitled to additional consideration of up to \$16.2 million provided certain financial goals relating to the business of Blass are achieved. The contingent consideration is payable in cash or stock at the option of the Company.

Immediately following the acquisition, the Company formed the subsidiary Bill Blass Jeans, LLC (“Jeans”) and contributed its ownership of Bill Blass International, LLC to Jeans. The Company then sold a 10% minority interest in Jeans to DEHC, an affiliate of DLH, for initial cash consideration of \$2.7 million and a subscribed interest of \$2.7 million which together represent approximately 10% of the aggregate purchase price of Blass (the “Minority Sale”). In addition, the Company issued a Warrant to DEHC to purchase up to 400,000 shares of the Company’s stock at a per share exercise price of \$8.89, provided certain financial goals are achieved.

The Company allocated the purchase price of the assets acquired and liabilities assumed at the estimated fair values at the acquisition date. The goodwill and trademarks are not deductible for tax purposes.

(in thousands)

**Purchase price:**

Cash payments	\$	39,060
Stock consideration		15,593
Direct acquisition costs		1,246
Total purchase price	\$	55,899

**Allocation of purchase price:**

Trademarks	\$	46,100
Goodwill		28,290
License agreements		779
Assets acquired		2,303
Total assets acquired		77,472
Total liabilities assumed		(21,573)
Net assets acquired	\$	55,899

Prior to this acquisition, there were executory contracts between UCC and Blass. UCC provided financial advisory services to Blass. UCC earned advisory and loan servicing revenues during the course of the arrangement, which terminated with the acquisition. The estimated fair value of these agreements was recorded when we acquired UCC and the amounts were included in intangible assets. The settlement of these agreements was recorded in purchase accounting at fair value without recognition of any amounts in our statement of operations.

Blass’ results of operations beginning on February 15, 2007, the date of acquisition, through September 30, 2007, are included in the Condensed Consolidated Statements of Operations.

**(12) ACQUISITIONS OF MARBLE SLAB AND MAGGIEMOO’S**

*Marble Slab* On February 28, 2007, the Company completed the purchase of substantially all of the assets of Marble Slab used or intended for use in connection with the operation of the Marble Slab franchising system. Marble Slab is the franchisor of 369 stores located in the United States, Canada, and the United Arab Emirates as of September 30, 2007. Since 1983, each Marble Slab Creamery has featured homemade super-premium ice cream that is hand-rolled in freshly baked waffle cones. This business operates in our QSR segment. The initial consideration of \$21 million consisted of cash of \$16 million, a promissory note in the principal amount of \$3.5 million, and a second promissory note in the principal amount of \$1.5 million (together with the first note, the “Promissory Notes”). The Promissory Notes accrue interest at the annual rate of 6% per annum until maturity, which is twelve months from the date of issuance. The Company shall have the right to withhold payment of principal due and owing under the second note in accordance with terms of the escrow agreement.





The Company allocated the purchase price of the Marble Slab assets acquired and liabilities assumed at the estimated fair values at the acquisition date. The recorded goodwill and trademarks are deductible for tax purposes.

(in thousands)

**Purchase price:**

Cash payments and promissory notes	\$	21,000
Direct acquisition costs		841
<b>Total purchase price</b>	<b>\$</b>	<b>21,841</b>

**Allocation of purchase price:**

Trademarks	\$	20,000
Goodwill		4,726
Franchise agreements		1,109
Assets acquired		310
<b>Total assets acquired</b>		<b>26,145</b>
Total liabilities assumed		(4,304)
<b>Net assets acquired</b>	<b>\$</b>	<b>21,841</b>

The original allocation of purchase price was revised to reflect a \$142,000 reduction in estimated fair value of liabilities assumed, and consequently goodwill has been reduced.

Marble Slab results of operations beginning on February 28, 2007, the date of acquisition, through September 30, 2007, are included in the Condensed Consolidated Statements of Operations.

MaggieMoo's On February 28, 2007, the Company and MM Acquisition Sub, LLC, a Delaware limited liability company and wholly owned subsidiary of the Company was merged with and into MaggieMoo's, and MaggieMoo's became a wholly owned subsidiary of the Company (the "Merger"). MaggieMoo's is the franchisor of 196 stores located in 29 states as of September 30, 2007. Each location features a menu of freshly made super-premium ice creams, mix-ins, smoothies, and custom ice cream cakes. This business operates in our QSR segment. The sellers received initial consideration of approximately \$15.9 million, after purchase adjustments of \$216,000, consisting of cash of approximately \$10.5 million and 234,242 shares of common stock of the Company, with an aggregate value of approximately \$2.4 million (based on the average closing quoted market price of the shares for the 15 consecutive trading days ending on (and including) the trading day prior to the date of the merger agreement, or \$10.21). For financial reporting purposes, and in accordance with SFAS No. 141 and related guidance thereto, the value of shares issued as consideration in connection with the merger agreement is determined by multiplying the number of shares issued by the average closing quoted market price of the shares for the 5 day period beginning two days prior to the date of the closing of the Merger and ending two days after the date of the closing of the Merger, or \$10.51. Included in the initial consideration is approximately \$3 million of stock and cash, in the same proportion as the ratio of stock and cash included in the initial consideration, which is being held back by the Company for two years to satisfy potential post-closing purchase price adjustments and indemnity claims. The sellers have the right to receive up to an additional \$2 million of consideration in the form of an earn-out, payable on March 31, 2008.

The Company allocated the purchase price of the MaggieMoo's assets acquired and liabilities assumed at the estimated fair values at the acquisition date. The recorded goodwill and trademarks are deductible for tax purposes.

(in thousands)

**Purchase price:**

Cash payments	\$	10,492
Stock consideration		2,462
Initial consideration payable		2,954
Direct acquisition costs		500
Total purchase price	\$	16,408

**Allocation of purchase price:**

Trademarks	\$	16,500
Goodwill		6,129
Franchise agreements		700
Assets acquired		1,600
Total assets acquired		24,929
Total liabilities assumed		(8,521)
Net assets acquired	\$	16,408

The original allocation of purchase price has been adjusted to reflect an increase of \$731,000 in liabilities assumed in connection with the acquisition, and consequently goodwill has been adjusted to reflect this increase.

MaggieMoo's results of operations beginning on February 28, 2007, the date of acquisition, through September 30, 2007, are included in the Condensed Consolidated Statements of Operations.

