

Castle Brands Inc
Form 10-K/A
July 29, 2009

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

**Form 10-K/A
Amendment No. 1**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934
FOR THE FISCAL YEAR ENDED MARCH 31, 2009**

Castle Brands Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-32849
(Commission File Number)

41-2103550
(I.R.S. Employer
Identification No.)

122 East 42nd Street, Suite 4700
New York, New York
(Address of principal executive offices)

10168
(Zip Code)

Registrant's telephone number, including area code (646) 356-0200

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class

Name of Each Exchange on Which Registered

Common stock, \$0.01 par value

NYSE Amex

Securities registered pursuant to Section 12(g) of the Act:

None.

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting
company

(Do not check if smaller
reporting company)

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant based on the September 30, 2008 closing price was approximately \$5,472,867. The registrant had 100,812,349 shares of common stock outstanding at July 24, 2009.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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EXPLANATORY NOTE

Castle Brands Inc. is filing this Amendment No. 1 on Form 10-K/A (Amendment) to amend its Annual Report on Form 10-K for the year ended March 31, 2009, filed with the Securities and Exchange Commission (SEC) on June 29, 2009 (Original 10-K).

This Amendment is being filed to amend the Original 10-K to include the information required by Items 10 through 14 of Part III of Form 10-K. Also, this Amendment amends the cover page of the Original 10-K to (i) delete the reference in the Original 10-K to the incorporation by reference of the definitive Proxy Statement for its 2009 Annual Meeting of Shareholders and (ii) update the number of outstanding common shares. Item 15 of this report is amended to include Exhibit 10.28 and the certifications specified in Rule 13a-14(a) under the Securities Exchange Act of 1934 required to be filed with this Amendment. Except for the addition of the Part III information, the updates to the cover page and the filing of related certifications, no other changes have been made to the Original 10-K. This Amendment does not reflect events occurring after the filing of the Original 10-K or modify or update those disclosures affected by subsequent events.

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FORM 10-K
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Table of Contents**PART III****Item 10. Directors, Executive Officers and Corporate Governance****Directors**

Listed below are the names, ages and biographies of our current directors and executive officers at July 24, 2009. Our directors are elected annually and serve until the next annual meeting of stockholders and until their successors are elected and appointed. Our executive officers serve until the appointment and qualification of their successors or until their earlier death, resignation or removal by our board of directors.

Mark Andrews, 59, our chairman of the board, founded our predecessor company, Great Spirits Company LLC, in 1998 and served as its chairman of the board, president and chief executive officer from its inception until December 2003. Mr. Andrews has served as our chairman of the board since December 2003 and served as our president from December 2003 until November 2005. Mr. Andrews served as our chief executive officer from December 2003 until November 2008. Prior to founding our predecessor, Mr. Andrews founded American Exploration Company, a company engaged in the exploration and production of oil and natural gas, in 1980. He oversaw that company becoming publicly traded in 1983 and served as its chairman and chief executive officer until its merger with Louis Dreyfus Natural Gas Corp. in October 1997. He also serves as a life trustee of The New York Presbyterian Hospital in New York City.

John F. Beaudette, 52, has served as a director of our company since January 2004. Since 1995, Mr. Beaudette has been the president of MHW, Ltd. (formerly named Monsieur Henri Wines Ltd.), a national alcoholic beverage importer, distributor and service company. From 1985 to 1994, Mr. Beaudette worked with PepsiCo Inc. and its affiliate company Monsieur Henri Wines in the distribution of Stolichnaya Vodka and other imported wine and spirit brands. During this period, Mr. Beaudette held positions such as director of planning for PepsiCo Wines & Spirits International and vice president of finance and chief financial officer of Monsieur Henri Wines. Mr. Beaudette is a director of The National Association of Beverage Importers Inc. (NABI) and serves on its executive committee.

Henry C. Beinstein, 66, has served as a director of our company since January 2009. He has been a partner of Gagnon Securities, LLC, a broker-dealer and a FINRA member firm, since January 2005 and has been a money manager and an analyst and registered representative of such firm since August 2002. Mr. Beinstein has been a director of Vector Group Ltd., a New York Stock Exchange listed holding company, since 2004. Vector Group is engaged principally in the tobacco business through its Liggett Group LLC subsidiary and in the real estate and investment business through its New Valley LLC subsidiary. New Valley owns 50% of Douglas Elliman Realty, LLC, which operates the largest residential brokerage company in the New York metropolitan area. He also served as a director of New Valley from March 1994 to December 2005. Mr. Beinstein has served as a director of Ladenburg Thalmann Financial Services Inc., the parent of the investment banking firm of Ladenburg Thalmann & Co. Inc., since May 2001. He retired in August 2002 as the executive director of Schulte Roth & Zabel LLP, a New York-based law firm, a position he had held since August 1997. Before that, Mr. Beinstein had served as the managing director of Milbank, Tweed, Hadley & McCloy LLP, a New York-based law firm, commencing in November 1995. From April 1985 through October 1995, Mr. Beinstein was the executive director of Proskauer Rose LLP, a New York-based law firm. Mr. Beinstein is a certified public accountant in New York and New Jersey and prior to joining Proskauer was a partner and national director of finance and administration at Coopers & Lybrand.

