WESTERN SIZZLIN CORP
Form 10-Q
August 14, 2008
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2008, or

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

For the transition period from to

Commission file number 0-25366

Western Sizzlin Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**86-0723400**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)
416 South Jefferson Street, Suite 600, Roanoke, Virginia	**24011**
(Address of Principal Executive Offices)	(Zip Code)

(540) 345-3195

(Registrant s Telephone Number Including Area Code)

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 x No o

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

Large accelerated filer o	Accelerated filer o
Non-accelerated filer x (Do not check if a smaller reporting company)	Smaller reporting company o

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

As of August 14, 2008, there were 2,831,884 shares of common stock outstanding.

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Western Sizzlin Corporation

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PART I. FINANCIAL INFORMATION

WESTERN SIZZLIN CORPORATION

Consolidated Balance Sheets

June 30, 2008 and December 31, 2007

		June 30, 2008 (unaudited)		December 31, 2007
Assets				
Current assets:				
Cash and cash equivalents	$	638,931	$	727,378
Trade accounts receivable, net of allowance for doubtful accounts of $254,990 in 2008 and $198,425 in 2007		926,029		994,085
Current installments of notes receivable, less allowance for impaired notes of $62,926 in 2008 and $50,904 in 2007		214,692		219,501
Other receivables		105,281		132,283
Income taxes receivable		108,551		90,161
Inventories		87,948		73,017
Prepaid expenses		223,521		228,396
Deferred income taxes		427,094		404,334
Total current assets		2,732,047		2,869,155
Notes receivable, less allowance for impaired notes receivable of $6,980 in 2008 and $15,501 in 2007, excluding current installments		549,637		625,231
Property and equipment, net		1,678,131		1,877,694
Investment in real estate		3,745,152		3,745,152
Investments in marketable securities		11,196,845		15,896,865
Franchise royalty contracts, net of accumulated amortization of $9,139,283 in 2008 and $8,824,135 in 2007		315,148		630,296
Goodwill		4,310,200		4,310,200
Financing costs, net of accumulated amortization of $193,970 in 2008 and $192,832 in 2007		6,240		7,378
Investment in unconsolidated joint venture		332,322		304,996
Deferred income taxes		363,728		235,655
Other assets		5,760		6,450
	$	25,235,210	$	30,509,072
Liabilities and Stockholders Equity				
Current liabilities:				
Note payable line of credit	$		$	2,000,000
Due to broker		368		342,022
Current installments of long-term debt		104,433		118,783
Current installment of long-term debt, secured by land held for investment		264,122		
Accounts payable		739,901		733,983
Accrued expenses and other		1,388,650		1,283,237
Total current liabilities		2,497,474		4,478,025
Long-term debt, excluding current installments		512,800		566,272
Long-term debt, secured by land held for investment, excluding current installments		2,377,098		
Other long-term liabilities		97,597		89,039
		5,484,969		5,133,336
Minority interest		1,462,920		1,873,748
Commitments and contingencies				
Stockholders equity:				
Convertible preferred stock, series A, $10 par value (involuntary liquidation preference of $10 per share). Authorized 25,000 shares; none issued and outstanding				
Convertible preferred stock, series B, $1 par value (involuntary liquidation preference of $1 per share). Authorized 875,000 shares; none issued and outstanding				
Common stock, $0.01 par value. Authorized 10,000,000 shares; issued and outstanding 2,762,321 in 2008 and 2,696,625 in 2007		27,624		26,967
Additional paid-in capital		21,274,929		20,415,785
Retained earnings (accumulated deficit)		(2,828,830)		2,978,189
Accumulated other comprehensive income (loss) unrealized holding gains (losses), net of taxes		(186,402)		81,047
Total stockholders equity		18,287,321		23,501,988
	$	25,235,210	$	30,509,072

See accompanying notes to consolidated financial statements.