**(13) ACQUISITION OF WAVERLY**

On May 2, 2007, the Company through its wholly owned subsidiary WV IP Holdings, LLC, completed the acquisition of intellectual property assets including primarily trademarks, copyrights, and license agreements relating to the Waverly®, Gramercy® and Village® brands pursuant to an asset purchase agreement with Schumacher for cash consideration of \$34.025 million. At the closing, the Company also acquired all of the rights, title and interests of Ellery Homestyles, LLC ("Ellery"), a licensee of the Waverly brand used in connection with the manufacture and sale of home products, under a Right of First Refusal Agreement ("ROFR") between Waverly Brand Acquisition LLC (an affiliate of Ellery) and Schumacher dated January 3, 2006 for cash consideration of \$2.75 million and a warrant to purchase 50,000 shares of the Company's common stock. The exercise price of the warrant is equal to \$12.43, which was the closing price of the Company's common stock on the day prior to the issuance of the warrant.

The Company allocated the purchase price of the assets acquired at the estimated fair values at the acquisition date. The goodwill and trademarks are deductible for tax purposes. The Company did not assume any liabilities in connection with the acquired assets.

**(in thousands)****Purchase price:**

Cash payments	\$	36,775
Warrants		110
Direct acquisition costs		454
Total purchase price	\$	37,339

**Allocation of purchase price:**

Trademarks	\$	32,000
Goodwill		4,906
License agreements		433
Assets acquired	\$	37,339

The original purchase price has been increased by \$254,000 to include additional acquisition costs. Consequently, the original amount allocated to goodwill has been increased.

Waverly results of operations beginning on May 2, 2007, the date of acquisition, through September 30, 2007, are included in the Condensed Consolidated Statements of Operations.

**(14) ACQUISITION OF PRETZEL TIME AND PRETZELMAKER**

On August 7, 2007, the Company purchased the trademarks, franchise agreements and related intellectual property, of Pretzel Time Franchising, LLC (“Pretzel Time”) and Pretzelmaker Franchising, LLC (“Pretzelmaker”, and together with Pretzel Time the “Pretzel Time and Pretzelmaker Brands”), from Mrs. Fields Famous Brands, LLC, for \$29.4 million. Pretzel Time and Pretzelmaker are franchise concepts that offer freshly made soft baked hot pretzels, pretzel bites, pretzel wrapped hot dogs and similar products and assorted beverages and are mainly located in shopping malls and shopping centers throughout the United States.

The purchase price consists of cash of approximately \$22.1 million and the issuance of approximately 1 million shares of common stock with an approximate value of \$7.3 million based on the Company's closing stock price immediately prior to the acquisition. In accordance with SFAS No. 141, "Business Combinations" and , the Company recorded the value of stock issued based on the five day average of the Company's closing stock price beginning two days before the acquisition and ending two days after, or \$7.99. No other assets were acquired, and no liabilities were assumed, in connection with the acquisition. The Company allocated the purchase price of the assets acquired at the estimated fair values at the acquisition date based on independent valuations. The goodwill and trademarks will be amortized for tax purposes.

(in thousands)

**Purchase price:**

Cash payments	\$	21,999
Stock consideration		7,972
Direct acquisition costs		300
Total purchase price	\$	30,270

**Allocation of purchase price:**

Trademarks	\$	27,500
Franchise agreements		740
Non-compete agreement		1,000
Goodwill		1,030
Assets acquired	\$	30,270

The results of operations of the Pretzel Time and Pretzelmaker Brands are included in the Condensed Consolidated Statements of Operations beginning on August 7, 2007, the date of acquisition, through September 30, 2007.

**(15) PRO FORMA INFORMATION RELATED TO THE ACQUISITIONS**

As the purchases of Bill Blass, MaggieMoo's, Marble Slab, Waverly and the Pretzel Time and Pretzelmaker Brands were material acquisitions, we are providing the pro forma financial information set forth below, which presents the consolidated results as if the acquisitions had all occurred on January 1, 2006. The financial information presented for TAF for the three and nine months ended September 30, 2007 is based on actual results since we owned TAF for all of 2007. The financial information for Bill Blass, MaggieMoo's, Marble Slab and Waverly for the three months ended September 30, 2007 is also based on actual information since those brands were all acquired prior to June 30, 2007. All of the other financial information for the three and nine month periods ended September 30, 2006 and 2007 are based on the actual results of the brands prior to our ownership and include pro forma adjustments consistent with the annual pro forma adjustments discussed in the Forms 8-K and 8-K/A filed with respect to TAF on November 14, 2006, Bill Blass on May 3, 2007, MaggieMoo's and Marble Slab on May 10, 2007, Waverly on July 18, 2007 and Pretzel Time and Pretzelmaker on October 23, 2007. This pro forma information is not necessarily indicative of the results that actually would have occurred nor does it intend to indicate future operating results.

(in thousands)	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2007	2006	2007	2006
	(unaudited)	(unaudited)	(unaudited)	(unaudited)
<b><u>Revenues:</u></b>				
TAF	\$ 2,421	\$ 2,396	\$ 6,155	\$ 6,333
Bill Blass	2,855	2,865	7,618	7,029
MaggieMoo's	1,179	978	2,918	2,817

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Marble Slab	1,983	1,317	4,427	4,380
Waverly	2,139	1,704	6,993	4,987
Pretzel Time	935	917	2,667	2,605
Pretzelmaker	532	612	1,686	1,737
Total pro forma revenues	\$ 12,044	\$ 10,789	\$ 32,464	\$ 29,888

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Operating income

TAF	\$	845	\$	(642)	\$	2,422	\$	359
Bill Blass		2,073		1,135		5,653		4,205
MaggieMoo's		314		(367)		5		(913)
Marble Slab		1,211		72		1,433		530
Waverly		894		704		3,880		2,060
Pretzel Time		732		649		1,826		1,645
Pretzelmaker		371		432		1,102		1,097
Total pro forma operating income	\$	6,440	\$	1,983	\$	16,321	\$	8,983

Net income (loss):

TAF	\$	208	\$	(691)	\$	987	\$	61
Bill Blass		1,617		977		4,687		2,550
MaggieMoo's		314		(497)		5		(1,357)
Marble Slab		1,203		72		1,428		467
Waverly		466		628		3,452		1,984
Pretzel Time		683		649		1,777		1,645
Pretzelmaker		338		432		1,068		1,097
Total		4,829		1,570		13,404		6,447
Corporate		(4,294)		(822)		(10,179)		(2,475)
Total pro forma net income	\$	535	\$	748	\$	3,225	\$	3,972

Pro forma net income per share -

basic and diluted	\$	0.01	\$	0.02	\$	0.06	\$	0.09
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Weighted-average shares outstanding-basic	52,384	46,534	50,801	45,098
Weighted-average shares outstanding-diluted	54,250	48,056	53,400	45,454

These amounts include the historical results of the businesses we acquired. We do not intend to assume their historical overhead costs in our corporate structure. As discussed in *Note 10 Acquisition of The Athlete's Foot*, TAF was acquired in the prior year on November 7, 2006.