Harvey P. Eisen, 66, has served as a director of our company since January 2009. Mr. Eisen has served as a director of Five Star Products Inc., a wholesale distributor of home decorating products, since November 2007. Mr. Eisen has served as chairman of the board and chief executive officer of National Patent Development Corporation, the parent company of Five Star Products Inc., since June 2007 and also served as its president since July 2007. He has been a director of National Patent Development Corporation since 2004. He has served as chairman and managing member of Bedford Oak Advisors, LLC, an investment partnership, since 1998. Prior

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thereto, Mr. Eisen served as senior vice president of Travelers, Inc. and of Primerica, each a financial services company, prior to its merger with Travelers in 1993. Mr. Eisen has also been a director of GP Strategies Corporation, a provider of customized training solutions, since 2002 and has served as its chairman of the board since 2005.

Phillip Frost, M.D., 72, has served as a director of our company since October 2008 and previously served as a director of our company from September 2005 to August 2007. Dr. Frost has served as the chief executive officer and chairman of the board of directors of OPKO Health, Inc., a specialty healthcare company with emphasis on products for use in ophthalmology, since March 2007. Since July 2006, Dr. Frost has served as the chairman of the board of directors of Ladenburg Thalmann Financial Services Inc. Dr. Frost has been a director of Ladenburg Thalmann Financial Services Inc. since March 2005. From 1987 to January 26, 2006, Dr. Frost served as chairman of the board of directors and chief executive officer of IVAX Corporation, a worldwide producer and marketer of generic and proprietary drugs. On January 26, 2006, IVAX completed a merger with Teva Pharmaceutical Industries Ltd. (Teva). Dr. Frost now serves as the vice chairman of the board of directors of Teva. Dr. Frost was Chairman of the Department of Dermatology at Mt. Sinai Medical Center of Greater Miami, Miami Beach, Florida from 1972 to 1986. He was also chairman of the board of directors of Key Pharmaceuticals, Inc. from 1972 until the acquisition of Key Pharmaceuticals by Schering Plough Corporation in 1986. He serves on the board of regents of the Smithsonian Institution, as a member of the board of trustees of the University of Miami, as a trustee of each of the Scripps Research Institutes, the Miami Jewish Home for the Aged, and the Mount Sinai Medical Center, and was vice chairman of the board of governors of the American Stock Exchange until its acquisition by NYSE Euronext on October 1, 2008. Dr. Frost is also a director of Continucare Corporation, a provider of outpatient healthcare and home healthcare services, Ideation Acquisition Corp, a special purpose acquisition company formed for the purpose of acquiring businesses in digital media, Prolor Biotech Inc (formerly Modigene Inc.), a development stage biopharmaceutical company, Kidville Inc. (formerly Longfoot Communications Corp.), a company that franchises facilities offering developmental classes for infants through five-year olds.

Glenn L. Halpryn, 48, has served as a director of our company since October 2008. Mr. Halpryn served as a director of Ivax Diagnostics, Inc., a publicly held corporation from October 2002 until October 10, 2008. Mr. Halpryn has been the chairman of the board and chief executive officer of QuikByte Software, Inc., a publicly held corporation that is party to a merger agreement with Sorrento Therapeutics, Inc., since July 2008. Mr. Halpryn was chairman of the board and chief executive officer of Orthodontix, Inc., a publicly held corporation, from April 2001 until Orthodontix merged with Protalix BioTherapeutics, Inc. in December 2006. Mr. Halpryn has served as a director of Winston Pharmaceuticals, Inc. since the September 2008 merger of Getting Ready Corporation, a publicly held shell company, and Winston Laboratories, Inc. From December 2006 until such merger, Mr. Halpryn served as the chairman of the board and chief executive officer of Getting Ready. Mr. Halpryn served as the chairman of the board, chief executive officer and president of clickNsettle.com, Inc., a publicly held shell corporation, from October 2007 until September 2008, following its merger with Cardo Medical, LLC. Mr. Halpryn was the president and secretary and a director of Longfoot Communications Corp., a publicly held shell corporation, from March 2008 until its merger with Kidville Holdings, LLC in August 2008. Mr. Halpryn is also chief executive officer and a director of Transworld Investment Corporation (TIC), serving in such capacity since June 2001. From 1984 to June 2001, Mr. Halpryn served as vice president/treasurer of TIC. Since 2000, Mr. Halpryn has been an investor and the managing member of investor groups that were joint venture partners in 26 land acquisition and development projects with one of the largest home builders in the country. In addition, since 1984, Mr. Halpryn has been engaged in real estate investment and development activities. From April 1988 through June 1998, Mr. Halpryn was vice chairman of Central Bank, a Florida state-chartered bank. Since June 1987, Mr. Halpryn has been the president of and beneficial holder of stock of United Security Corporation, a broker-dealer registered with FINRA.