**(16) DEBT**

On March 12, 2007, NexCen Acquisition Corp. ("the Issuer"), a wholly owned subsidiary of the Company, entered into a master loan agreement with BTMU Capital Corporation. This master loan agreement provides for borrowings pursuant to the issuance of a single class of notes to the Issuer and its wholly-owned subsidiaries ("Co-Issuers") which are jointly and severally liable for payments required under the notes. The assets of the Issuer and Co-Issuers, which consist of the respective IP assets and the related royalty revenues and trade receivables, are pledged as collateral security under each note, and secure the obligations of the Issuer and all Co-Issuers under all of the notes. The notes are non-recourse to NexCen Brands, Inc. Each note is repayable in full after five years. The facility has no expiration date and can be terminated by the Co-Issuers upon thirty days notice and by BTMU Capital Corporation by electing not to fund future advances; however, each note funding maintains its respective maturity date. The maximum aggregate amount of borrowings that may be outstanding at any one time under the agreement is \$150 million. The borrowing rate is LIBOR plus an interest rate margin, which ranges from 1.50% to 3.00%. The Company may refinance all or part of the notes with no pre-payment penalties. This allows us to refresh available borrowing capacity under the facility, such as by completing securitization transactions involving certain of our acquired IP assets and using the proceeds from these transactions to repay notes under the master loan agreement. The borrowing rate is based on 3-month LIBOR which is a floating rate. The LIBOR rate resets every 90 days.



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In March, May, August and September 2007, we borrowed \$26.5 million, \$27.3 million, \$22.0 million and \$16.0 million, respectively, under the new credit facility. The borrowings are secured by the assets of The Athlete's Foot, Bill Blass, Waverly, and Pretzel Time and Pretzelmaker Brands respectively. The Company paid borrowing fees of \$265,000, \$273,000, \$220,000 and \$240,000 for The Athlete's Foot, Bill Blass, Waverly, and Pretzel Time and Pretzelmaker borrowings, respectively, and incurred aggregate transaction costs including borrowing fees and other direct costs of \$2.0 million, which are being amortized over five years.

As of September 30, 2007, outstanding borrowings under the facility totaled \$91.3 million at initial floating borrowing rates approximating 8.0%. The rate is reset each quarter based upon a measurement of debt leverage to cash flow ratio. Approximately \$4.3 million of this amount has been classified as current portion of long-term debt as of September 30, 2007. Interest expense recorded by the Company for the three and nine months ended September 30, 2007 was approximately \$1.5 million and \$2.7 million respectively.

## (17) SEGMENT REPORTING

The Company operates three segments: retail franchising, consumer branded products, and quick service restaurants. The Company's reportable operating segments have been determined in accordance with the Company's internal management structure. The following tables set forth the Company's financial performance by reportable operating segment.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Revenues:				
Franchise management:				
Retail franchising	\$ 2,421	\$ -	\$ 6,155	\$ -
Quick service restaurants	4,063	-	7,299	-
Total	6,484	-	13,454	-
Brand management:				
Consumer branded products	4,845	-	10,611	-
Total revenues	\$ 11,329	\$ -	\$ 24,065	\$ -
Operating income (loss):				
Franchise management:				
Retail franchising	\$ 884	\$ -	\$ 2,452	\$ -
Quick service restaurants	2,232	-	3,019	-
Total	3,116	-	5,471	-
Brand management:				
Consumer branded products	2,920	-	7,311	-
Total brands	6,036	-	12,782	-
Corporate and unallocated expenses	(3,396)	2,568	(9,992)	6,271
Total operating income (loss)	\$ 2,640	\$ (2,568)	\$ 2,790	\$ (6,271)
EBITDA:				
Franchise management:				
Retail franchising	\$ 936	\$ -	\$ 2,600	\$ -
Quick service restaurants	2,310	-	3,178	-
Total	3,246	-	5,778	-
Brand management:				
Consumer branded products	3,013	-	7,522	-
Total brands	6,259	-	13,300	-
Corporate and unallocated expenses	(2,330)	(1,504)	(7,105)	(4,369)
Total EBITDA	3,929	(1,504)	6,195	(4,369)
Adjustments to reconcile EBITDA to operating income:				
Other income	(51)	(469)	(291)	(562)

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Stock compensation expense	(848)	(388)	(2,219)	(1,084)
Depreciation and amortization	(390)	(207)	(895)	(256)
Total operating income (loss)	\$ 2,640	\$ (2,568)	\$ 2,790	\$ (6,271)

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Assets:	September 30, 2007	December 31, 2006
Franchise management:		
Retail franchising	\$ 58,642	\$ 59,937
Quick service restaurants	86,018	-
<b>Total</b>	<b>144,660</b>	<b>59,937</b>
Brand management:		
Consumer branded products	121,928	-
<b>Total brands</b>	<b>266,588</b>	<b>59,937</b>
Corporate	71,142	98,448
<b>Total assets</b>	<b>\$ 337,730</b>	<b>\$ 158,385</b>
Current and long-term debt:		
Franchise management		
Retail franchising	\$ 26,268	\$ -
Quick service restaurants	16,000	-
<b>Total</b>	<b>42,268</b>	<b>-</b>
Brand management		
Consumer branded products	49,060	-
<b>Total brands</b>	<b>91,328</b>	<b>-</b>
Corporate	-	-
<b>Total current and long-term debt</b>	<b>\$ 91,328</b>	<b>\$ -</b>

At December 31, 2006, we had only one operating segment - our retail franchising business.

### **(18) DISCONTINUED OPERATIONS**

For the nine months ended September 30, 2007, the loss from discontinued operations of \$453,000 includes the reversal of \$647,000 in sales tax liabilities as a result of statute of limitations that have expired and tax settlements with three states related to income tax matters. These reversals are offset by legal fees and other costs of \$459,000 incurred in connection with litigation related to a business sold by the Company in 2005. During the second quarter of 2007 the Company recorded a settlement in the amount of \$600,000 relating to this litigation which is discussed in *Note 8 Commitments and Contingencies*. Discontinued operations for the nine months ended September 30, 2006, includes \$1.6 million of profit related to operations of our MBS business that have been reclassified to discontinued operations. At September 30, 2007, the accompanying balance sheet includes approximately \$1.5 million in accounts payable and accrued expenses relating to discontinued operations.