Richard J. Lampen, 55, has served as our interim president and chief executive officer and as a director of our company since October 2008. Mr. Lampen has served as executive vice president of Vector Group Ltd. since July 1996. From October 1995 to December 2005, Mr. Lampen served as the executive vice president and general counsel and a director of New Valley LLC, now a subsidiary of Vector Group Ltd. Since September 2006, he has served as president and chief executive officer of Ladenburg Thalmann Financial Services Inc., the parent of Ladenburg Thalmann & Co. Inc. Mr. Lampen has served as a director of Ladenburg

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Thalmann Financial Services Inc. since January 2002. Since November 1998, he has served as president and chief executive officer of CDSI Holdings Inc., an affiliate of New Valley LLC seeking acquisition or investment opportunities. Mr. Lampen has served as a director of CDSI Holdings since January 1997. From May 1992 to September 1995, Mr. Lampen was a partner at Steel Hector & Davis, a law firm located in Miami, Florida. From January 1991 to April 1992, Mr. Lampen was a Managing Director at Salomon Brothers Inc, an investment bank, and was an employee at Salomon Brothers Inc from 1986 to April 1992. Mr. Lampen has served as a director of a number of other companies, including U.S. Can Corporation, The International Bank of Miami, N.A. and Specs Music Inc., as well as a court-appointed independent director of Trump Plaza Funding, Inc.

Micaela Pallini, 39, has served as a director of our company since October 2008. Ms. Pallini has served since May 1997 as a director and the head of production of I.L.A.R. S.p.A., a producer of alcoholic beverages located in Rome, Italy and a supplier to the Company under an exclusive marketing agreement. Ms. Pallini is the daughter of Virgilio Pallini, the President of I.L.A.R. S.p.A. Ms. Pallini is also a member of the board of directors of Unione Industriali di Roma, an association of Roman industrial entrepreneurs; a member of the board of directors and the audit committee of Federvini, the national association of Italian wine, spirit and liqueur providers; and a Vice President of B52, a national association for the promotion of women in business in Italy. Ms. Pallini was engaged in research activities before assuming her position with I.L.A.R. S.p.A.

Steven D. Rubin, 49, has served as a director of our company since January 2009. Mr. Rubin has served as executive vice president administration since May 2007 and a director of Opko Health, Inc. since February 2007. Mr. Rubin also has served as secretary of Ideation Acquisition Corp. since June 2007. Mr. Rubin served as the senior vice president, general counsel and secretary of IVAX Corporation from August 2001 until September 2006. Mr. Rubin currently serves on the board of directors of Dreams, Inc., a vertically integrated sports licensing and products company, Safestitch Medical, Inc., a medical device company, Ideation Acquisition Corp., Prolor Biotech Inc. (formerly Modigene, Inc.), Neovasc, Inc., a medical device company, Kidville, Inc., Cardio Medical, LLC, a producer and distributor of orthopedic and spinal medical devices, and Non-Invasive Monitoring Systems, Inc., a medical device company.

Executive Officers

The following table lists the name, age and position of our executive officers:

Name	Age	Position
Richard J. Lampen	55	Interim President and Chief Executive Officer
John S. Glover	54	Chief Operating Officer
T. Kelley Spillane	46	Senior Vice President U.S. Sales
Alfred J. Small	40	Senior Vice President, Chief Financial Officer, Treasurer & Secretary

Listed below are biographical descriptions of our current executive officers. For Mr. Lampen's information, see the description under *Directors* above.

John S. Glover, our chief operating officer, joined us in February 2008. From February 20, 2008 to October 11, 2008, Mr. Glover served as our senior vice president marketing. From June 2006 to February 2008, Mr. Glover served as senior vice president commercial management of Remy Cointreau USA. From January 2001 to June 2006, Mr. Glover served in various management positions at Remy Cointreau in the United States and France. From January 1999 to January 2001, he was a managing director and chief marketing officer for Bols Royal Distilleries in the Netherlands.

T. Kelley Spillane, our senior vice president U.S. sales, joined us in April 2000. From April 2000 to December 2003, Mr. Spillane served as vice president-sales of Great Spirits Company, and was appointed executive vice president U.S. sales in December 2003. Prior to joining us, Mr. Spillane worked at Carillon Importers Limited, a division of Grand Metropolitan PLC. Carillon developed and launched Absolut Vodka and Bombay Sapphire Gin. At Carillon, Mr. Spillane served as assistant manager for its control states and duty free divisions and was promoted to director of special accounts, focusing on expanding sales in national accounts.

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Alfred J. Small, our senior vice president, chief financial officer, secretary and treasurer assumed his current position in January 2009. From November 2007 until January 2009, Mr. Small served as senior vice president and chief financial officer and previously had served as our vice president-controller since March 2007 and our principal accounting officer since October 2006. Mr. Small joined us in October 2004. From February 1999 until October 2004, Mr. Small served in various accounting roles, including senior accountant at Grodsky Caporrino & Kaufman, CPA PC. Mr. Small is a certified public accountant.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires our officers, directors and persons who beneficially own more than ten percent of our common stock to file reports of ownership and changes in ownership with the SEC. These reporting persons are also required to furnish us with copies of all Section 16(a) forms they file. To our knowledge, based solely on our review of the copies of these forms furnished to us and representations made to us that no other reports were required, we are not aware of any late or delinquent filings required under Section 16(a) with respect to the fiscal year ended March 31, 2009, except as follows: (a) Mark Andrews filed a late form 4 on November 6, 2008 reporting an aggregate of 33,056 shares of series A convertible preferred stock issued upon the October 20, 2008 conversion of senior notes, (b) T. Kelley Spillane filed a late Form 4 on September 25, 2008 reporting an option to purchase 33,900 shares granted on June 9, 2008, (c) Seth Weinberg filed a late Form 4 on September 25, 2009 reporting an option to purchase 34,200 shares granted on June 9, 2008, (d) John Soden filed a late Form 4 on September 25, 2009 reporting an option to purchase 26,600 shares granted on June 9, 2008, (e) John Glover filed a late Form 4 on September 25, 2009 reporting an option to purchase 15,400 shares granted on June 9, 2008, (f) Donald Marsh filed a late Form 4 on September 25, 2009 reporting an option to purchase 14,800 shares granted on June 9, 2008, (g) Alfred J. Small filed a late Form 4 on September 25, 2009 reporting an option to purchase 25,100 shares granted on June 9, 2008 and (h) Micaela Pallini filed a late Form 3 on October 23, 2008.

Corporate Governance Guidelines

Our board of directors has adopted a code of business conduct, which applies to all of our directors, executive officers and employees. The code of business conduct sets forth our commitment to conduct our business in accordance with the highest standards of business ethics and to promote the highest standards of honesty and ethical conduct by our directors, executive officers and employees. Our code of conduct is posted on our investor relations web site at <http://investor.castlebrandsinc.com>.

Stockholder Nominations

There have been no material changes to the procedures by which security holders may recommend nominees to our board of directors.

Audit Committee Information and Report

Our board has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended. Messrs. Beinstein (Chair), Halpryn and Rubin comprise our audit committee. Our board of directors has determined that each member of the audit committee is an independent director and is financially literate as required by the applicable rules of NYSE Amex and the SEC. The audit committee is responsible for, among other things:

- appointing, replacing overseeing and compensating the work of our independent registered public accounting firm;

- reviewing and discussing with management and our independent registered public accounting firm our quarterly financial statements and discussing with management our earnings releases;

- pre-approving all auditing services and permissible non-audit services provided by our independent registered public accounting firm;

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engaging in a dialogue with our independent registered public accounting firm regarding relationships that may adversely affect the independence of the independent registered public accounting firm and, based on such review, assessing the independence of our independent registered public accounting firm;

providing the audit committee report to be filed with the SEC in our annual proxy statement;

reviewing with our independent registered public accounting firm the adequacy and effectiveness of the internal controls over our financial reporting;

establishing procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including the confidential anonymous submission by our employees of anonymous concerns regarding questionable accounting or auditing matters;

reviewing and pre-approving related-party transactions;

reviewing and discussing with management and our independent registered public accounting firm management's annual assessment of the effectiveness of the internal controls and our independent registered public accounting firm's attestation and report about management's assessment as required by the SEC, when applicable;

reviewing and discussing with management and our independent registered public accounting firm the adequacy and effectiveness of our internal controls including any significant deficiencies in the design or operation of our internal controls or material weaknesses and any fraud, whether or not material, that involves our management or other employees who have a significant role in our internal controls and the adequacy and effectiveness of our disclosure controls and procedures; and

reviewing and assessing annually the adequacy of the audit committee charter.

Our audit committee charter is posted on our investor relations website at <http://investor.castlebrandsinc.com>.

Financial Expert on Audit Committee

Our board of directors has determined that Henry C. Beinstein is our audit committee financial expert (as defined in Item 407(d)(5) of Regulation S-K) and is an independent director under the NYSE Amex rules.

Item 11. Executive Compensation

Compensation Overview

Introduction

We are a smaller reporting company as such term is defined in Rule 405 of the Securities Act and Item 10 of Regulation S-K. Accordingly, and in accordance with relevant SEC rules and guidance, we have elected, with respect to the disclosures required by Item 402 (Executive Compensation) of Regulation S-K, to comply with the disclosure requirements applicable to smaller reporting companies.

Table of Contents**Summary Compensation Table**

The following table shows the compensation paid to our officers listed below (Named Executive Officers) for our 2009 and 2008 fiscal years.