### **(19) SUBSEQUENT EVENTS**

On November 8, 2007, the Company borrowed an additional \$19 million secured by the assets of Maggie Moo's and Marble Slab under its credit facility with BTMU at an initial interest rate of LIBOR plus 2.65%, or approximately 7.50%.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (MD&A)

### FORWARD-LOOKING STATEMENTS

We make statements in the Quarterly Report that are considered forward-looking statements within the meaning of the Securities Exchange Act of 1934, as amended. The words "anticipate," "believe," "estimate," "intend," "may," "will," "expect" similar words 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. These risks, uncertainties and other factors include, but are not limited to:

- we may not be successful in implementing our new IP strategy;
- we may not be able to acquire IP or IP-centric companies or finance or exploit them on terms that are acceptable to us;
- we are likely to face substantial competition in seeking to acquire and market desirable IP and IP-centric companies, and competitors may have substantially greater resources than we do;
- we may not be successful in operating or expanding our acquired businesses or integrating them into an overall IP business strategy;
- we may not be able to borrow desired amounts at desired times in accordance with the terms of our master loan agreement;
- we will be subject to risks associated with incurring indebtedness, including interest expense and the obligation to satisfy covenants contained in our master loan agreement, and these could have a negative impact on our business and results and could reduce our flexibility in some circumstances;
- risks associated with marketing and licensing our acquired trademarks and with successfully developing and marketing new products particularly in light of rapidly changing fashion and market trends;
- risks associated with the ability of licensees and franchisees to successfully market and sell branded products, competition;
- we may not be able to realize value from our accumulated tax loss carry forwards, because of a failure to generate sufficient taxable earnings, regulatory limits or both;
- general regional and national economic conditions;
- loss or departure of one or more members of our senior management; and
- the market price of our stock may be volatile, which could make the use of our stock as consideration for acquisitions less attractive to potential sellers.

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 throughout this Report, in Item 1A of our Annual Report on Form 10-K/A for the year ended December 31,

2006 and our other periodic reports filed with the Securities and Exchange Commission. Forward-looking statements reflect our reasonable beliefs and expectations as of the date of this Report, and we have no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

## **OVERVIEW**

NexCen Brands, Inc. (“NexCen” or the “Company”) is a company that engages in the acquisition and management of established consumer brands in intellectual property-centric industries. NexCen’s goal is to be the world leader in brand management for the 21st century. Our business is focused on acquiring, managing and developing intellectual property, which we refer to as IP, and IP-centric businesses. IP-centric companies own, license or otherwise possess rights to trademarks, trade names, copyrights, patents, trade secrets and other intangible assets. IP that we have acquired and expect to acquire in the future includes trademarks, trade names, copyrights, franchise rights, patents, trade secrets, know-how and other similar, valuable property, primarily used in the retail and consumer branded products and franchise businesses. In building our IP business, we have focused on three vertical segments: retail franchising, consumer branded products and quick service restaurant franchising (which we refer to as “QSR” franchising).

We transitioned to this IP-centric business model in the second half of 2006, when we began to acquire IP-centric businesses (following our June 2006 acquisition of UCC, which established the platform for our IP business strategy). When we acquired UCC, Robert W. D'Loren, who was the president and chief executive officer of UCC, became our president and chief executive officer and a member of our Board of Directors. Mr. D'Loren, together with the other members of our senior management team (some of whom formerly worked for UCC), implemented our IP business strategy.

Through November 7, 2007, we have acquired seven brands, as follows:

Franchise Management:

Retail Franchising

· The Athlete's Foot (acquired November 7, 2006)

QSR franchising

· Maggie Moo's (acquired February 28, 2007)

· Marble Slab (acquired February 28, 2007)

· Pretzel Time (acquired August 7, 2007)

· Pretzelmaker (acquired August 7, 2007)

Brand Management:

Consumer Branded Products

· Bill Blass (acquired February 15, 2007)

· Waverly (acquired May 2, 2007)

Our operating segments are discussed in *Note 17* to our *Unaudited Condensed Consolidated Financial Statements* included in this Report.

We are continuously evaluating additional potential acquisitions and are actively in discussions to acquire additional IP-centric businesses. However, as of the date of this Report, we have not entered into any binding agreements to complete any additional acquisitions.

Before transitioning to our IP business, we managed a leveraged portfolio of MBS. We liquidated our MBS portfolio and exited that business in the fourth quarter of 2006. We also previously owned and operated various mobile and wireless communications businesses, which we sold in 2004. For the periods reflected in our financial statements, the MBS business and related assets and liabilities, as well as anything related to our former mobile and wireless communications businesses, are reported as discontinued operations. The results of our IP business are reported as our continuing operations.

Our IP business strategy is to generate revenue from licensing and other commercial arrangements with third parties who want to use the IP that we own, acquire and manage. These third parties pay us licensing and other contractual fees and royalties (including franchise fees) for the right to use our IP on either an exclusive or non-exclusive basis. Our contractual arrangements may apply to a specific product market, a specific geographic market, or to multiple markets. Because of the changes in our business, our financial results have varied significantly from one period to the next. As we expand our IP strategy, our financial results are likely to continue to change significantly over the near term.

In reviewing our results for the third quarter of 2007, you should keep in mind the following factors:

- Comparisons to prior periods are not yet meaningful, because we did not initiate our IP business strategy 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 The Athlete's Foot.
- Of the seven IP brands we owned and operated at September 30, 2007, we owned only one -- The Athlete's Foot -- for the entire nine months of 2007. Our results through September 30, 2007 include Bill Blass for seven and one half months, Maggie Moo's and Marble Slab for seven months, Waverly for approximately five months, and Pretzel Time and Pretzelmaker for less than two months. In addition, MaggieMoo's and Marble Slab's revenue streams are subject to wide seasonal fluctuations. Consequently, our nine month results are not indicative of what we expect our results to be in future periods.



If we continue to acquire IP-centric businesses (as we expect to do), future period results will continue to change due to the inclusion of such additional businesses. Accordingly, period-to-period changes may continue to be significant. However, as we own a group of businesses for a longer period, we expect to be able to evaluate changes in our results from those businesses owned for multiple periods (isolating the effect on our results of newly acquired businesses).

References in the Report to “we,” “our” and the “Company” are to NexCen Brands, Inc. and its subsidiaries, collectively. We discuss our business in detail in Item 1 of our 2006 Annual Report on Form 10-K/A, and we discuss the risks affecting our business in Item 1A of that Annual Report.

We own the proprietary rights to a number of trademarks used in this Report which are important to our business, including The Athlete’s Foot, Bill Blass, MaggieMoo’s, Marble Slab, Waverly, Pretzel Time and Pretzelmaker. We have omitted the “®” and “TM” trademark designations for such trademarks in this Report. Nevertheless, all rights to such trademarks named in this Report are reserved.

## **TAX CONSIDERATIONS**

An important aspect of our business strategy is to realize value, in the form of tax savings, from our accumulated tax loss carryforwards. Under federal and certain state tax laws, we may use these carryforwards to substantially reduce the income taxes we otherwise would have to pay on future taxable income. In addition, these tax loss carryforwards will not be available to offset certain state and foreign taxes, as well as the federal alternative minimum tax. However, we expect that these tax loss carryforwards will substantially reduce our overall cash expenses, as compared to amounts that would otherwise be due, to the extent that we generate sufficient taxable income to make use of these carryforwards. Limitations on our ability to recognize tax loss carryforwards as deferred tax assets on our balance sheet and to offset them against deferred tax expenses are discussed in *Note 5 to the Unaudited Consolidated Financial Statements* contained in this Report. As a result, we could have little current income tax liability for a period of time. Our ability to realize value from these tax loss carryforwards is subject to various risks and uncertainties, including regulations that, under certain circumstances, may limit our ability to use these carryforwards to reduce future taxes that we might otherwise owe. These risks and uncertainties are discussed at length in our 2006 Annual Report on Form 10-K/A, in Item 1 under the heading “Tax Loss Carry Forwards” and in Item 1A under the heading “Risks of Our Tax Loss Carry Forwards.”