Name and Principal Position	Year	Salary	Bonus	Stock	All Other	Total
				based	Compensation	
				(1)		
Richard J. Lampen (2) Interim president and chief executive officer	2009	\$	\$	\$ 5,667	\$	\$ 5,667
	2008					
John Glover Chief operating officer	2009	255,871	35,000	57,748	192(3)	348,811
	2008	40,865	12,500(4)			53,365
T. Kelley Spillane Senior vice president U.S. Sales	2009	252,537	61,296	41,189	2,922(5)	357,944
	2008	225,485	98,073(4)	39,604	1,415(5)	364,577
Donald L. Marsh Jr. Former president and chief operating officer	2009	202,708		180,672	476,000(6)	859,380
	2008	121,231	292,000(7)	20,808	184,500(8)	618,539
John Soden Former senior vice president, managing director international	2009(9)	192,571	64,191	265,718	280,078(10)(11)	802,558
	2008(9)	255,443	70,858(4)	132,252	28,108(11)	480,661

(1) Represents the dollar amount of expenses recognized for financial statement purposes with respect to the 2009 and 2008 fiscal years for the fair value of stock based compensation granted in fiscal 2009 and prior fiscal years in accordance with SFAS 123R. Under SEC rules, the amounts shown

exclude the impact of estimated forfeitures relating to service-based vesting conditions. See note 14 to our consolidated financial statements for the year ended March 31, 2009 included in our Original 10-K regarding the assumptions underlying the valuation of these grants.

- (2) Mr. Lampen was appointed interim president and chief executive officer in October 2008.
- (3) Represents interest on the promissory note issued in lieu of a cash bonus payment as described in note 4 to this table.
- (4) Paid by issuing a promissory note, which bore interest at an annual rate of 4.5%, and accrued from June 19, 2008 through the October 2008 payment date

following the
closing of the
sale of the series
A convertible
preferred stock.
Interest
payments on
these notes are
reflected in All
other
compensation.

- (5) Represents life
insurance
premiums paid
by us for the
benefit of
Mr. Spillane and
interest on the
promissory note
issued in lieu of
a cash bonus
payment as
described in
note 4 to this
table.
- (6) Represents
payments
accrued with
respect to
Mr. Marsh in
connection with
the termination
of his
employment in
October 2008.

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- (7) Includes \$100,000 signing bonus and a contractually guaranteed \$192,000 bonus for fiscal 2008.
- (8) Prior to joining our company as our president and chief operating officer, Mr. Marsh was paid \$184,500 as a consultant during our 2008 fiscal year.
- (9) Payments to Mr. Soden are made in Euros and converted to U.S. dollars at a conversion rate of 1.00=\$1.42447 for our 2009 fiscal year and 1.00=\$1.41316 for our 2008 fiscal year (the average Euro to U.S. dollar conversion rates for these periods as listed on Oanda.com).
- (10) Includes 180,250 of severance accrued with respect to Mr. Soden under the terms of his contract

upon his termination on December 31, 2008, converted to U.S. dollars as per note 9 of this table and interest on the promissory note issued in lieu of a cash bonus payment as described in note 2 to this table.

- (11) Mr. Soden received a car allowance of 15,600, converted to U.S. dollars as per note 9 of this table.

Narrative Disclosure to Summary Compensation Table

Management Changes

The employment of Donald Marsh, our former president and chief executive officer, terminated in October 2008. In May 2009, we entered into an agreement with Mr. Marsh under which we agreed to pay him an aggregate of \$476,000. In December 2008, we entered into an agreement with John Soden, who had acted as our senior vice president, managing director-international, under which his employment was terminated without cause effective December 31, 2008. Under the agreement, we agreed to pay Mr. Soden an aggregate of 180,250 of severance and Mr. Soden agreed that he would not receive the 72,100 retention payment that he was to have received under a retention agreement as discussed below. Accordingly, the following discussion does not include the terms of Messrs. Marsh's or Soden's employment agreements or potential termination or change of control payments to them.

Material Terms of Named Executive Officers' Employment Agreements

The material terms of Messrs. Glover's and Spillane's employment agreements are described in the table below. Mr. Lampen, our interim president and chief executive officer, does not receive a salary or benefits from us in connection with his service. Instead, we are party to a management services agreement with Vector Group Ltd., a more than 5% stockholder, under which Vector Group agreed to make available to us Mr. Lampen's services. For a discussion of this agreement, see Item 13 *Certain Relationships and Related Transactions, and Director Independence Agreement with Vector Group Ltd.*

Certain Material Terms of Employment Agreements with Named Executive Officers

	Performance Bonus (as Percentage of Annual Base	Number of Options
Initial Annual Base Salary		

Named Executive Officers	Date of Agreement	under the Agreement(1)	Salary Unless Otherwise Indicated)	Granted upon Execution of Agreement	Duration of Severance Payments(2)
Richard J. Lampen					
John Glover	1/24/2008	\$ 250,000	Up to 60%	60,000 ⁽³⁾	12 months
T. Kelley Spillane	5/2/2005	175,000	(4)		12 months

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- (1) Increases are at the compensation committee's sole discretion. As of July 24, 2009, the annual base salary for Messrs. Glover and Spillane is \$265,000 and \$252,537, respectively.
- (2) Please see *Potential Payments Upon Termination or Change in Control* below for a full description of these severance obligations.
- (3) Stock options granted in fiscal 2008 with an exercise price of \$1.90 per share.
- (4) Mr. Spillane's employment contract calls for him to receive performance bonuses at the discretion of our Compensation Committee, with no specific percentage.