## **CRITICAL ACCOUNTING POLICIES**

Critical accounting policies are the accounting policies that are most important to the presentation of our financial condition and results of operations and require management’s most difficult, subjective or complex estimates and judgments. Our critical accounting policies include valuation of our deferred tax assets and impairment testing of goodwill and intangible assets. These critical accounting policies are discussed in detail in our 2006 Annual Report on Form 10-K/A in Item 7 under the heading “Critical Accounting Policies.” We also discuss our significant accounting policies in *Note 1* to our *Unaudited Condensed Consolidated Financial Statements* contained in this Report and in *Notes 2 and 3* to our *Audited Consolidated Financial Statements* included in Item 8 in our 2006 Annual Report on Form 10-K/A.

New accounting pronouncements are discussed in *Note 1 to the Unaudited Condensed Consolidated Financial Statements* contained in this Report.

## **COMPARISON OF RESULTS FOR THREE AND NINE MONTH PERIODS ENDED SEPTEMBER 30, 2007 AND SEPTEMBER 30, 2006**

### **RESULTS OF CONTINUING OPERATIONS**

*Income (Loss) From Continuing Operations*

We recognized income from continuing operations of \$123,000 and \$127,000 for the three and nine months ended September 30, 2007, respectively, compared to losses from continuing operations of \$1.4 million and \$4.1 million, for the same periods in 2006, as a result of the implementation of our IP-centric business model. No revenues were earned in the first nine months 2006 in connection with the new business model.

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*Royalty, Licensing and Franchise Fee Revenue*

We recognized \$11.3 million and \$24.1 million in revenues for the three and nine months ended September 30, 2007, respectively, as a result of owning seven brands, six of which were acquired during the first nine months of 2007. Of the \$24.1 million in revenues recognized for the nine month period, \$10.6 million related to franchising royalties, \$10.7 million related to licensing, and \$2.7 million related to franchise fees, compared to \$0 for each in 2006. Royalty and licensing revenues are recorded as they are earned and become receivable from franchisees. Franchise fee revenue is recognized when all initial services are performed, which is generally considered to be upon the opening of the applicable franchisee store. Our revenues, especially those derived from our premium ice cream franchisees, are subject to seasonal fluctuations.

*Total Operating Expenses*

Operating expenses of approximately \$8.7 million and \$21.3 million for the three and nine months ended September 30, 2007, respectively, increased \$6.1 million and \$15.0 million, from the same periods in 2006. The increase reflects an increase in selling, general and administrative costs and stock based compensation resulting from the acquisitions of the brands we own.

Operating expenses that have been reclassified to discontinued operations are directly attributable to the MBS and other businesses that have been sold or otherwise exited. All other costs are expenses that would have been incurred regardless of our business operations, and therefore remain included as part of continuing operations.

*Selling, General and Administrative Expenses*

Selling, general and administrative (“SG&A”) expenses consist of compensation and personnel related costs, rent, facility related support costs, travel and advertising.

Corporate SG&A expenses of \$2.1 million and \$6.2 million for the three and nine months ended September 30, 2007, respectively, increased \$.5 million and \$2.8 million, from the same periods in 2006. The increase primarily reflects additional costs resulting from the hiring of corporate staff to support our acquisition activity and growth of the company. Additionally, we recorded SG&A expenses for our brands of \$4.7 million and \$10.0 million for the three and nine months ended September 30, 2007 compared to \$0 in 2006. Of the \$10.0 million of brand related SG&A expenses recorded for the nine month period ended September 30, 2007, \$4.0 million related to our QSR segment, \$3.2 million related to our retail franchising segment, and the remainder related to our consumer branded products segment. Personnel employed by the Company increased from 20 employees at September 30, 2006 to 96 employees at September 30, 2007 as a result of our acquisitions.

*Professional Fees*

Corporate professional fees of \$310,000 and \$1.1 million for the three and nine months ended September 30, 2007, respectively, represent the costs of outside professionals, primarily related to legal expenses associated with our public reporting, compliance, and corporate finance activities and accounting fees related to auditing and tax services. Professional fees related to our Brands of \$356,000 and \$767,000 for the three and nine months ended September 30, 2007, respectively, include accounting fees and legal expenses associated with franchising activities, trademark and copyright maintenance.

*Depreciation and Amortization*

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

Depreciation and amortization of \$390,000 and \$895,000 for the three and nine months ended September 30, 2007, respectively, increased \$183,000 and \$639,000 from the same periods in 2006. The increase primarily reflects the amortization of intangible assets related to a non-compete agreement with our chief executive officer, and amortization of intangibles of franchise agreements, license agreements, and master development agreements related to the TAF, Blass, Marble Slab, MaggieMoo's, Waverly, and Pretzel Time and Pretzelmaker acquisitions.

*Stock Compensation Expense*

We adopted SFAS No. 123R, "*Share-Based Payment*" in the first quarter of 2006. At that time we began to recognize compensation expense over the service period for the fair value of all equity based award grants issued after January 1, 2006, as well as expense attributable to the remaining service period for all prior grants that had not fully vested by that date.

Stock compensation expense of \$848,000 and \$2.2 million for the three and nine months ended September 30, 2007, respectively, increased \$460,000 and \$1,135,000, from the same periods in 2006. The increase results from the granting of a total of approximately 6,822,000 options and warrants in 2006 and the first 9 months of 2007. These options and warrants were issued to provide long-term incentive packages to new key executives and other senior managers that we hired in 2007 and 2006, including individuals who were employed by UCC, The Athlete's Foot, Bill Blass, Marble Slab, and Waverly prior to their acquisition by us (*See Note 4 to the Unaudited Condensed Consolidated Financial Statements*).

#### *Interest Income*

We recognized interest income of \$320,000 and \$1.5 million for the three and nine months ended September 30, 2007, respectively, compared to \$733,000 and \$1.6 million, for the same periods in 2006. The amounts recognized in 2007 reflect interest earned on our cash balances. In the first quarter of 2006, most of our available cash was invested in MBS, and earnings on such investments are reported as part of the results of discontinued operations.