Annual Incentives to Named Executive Officers

We paid Mr. Glover an aggregate cash bonus of \$35,000 for fiscal 2009. Mr. Glover was the only named executive officer who received a cash bonus for fiscal 2009. Messrs. Spillane and Soden received retention payments under outstanding retention agreements in fiscal 2009 of \$61,296 and 45,063 (equivalent to \$64,191 based on the average Euro to U.S. dollar conversion rate for fiscal 2009 as listed on Oanda.com), respectively. In fiscal 2009, we redeemed

promissory notes that we issued to Messrs. Glover, Spillane and Soden in lieu of fiscal 2008 cash bonus payments. These bonus and retention payments are included in the summary compensation table above under the heading Bonus. Interest under the notes issued in lieu of fiscal 2008 cash bonus payments is included in such table under the heading All Other Compensation.

Long-Term Equity-Based Incentive Awards**Outstanding Equity Awards at 2009 Fiscal Year-End**

	Option Awards				Stock Awards	
	Equity Incentive Plan Awards:		Equity Incentive Plan Awards:		Equity Incentive Plan Awards:	
Name and Principal Position	Number of Unearned Securities	Number of Securities	Option Exercise Price	Option Expiration Date	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other	Market value of Unearned Shares, Units or Other Rights
	Underlying Unexercised Options (#)	Underlying Unexercised Options (#)	(\$)		That Have Not Vested (#)	That Have Not Vested (\$)
Richard J. Lampen		1,000,000(1)	\$0.35	11/3/2018		\$
John Glover	60,000		\$1.90	1/24/2018	214,286(2)	\$ 40,714
	15,400		\$0.21	6/9/2018		\$
T. Kelley Spillane	60,000		\$6.00	1/9/2014	214,286(2)	\$ 40,714
	5,000		\$8.00	1/27/2015		\$
	7,500		\$7.23	6/12/2016		\$
	33,900		\$0.21	6/9/2018		\$
Donald L. Marsh Jr. (3)	250,000		\$3.09	11/12/2017		\$
	14,800		\$0.21	6/9/2018		\$
John Soden (4)	80,000		\$9.00	3/29/2016		\$
	26,600		\$0.21	6/09/2018		\$

(1) This option vests in four equal annual installments with the first installment vesting on January 21, 2010.

(2) This restricted stock grant vests

in two equal
annual
installments
beginning on
February 11,
2010.

- (3) Mr. Marsh's
employment
terminated in
September 2008
and his options
were cancelled
in May 2009.

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- (4) Mr. Soden's employment terminated in December 2008 and his options will expire on December 31, 2009 due to his termination.

Timing of Equity Grants

For all of our employees, including our named executive officers, grants of equity-based compensation are effective on the date that our compensation committee approves them. All stock option grants to employees, including named executive officers, are made with an exercise price at least equal to the fair market value of the underlying stock on the grant date. Our compensation committee does not grant equity compensation awards in anticipation of the release of material nonpublic information. Similarly, we do not time the release of material nonpublic information based on equity award grant dates.

Severance and Change in Control Benefits

We provide certain severance and change in control benefits to our named executive officers. You can find detailed information about these benefits below.

Perquisites and Other Benefits

We generally provide the same health and welfare benefits to all of our full-time employees, including our named executive officers, including health and dental coverage, disability insurance, and paid holidays and other paid time off.

We maintain a 401(k) retirement savings plan for the benefit of all of our full-time employees, including our named executive officers.

Indemnification

Our certificate of incorporation and bylaws require us to indemnify our directors and officers to the fullest extent permitted by Delaware law. We also have entered into indemnity agreements with each of our directors and named executive officers.

Material Tax Implications of Our Compensation Policy

Section 162(m) of the Internal Revenue Code of 1986, as amended, limits the deductibility on our tax return of compensation over \$1 million to any of our named executive officers unless, in general, the compensation is paid under a plan which is performance-related, non-discretionary and has been approved by our stockholders. Our compensation committee's policy with respect to section 162(m) is to make every reasonable effort to ensure that compensation is deductible to the extent permitted while simultaneously providing our executives with appropriate compensation for their performance. We did not pay any compensation during fiscal 2009 that would be subject to the limitations set forth in section 162(m).

Potential Payments Upon Termination or Change in Control

The following describes the potential payments upon termination or a change in control for our named executive officers.

Retention Arrangements

In January 2008, our compensation committee agreed to pay specified retention payments to various named executive officers on April 30, 2008 (later amended to May 1, 2008) and September 30, 2008. The retention payments were based on the continued employment of such executive officers. Under these agreements, Mr. Soden received an aggregate retention payment of \$45,064 (\$64,191 based on applicable conversion rates on the dates paid) and Mr. Spillane received an aggregate retention payment of \$61,296.