#### *Interest Expense*

Interest expense of \$1.6 million and \$2.8 million for the three and nine months ended September 30, 2007, respectively, reflects interest incurred in connection with our borrowings under the BTMU agreement (*See Note 16 to the Unaudited Condensed Consolidated Financial Statements*), and \$140,000 of imputed interest related to a long-term consulting agreement liability, assumed with The Athlete's Foot acquisition, which expires in 2028.

#### *Other Income (Expense)*

Other income of \$51,000 and \$291,000 for the three and nine months ended September 30, 2007, respectively, decreased \$418,000 and \$271,000, from the same periods in 2006, and primarily reflects loan servicing revenue received in 2007. The Company merged with UCC Capital in June, 2006 and as a result the operating results for the third quarter of 2006 includes loan servicing revenue derived from loans initiated and/or serviced by UCC. We expect the loan servicing activity to continue to decrease throughout 2007 and beyond as the underlying loans are repaid. Other income in 2007 also includes recoveries of \$49,000 received from a venture capital investment, which had been written off in 2002. We record these recoveries as we receive them as the extent of future payments, if any, cannot be readily determined.

#### *Minority Interest*

Minority interest expense of \$56,000 and \$198,000 for the three and nine months ended September 30, 2007, respectively, represents approximately 10% of the after tax net income attributable to the Bill Blass business which is jointly owned 90% by NexCen Acquisition Corp. and 10% by Designer Equity Holdings, LLC, an entity controlled by a licensee of the Blass trademark.

#### *Income Taxes*

The current provision for taxes for the nine months ending September 30, 2007 of \$191,000 includes approximately \$181,000 of foreign taxes withheld on franchise royalties received from foreign based franchisees in accordance with tax treaties between the U.S. and the respective foreign countries and \$10,000 of state income tax expense.

The Company computes its combined current and deferred quarterly income tax expense or benefit based upon an estimate of the annual effective tax rate from continuing operations. The Company's effective tax rate from continuing operations was 0% and 97%, in the first and second quarters of 2007, respectively. In the third quarter of 2007, the Company has pre-tax income from continuing operations of \$1.3 million and as a result it recorded a tax provision

based on the estimated effective tax rate for the third quarter which approximates 92%. The combined federal and state deferred tax expense of \$1.3 million for the nine months ended September 30, 2007 results primarily from timing differences relating to the Athlete's Foot, MaggieMoo's, Marble Slab, Waverly, Pretzel Time and Pretzelmaker trademarks, which are amortized over fifteen years for tax purposes but which are not amortized for book purposes. The deferred tax liability resulting from these timing differences cannot be offset against the Company's deferred tax assets under U.S. generally accepted accounting principles since the deferred tax expense relates to an indefinite-lived asset and is not anticipated to reverse in the same period. The Company anticipates that cash paid for income taxes for 2007 will be minimal due to the amortization of trademarks for tax purposes and the availability of net operating loss carryforwards. The Company anticipates that it will only pay federal alternative minimum taxes, foreign taxes withheld at source and certain state and local income and franchise taxes. This current tax expense reflects the Company's expectation of its cash tax obligations. Current income tax expense represents approximately 5% and 12% of pre-tax income from continuing operations for the three and nine months ended September 30, 2007.

For a further discussion of the Company's tax situation, including deferred tax assets and liabilities, see *Note 5 to the Unaudited Consolidated Financial Statements* contained in this Report.

### *Discontinued Operations*

During the three and nine months ended September 30, 2007, discontinued operations of \$(6,000) and \$(453,000), respectively, reflects the reversal of \$0 and \$647,000, respectively, in sales tax liabilities where the statute of limitations has expired and includes tax settlements with three states related to income tax and voluntary disclosure events. This reversal is offset by legal fees and other costs of \$6,000 and \$459,000, respectively, incurred in connection with litigation related to the Transportation business sale. Additionally, during the quarter the Company recorded a settlement in the amount of \$600,000 relating to the Transportation business sale and is discussed in *Note 8 to the Unaudited Condensed Consolidated Financial Statements*. Discontinued operations for the three and nine months ended September 30, 2006, includes \$544,000 and \$1.6 million of profit, or \$0.01 and \$0.03 per share, respectively, related to operations of our MBS business that have been reclassified to discontinued operations. At September 30, 2007, the accompanying balance sheet includes approximately \$1.5 million in accounts payable and accrued expenses relating to discontinued operations.

### FINANCIAL CONDITION

During the nine months ended September 30, 2007, our total assets increased by \$179 million, while our total liabilities increased by \$128 million. These changes reflect the additional trademarks and goodwill acquired in the acquisitions of Bill Blass, MaggieMoo's, Marble Slab, Waverly, Pretzel Time and Pretzelmaker Brands during the period, offset by a decrease in cash which was utilized for the acquisitions. In addition, we borrowed \$91.8 million in 2007 secured by the assets of The Athlete's Foot, Bill Blass, Waverly, Pretzel Time and Pretzelmaker under our credit facility with BTMU, which is described in *Note 16 to the Unaudited Condensed Consolidated Financial Statements*. These borrowings increased both our cash on hand and our indebtedness. On November 8, 2007, the Company borrowed an additional \$19.0 million secured by the assets of MaggieMoo's and Marble Slab. This borrowing increased cash and debt to approximately \$50 million and \$110 million, respectively.

### *Liquidity and Capital Resources*

Liquidity refers to our ability to meet financial obligations that arise during the normal course of business. Sources of liquidity can include cash generated by operations, available borrowings, and proceeds from the sale of securities or assets. Our operations have not been profitable historically, and thus they have consumed, rather than generated, cash. One of our key objectives is to achieve profitability in our IP business, so that our operations will enhance our liquidity and increase the amount of cash we have available for investment in the growth and development of our business.

Our business model does not involve significant capital asset investment (other than planned acquisitions of IP assets and IP-centric businesses.) Accordingly, we do not expect to be required to fund any material capital expenditures outside of our core IP acquisition program.

Although we had more than \$83 million of cash on hand at December 31, 2006, we concluded that securing an additional source of liquidity was important to ensure our continued ability to fund acquisitions and the expansion of our business. Accordingly, on March 12, 2007 we entered into a new \$150 million bank credit facility, the terms of which are discussed in *Note 16 to the Unaudited Condensed Consolidated Financial Statements*. We believe that the combination of cash on hand and available borrowings under this new credit facility will provide us with sufficient liquidity to meet current operations and planned business growth for at least the next twelve months.