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On July 15, 2008, we entered into written retention agreements with various named executive officers to incentivize such executive officers to remain in our employment up to and following a control event as defined in the retention agreements. The retention agreements provide that if, on the 60th calendar day following the first control event following July 15, 2008, we continue to employ the executive officer in any capacity, then we will pay to the executive officer certain amounts. The October 20, 2008 closing of the series A convertible preferred stock transaction constituted a control event under the retention agreements as it was a financing with gross proceeds to us of at least \$10,000,000. In December 2008, we entered into agreements with certain executive officers to provide for payment of these retention amounts in the form of restricted common stock instead of cash. Under their respective agreements, Messrs. Glover and Spillane each received 214,286 shares of restricted common stock. Mr. Soden would have been paid 72,100 (\$100,000 based on applicable conversion rates) under his retention agreement, if he continued to be employed by us on the 60th calendar day following October 20, 2008. In December 2008, we entered into an agreement with Mr. Soden under which his employment was terminated without cause effective December 31, 2008 and he agreed that he would not receive the foregoing retention payment.

Termination Without Cause

Under employment agreements with each of Messrs. Glover and Spillane, if we terminate such executive's employment without cause, we have agreed to pay the executive his annual base salary and a pro-rated bonus, and provide benefits to maintain medical insurance, for 12 months following termination.

Also, if we terminate Mr. Glover or Mr. Spillane without cause, then such officer is entitled to accelerated vesting or other treatment of some or all of the stock options granted to such executive under the terms of such executive's employment agreement.

For Mr. Glover, the vesting of any options held accelerates with respect to the number of shares of our common stock that equals (x) the number of shares that would have vested during the 12 months following termination, multiplied by (y) a fraction, the numerator of which is the number of full calendar months that have elapsed since the last vesting date or the original issue date (if a vesting date has not occurred) and the denominator of which is the number of full calendar months from the last vesting date or the original issue date (if a vesting date has not occurred) to the vesting date during the 12 months following termination. For Mr. Spillane, any unvested options that would have become vested if his employment continued during the 12 month period following his termination will become vested at the end of such 12 month period and will be exercisable for a period of two years after termination.

For Mr. Glover, cause is defined as (i) personal dishonesty, (ii) willful misconduct, (iii) breach of fiduciary duty, (iv) failure to substantially perform assigned duties relating to his performance under his agreement, (v) conviction or entry of any plea of guilty or nolo contendere to any felony or other lesser crime that would require removal from his position with us (e.g. any alcohol or drug related misdemeanor) or (vi) material breach of any provision of his employment agreement for a period of 15 days after written demand by us.

For Mr. Spillane, cause is defined as (i) personal dishonesty, (ii) willful misconduct, (iii) breach of fiduciary duty, (iv) failure to substantially perform assigned duties relating to his performance under his agreement (other than due to becoming disabled) as reasonably determined by our board or (v) any willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or material breach of his employment agreement as reasonably determined by our board.

Non-Renewal of Employment Agreement

If we do not renew Mr. Glover's employment agreement, he is entitled to receive his annual base salary and medical benefits for six months and a pro-rata share of his annual incentive bonus.

Table of Contents***Termination Due to Disability***

The employment agreements of Messrs. Glover and Spillane each provide that, in each case, if we terminate such executive due to a disability, we must pay such executive his annual base salary for a period of one year following the date of termination, minus any other disability benefits provided by us to the executive during this period, plus a pro-rated bonus for the year in which the termination occurs. For each of our named executive officers, a disability is defined in his employment agreement as a failure, because of illness or incapacity, to perform the duties of his employment for six months.

Termination by Employee with Good Reason

Each of Messrs. Glover's and Spillane's employment agreements provides that if he terminates his employment for good reason, we must pay the executive his annual base salary for a period of one year following the date of termination.

For Mr. Glover, good reason means a termination of his employment within 30 days after (i) a material diminution in nature, title or status of his responsibilities, (ii) dissolution or divestiture of all or a significant portion of our assets or another material change to us that would materially adversely diminish the nature, title or status of his job responsibilities, (iii) a relocation of his principal place of work to a location of more than 50 miles from our current office or (iv) our failure to perform any obligation under his employment agreement for a period of 15 days following written notice by him. For Mr. Spillane, good reason means a termination of his employment within 30 days after (i) a material diminution in nature or status of his responsibilities, (ii) dissolution or divestiture of all or a significant portion of our assets or another material change to us that would materially adversely diminish the nature or status of his job responsibilities or (iii) our material breach of any provision under his employment agreement which is not cured within 15 business days following written notice by him.

Any severance payments described above under *Termination Without Cause*, *Non-Renewal of Employment Agreement*, *Termination of Employment Due to Disability* and *Termination by Employee with Good Reason* are in consideration of the non-compete provisions contained in each named executive officer's employment agreement.