Additional sources of liquidity, if needed, may be available through additional bank borrowings and market sales or private placements of debt or equity securities. We cannot assure that any such additional borrowings or sales of securities will be available to us (should they be needed in the future) on favorable terms and conditions or at all. Such sources of additional liquidity are subject to many risks and uncertainties that are not within our control, such as

changes in the condition of the capital markets and prevailing bank loan terms, as well as the trading price of our common stock. In addition, as discussed in Item 1A of our 2006 Annual Report on Form 10-K/A under the heading “Risks of Our Tax Loss Carry Forwards,” issuing significant amounts of additional shares of our capital stock can result in limitations on our ability to use our tax loss carry forwards in the future. The market price of our common stock has been, and may continue to be, volatile, which could result in a reduction of the market price of our common stock and, among other things, make it more expensive for us to complete acquisitions using our stock as consideration. Our ability to grow through the acquisition of additional IP assets and businesses will depend on the availability of capital to complete acquisitions.



The following table reflects use of net cash for operations, investing, and financing activities for the nine month periods ended September 30,

(IN THOUSANDS)	2007		2006	
Net cash used in operating activities	\$	(4,982)	\$	(129)
Net cash (used in) provided by investing activities		(145,374)		169,872
Net cash provided by (used in) financing activities		96,253		(134,274)
Net (decrease) increase in cash and cash equivalents	\$	(54,104)	\$	35,469

Net cash used in operating activities was \$5.0 million in 2007 compared to \$129,000 in 2006. The cash used in operating activities in 2007 is primarily a result of the increase in accounts receivable and prepaid expenses reflecting growth in the businesses we acquired. The cash provided from operations in 2006 was a result of the MBS activity.

Net cash used in investing activities was \$145.4 million in 2007, primarily resulting from the acquisitions of Bill Blass, Marble Slab, MaggieMoo's, Waverly, Pretzel Time, and Pretzelmaker during the nine months ended September 30, 2007. Cash provided by investing activities of \$170 million for 2006, related primarily to approximately \$173 million in proceeds from the sale of certain MBS investments net of \$3 million of principal repayments on our MBS investments.

Net cash provided by financing activities in 2007 of \$96 million primarily reflects the funds received by The Athlete's Foot, Bill Blass, Waverly and Pretzel Time and Pretzelmaker Brands from the BTMU facility which is discussed in *Note 16 to the Unaudited Condensed Consolidated Financial Statements*, as well as the funds received by the Company from the sale of minority interest in Bill Blass Jeans, LLC as discussed in *Note 11 to the Unaudited Condensed Consolidated Financial Statements*. Net cash used in financing activities in 2006 of \$134 million primarily related to the repayment of all of the Company's remaining outstanding short-term borrowings under repurchase agreements that were used to fund MBS investments. These borrowings were repaid out of the proceeds from sales of, and principal payments on, MBS investments.

As discussed in *Note 8 to the Unaudited Condensed Consolidated Financial Statements*, Geologic, the buyer of our Transportation business, filed a lawsuit against us seeking damages for alleged breaches of certain of the representations and warranties we made to Geologic when we sold the Transportation business to them in 2004. In July 2007, the Company settled all claims with the plaintiff for a payment of \$600,000 and the case was dismissed. The settlement payment and the Company's costs in connection with the defense of this case have been recorded against discontinued operations, further increasing the loss on the sale of the Transportation segment.

## CONTRACTUAL OBLIGATIONS

The following table reflects our contractual commitments, including our future minimum lease payments as of September 30, 2007:

Contractual Obligations (\$ in thousands)	Total	Payments due by period			
		Less than 1 year	1-3 years	3-5 years	More than 5 years
Long-Term Debt	\$ 91,328	\$ 4,273	\$ 24,225	\$ 56,596	\$ 6,235
Capital Lease Obligations	63	42	21	-	-
Operating Leases	15,206	1,665	3,453	3,366	6,722
Purchase Obligations	8,054	5,100	2,954	-	-
	-	-	-	-	-

## Other Long-Term Liabilities

Reflected on the Registrants Balance Sheet under GAAP

Total	\$ 114,651	\$ 11,079	\$ 30,653	\$ 59,961	\$ 12,958
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The long-term debt relates to the borrowings under the BTMU Capital Corporation facility (*See Note 16 to the Unaudited Condensed Consolidated Financial Statements*). The operating lease obligations reflect real estate leases in New York City, Norcross, Georgia, Columbia, Maryland, and Houston, Texas and Marlborough, Massachusetts (both of which we sub-lease). The purchase obligations include deferred consideration and contingent consideration related to the Bill Blass, Marble Slab, and Maggie Moo's acquisitions. 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.

**ITEM 3. 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*

The Company is exposed to changes in interest rates primarily as a result of its borrowing and investing activities used to maintain liquidity and fund business operations. The nature and amount of the Company's long-term and short-term debt can be expected to vary as a result of future business requirements, market conditions and other factors. At September 30, 2007, the Company had outstanding borrowings of \$91.3 million under its credit facility, secured by the assets of The Athlete's Foot, Bill Blass, Waverly, and Pretzel Time and Pretzelmaker brands. The interest rate on these borrowings is based on three month LIBOR rates plus a margin. The Company is subject to interest rate risk from fluctuations in the LIBOR rate. LIBOR rates fluctuate on a daily basis. The LIBOR rate for our debt resets every 90 days. At December 31, 2006, we had no outstanding borrowings or other debt. If our bank requests it, we will be obligated to hedge the interest rate exposure on our outstanding loans.

We invest our cash and cash equivalents in investment funds which normally conform to the following investment strategies: investing at least 80% of assets in U.S. Government securities and repurchase agreements for those securities, investing in U.S. Government securities issued by entities that are chartered or sponsored by Congress but whose securities are neither issued nor guaranteed by the U.S. Treasury, maintaining a dollar-weighted average maturity at sixty days or less. These investments are generally subject to the risks of changes in market interest rates and the impact of any declines in the credit quality of an issuer or a provider of credit support. A 10% change in interest rates would not materially impact the returns on our excess cash balances. In general, the Company accepts a slightly lower rate of interest on its investments in exchange for a higher credit rating from the issuer or the guarantor of the securities in which the Company invests. Our primary objective in investing cash balances is to preserve principal and maintain liquidity, rather than to seek enhanced investment returns.

### *Foreign Exchange Rate Risk*

The Company is exposed to fluctuations in foreign currency due to its international franchisees. Several of the brands we own have franchisees or licensees located in countries that transact business in currencies other than the U.S. dollar. The foreign currency is translated into U.S. dollars to determine the amount of royalties due to the Company. Although we have franchisees and licensees throughout the world for our various brands, our primary foreign currency exchange exposure involves the Australian dollar, as approximately one-third of our international stores for The Athlete's Foot as of September 30, 2007, are located in Australia. However, because more than two-thirds of The Athlete's Foot revenue is generated from domestic franchisees, and because the most of the Company's other franchisees and licensees are concentrated in the United States, the overall exposure to foreign exchange gains and losses is not expected to have a material impact on the consolidated results of operations.

## **ITEM 4. DISCLOSURE CONTROLS AND PROCEDURES**

### *Evaluation of Disclosure Controls and Procedures*

We have established disclosure controls and procedures to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the officers who certify the Company's financial reports and to other members of senior management and the Board of Directors.