Each of Messrs. Glover and Spillane is prohibited from, during the term of his employment and for 12 months thereafter, (1) competing with us, (2) soliciting our employees and (3) soliciting our customers.

Change in Control

On November 3, 2008, we granted to Richard J. Lampen, our interim president and chief executive officer, an option to purchase 1,000,000 shares of our common stock at an exercise price of \$0.35 per share. Such option vests in four equal annual installments beginning on the first anniversary of the grant date provided that Mr. Lampen is then still a director or officer. The vesting of this option accelerates upon a change of control or Mr. Lampen's death or disability. For Mr. Lampen, a change of control means: (i) consummation of a reorganization, merger or consolidation, sale, disposition of all or substantially all of our assets or stock or any other similar corporate event (a Business Combination), in each case, unless, following such Business Combination, all or substantially all of the individuals or entities who were the beneficial owners, respectively, of our voting securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns our company or all or substantially all of our assets either directly or through one or more subsidiaries); or (ii) board approval of a complete dissolution or liquidation of our company; or (iii) any person (as such term is defined in Section 3(a)(9) of the Securities Exchange Act of 1934 (the Exchange Act) and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act), other than Dr. Phillip Frost, any member of his immediate family, and any person or group (as used in Section 13(d)(3) of the Exchange Act) that is controlled by Dr. Frost or any member of his immediate family, any beneficiary of the estate of Dr. Frost, or any trust, partnership, corporation or other entity controlled by any of the foregoing, is or becomes, after the date hereof, a beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of our company representing 35% or more of the combined voting power of our then outstanding securities eligible to vote for the election of our board of directors.

If there is a change of control during the term of Messrs. Glover's and Spillane's employment agreement, then such named executive officer is entitled to immediate vesting and settlement of all stock options granted to the named executive officer under our 2003 Stock Incentive Plan, as amended.

If Mr. Glover or Mr. Spillane is terminated following or in connection with a change of control of our company (as defined for each executive below), then such named executive officer will continue to be paid an amount equal to his base salary for a period of two years. Under Messrs. Glover's and Spillane's employment agreements, each is entitled to continue his benefits for 24 months following a termination of employment following, or in connection with, a change of control.

For Messrs. Glover and Spillane, a change of control is defined as (i) any person becoming the beneficial owner of 35% or more of our outstanding voting stock, other than directly from us; (ii) a merger or consolidation of our company where 49% or more of the voting stock of the surviving company is held by persons other than our former stockholders; (iii) during any period of two consecutive years, individuals who at the beginning of such period were members of our board of directors cease to constitute at least a majority thereof (unless the appointment, election, or the nomination for election by our stockholders, of each new director was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such

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period); or (iv) a sale or disposal of substantially all of our assets to an outside entity or entities. Subclause (i) of the prior sentence will not apply to any acquisition of our securities by Dr. Phillip Frost, any member of his immediate family, any person or group (as used in Section 13(d)(3) of the Exchange Act) that is controlled by Dr. Frost or any member of his immediate family, any beneficiary of the estate of Dr. Frost, or any trust, partnership, corporate or other entity controlled by any of the foregoing.

The closing of the October 2008 series A convertible preferred stock transaction did not constitute a change of control under any employment agreement with a named executive officer.

The following table quantifies for each named executive officer the estimated potential severance payments and benefits that would be provided, if each termination circumstance set forth below occurred on March 31, 2009.

Named Executive Officer	Severance Payment	Estimated Value of Benefits ⁽¹⁾	Benefit of Acceleration of Vesting of Stock Awards ⁽²⁾
Richard J. Lampen			
<i>Termination without cause/for good reason</i>			
<i>Non-renewal of employment agreement</i>			
<i>Termination due to disability</i>			
<i>Change in control</i>			
John Glover			
<i>Termination without cause/for good reason</i>	\$262,500 ⁽³⁾	\$27,179	\$40,714
<i>Non-renewal of employment agreement</i>	\$131,250 ⁽³⁾	\$13,590	N/A
<i>Termination due to disability</i>	\$262,500 ⁽³⁾	N/A	\$40,714
<i>Change in control</i>	\$525,000 ⁽³⁾⁽⁴⁾	\$54,358	\$40,714
T. Kelley Spillane			
<i>Termination without cause/for good reason</i>	\$252,537 ⁽³⁾	N/A	\$40,714
<i>Non-renewal of employment agreement</i>	N/A	N/A	N/A
<i>Termination due to disability</i>	\$252,537 ⁽³⁾	N/A	\$40,714
<i>Change in control</i>	\$505,074 ⁽³⁾⁽⁴⁾	N/A	\$40,714

(1) Estimated using the value of COBRA payments at the rates in effect on March 31, 2009.

(2) The estimated amount of benefit was calculated by multiplying the number of options that would accelerate

vesting upon the termination circumstance indicated by the difference between the closing price of our common stock on March 31, 2009, which was \$0.20 and the exercise price of the stock option or the par value of the restricted stock, as applicable. This column shows no benefit for Mr. Lampen since the exercise price for his stock options was above the closing price of ou