As required by Rule 13a-15(b) under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), management carried out an evaluation, with the participation of the Company's chief financial officer and chief executive officer, of the effectiveness of the Company's disclosure controls and procedures, as of September 30, 2007. Based on their evaluation as of September 30, 2007, the chief executive officer and chief financial officer of the Company have concluded that the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) are effective to ensure that the information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and

reported within the time periods specified in SEC rules and forms.

***Changes in Internal Control Over Financial Reporting and Disclosure Controls and Procedures***

We acquired The Athlete's Foot in November 2006, Bill Blass, Maggie Moo's and Marble Slab in February 2007, Waverly in May 2007, and Pretzel Time and Pretzelmaker in August 2007. During the quarter ended September 30, 2007, we implemented additional controls to address the operations and financial reporting processes of certain of these acquisitions, particularly The Athlete's Foot. Additional controls that we implemented included processes related to revenue recognition. In the judgment of management, the implementation of these additional controls constitute a change during the quarter ended September 30, 2007 in the Company's internal control over financial reporting that materially affected, or is likely to materially affect, the Company's internal control over financial reporting. We are continuing the process of incorporating all of these acquired businesses' operations and financial reporting processes with and into our existing system of internal financial reporting controls. The Company's internal control over financial reporting will likely be materially affected in the future by implementing appropriate additional internal controls over financial reporting to account for these acquisitions.

## **PART II—OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

*See Note 8 to the Unaudited Condensed Consolidated Financial Statements.*

### **ITEM 1A. RISK FACTORS**

Information regarding risk factors appears in “Management’s Discussion and Analysis of Financial Condition and Results of Operations - Forward-Looking Statements,” in Part I - Item 2 of this Form 10-Q and in Part I - Item 1A of our Annual Report on Form 10-K/A for the year ended December 31, 2006. Based on continuing changes to our business and volatility in the price of our common stock, we have updated and revised two of the risk factors previously disclosed in our Annual Report on Form 10-K/A for the year ended December 31, 2006:

**The market price of our common stock has been, and may continue to be, volatile, which could reduce the market price of our common stock and, among other things, make it more expensive and difficult for us to complete acquisitions using our stock as consideration.**

Since we announced the acquisition of UCC and the hiring of Mr. D’Loren, the trading price of our common stock has experienced significant price and volume fluctuations. This market volatility could reduce the market price of our common stock, regardless of our operating performance. In addition, the trading price of our common stock could change significantly over short periods of time in response to actual or anticipated variations in our quarterly operating results, announcements by us or by third parties on whom we rely or against whom we compete, factors affecting the markets in which we do business or changes in national or regional economic conditions. If our stock price declines, sellers of IP and IP-centric businesses may be less willing to accept shares of our common stock as consideration for a portion of future acquisitions. In addition, if sellers are willing to accept shares of our common stock, we may be required to issue additional shares to complete such acquisitions, which would make acquisitions more dilutive to our stockholders. The market price of our common stock also could be reduced by general market price declines or market volatility in the future or future declines or volatility in the prices of stocks for companies against whom we compete or companies in the industries in which our licensees compete.

**Acquisitions involve numerous risks that we may not be able to address or overcome, and could result in acquisitions that negatively affect our business and financial results.**

Even if we are successful in completing IP-centric acquisitions, we may not be able to successfully integrate or achieve or maintain profitability levels that will justify our investments in those acquisitions. Among other things, we may not be able to realize anticipated benefits from our acquisitions, including various synergies and economies of scope and scale. Each acquisition involves numerous risks, any of which could have a detrimental effect on our results of operations and/or the value of our equity. These risks include, among others:

- overpaying for acquired assets or businesses;
- being unable to license, market or otherwise exploit IP that we acquire on anticipated terms or at all;
- negative effects on reported results of operations from acquisition-related expenses and amortization or impairment of acquired intangibles;
- 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 IP portfolio grows and becomes more diversified;

· failing to achieve synergies across our diverse IP portfolio;

· failing to acquire or hire additional successful managers, or being unable to retain critical acquired managers;

· potential adverse effects of a new acquisition on an existing business or business relationship;

· 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 acquire, which may differ from one acquisition to the next, including those related to entering new lines of business or markets in which we have little or no prior experience.

## **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

The Company issued 1.6 million shares of common stock to former UCC security holders as described in Item 8.01 of the Form 8-K filed on September 5, 2007.

## **ITEM 3. DEFAULT UPON SENIOR SECURITIES**

None.

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

On September 5, 2007, the Company held its 2007 Annual Meeting of Stockholders at which nine directors were elected to hold office until the 2008 Annual Meeting of Stockholders and the appointment of KPMG LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2007 was ratified. Additional information on the 2007 Annual Meeting of Stockholders is detailed in the Current Report on Form 8-K filed on September 6, 2007.

## **ITEM 5. OTHER INFORMATION**

None.

## **ITEM 6. EXHIBITS AND REPORTS**

### **Exhibits**

- \*2.1 Asset Purchase Agreement dated August 7, 2007, by and among NexCen Asset Acquisition, LLC, NexCen Brands, Inc., Pretzel Time Franchising, LLC, Pretzelmaker Franchising, LLC, and Mrs. Fields Famous Brands, LLC. (Designated as Exhibit 2.1 to the Form 8-K filed on August 8, 2007)
- \*4.1 Registration Rights Agreement dated August 7, 2007, by and among NexCen Brands, Inc., Pretzelmaker Franchising, LLC, and Pretzel Time Franchising, LLC. (Designated as Exhibit 4.1 to the Form 8-K filed on August 8, 2007)
- \*9.1 Voting Agreement dated August 7, 2007, by and among NexCen Brands, Inc., Pretzelmaker Franchising, LLC, and Pretzel Time Franchising, LLC. (Designated as Exhibit 9.1 to the Form 8-K filed on August 8, 2007)
- 10.1 Employment agreement by and between NexCen Brands, Inc. and Sue Nam
- 31.1 Certification pursuant to 17 C.F.R § 240.15d-14 (a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for Robert W. D'Loren.
- 31.2 Certification pursuant to 17 C.F.R § 240.15d-14 (a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for David B. Meister.
- \*\*32.1 Certifications pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for Robert W. D'Loren and David B. Meister.

\* Incorporated by reference.

\*\* These certifications are being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and are not being filed as part this Quarterly Report on Form 10-Q or as a separate disclosure document.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Quarterly Report on Form 10-Q to be signed on its behalf by the undersigned thereunto duly authorized.

*Dated:* November 9, 2007  
*NexCen Brands, Inc.*

*By:* /s/ David B. Meister  
*David B. Meister*  
*Senior Vice President and Chief Financial Officer*  
*(Principal Financial and Accounting Officer)*