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WESTERN SIZZLIN CORPORATION

Consolidated Statements of Operations

Three Months and Six Months Ended June 30, 2008 and 2007

(Unaudited)

	Three Months Ended June 30, 2008	Three Months Ended June 30, 2007	Six Months Ended June 30, 2008	Six Months Ended June 30, 2007
Revenues:				
Company-operated restaurants	$ 3,490,292	$ 3,542,157	$ 6,616,402	$ 6,590,457
Franchise operations	1,071,936	1,148,414	2,121,077	2,229,804
Total revenues	4,562,228	4,690,571	8,737,479	8,820,261
Costs and expenses restaurant and franchise operations:				
Company-operated restaurants food, beverage and labor costs	2,491,597	2,478,121	4,802,485	4,741,780
Restaurant occupancy and other	573,873	575,785	1,133,811	1,178,751
Franchise operations direct support	309,386	332,105	613,921	606,555
Subleased restaurant property expenses	37,188	24,992	64,491	44,636
Corporate expenses	431,445	580,244	915,695	968,847
Depreciation and amortization expense	263,613	265,674	528,615	531,608
Corporate litigation fees and expenses	20,980	27,653	158,764	42,112
Total costs and expenses restaurant and franchise operations	4,128,082	4,284,574	8,217,782	8,114,289
Equity in income of joint venture	61,335	51,973	107,327	65,675
Income from restaurant and franchise operations	495,481	457,970	627,024	771,647
Net realized gain (loss) on sales of marketable securities	754		(39,852)	
Net unrealized losses on marketable securities held by limited partnership	(2,280,461)		(6,443,124)	
Expenses of investment activities, including interest of $29,879 and $53,686 for three and six month periods ended June 30, 2008, respectively	(468,406)	(74,510)	(968,673)	(136,407)
Loss from investment activities	(2,748,113)	(74,510)	(7,451,649)	(136,407)
Other income (expense):				
Interest expense	(15,748)	(19,727)	(54,195)	(40,051)
Interest income	11,503	13,775	32,367	30,353
Other, net	(410)	501	192	4,198
Total other income (expense), net	(4,655)	(5,451)	(21,636)	(5,500)
Income (loss) before income tax expense and minority interest	(2,257,287)	378,009	(6,846,261)	629,740
Income tax expense (benefit):				
Current	18,815	8,257	14,621	18,184
Deferred	39,436	137,589	(103,035)	229,436
Total income tax expense (benefit)	58,351	145,846	(88,418)	247,620
Minority interest in net loss of limited partnership	359,614		950,828	
Net income (loss)	$ (1,956,024)	$ 232,163	$ (5,807,019)	$ 382,120
Earnings (loss) per share (basic and diluted):				
Net income (loss)	$ (.72)	$ .13	$ (2.14)	$ .21

See accompanying notes to consolidated financial statements.

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WESTERN SIZZLIN CORPORATION

Consolidated Statement of Changes in Stockholders Equity

Six Months Ended June 30, 2008
(Unaudited)

	Common Stock Shares	Common Stock Dollars	Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income (Loss)	Total
Balances, December 31, 2007	2,696,625	$ 26,967	$ 20,415,785	$ 2,978,189	$ 81,047	$ 23,501,988
Net loss				(5,807,019)		(5,807,019)
Change in unrealized holding gains (losses), net of taxes of $47,798					(267,449)	(267,449)
Comprehensive loss						(6,074,468)
Shares issued for ITEX Corporation common stock	57,196	572	800,172			800,744
Stock options exercised	8,500	85	58,972			59,057
Balances, June 30, 2008	2,762,321	$ 27,624	$ 21,274,929	$ (2,828,830)	$ (186,402)	$ 18,287,321

See accompanying notes to consolidated financial statements.

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WESTERN SIZZLIN CORPORATION

Consolidated Statements of Cash Flows

Six Months Ended June 30, 2008 and 2007

(Unaudited)

	Six Months Ended June 30, 2008	Six Months Ended June 30, 2007
Cash flows from operating activities:		
Net income (loss)	$ (5,807,019)	$ 382,120
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Restaurant and franchise activities:		
Depreciation and amortization of property and equipment	211,637	214,376
Amortization of franchise royalty contracts and other assets	315,148	315,149
Amortization of finance costs	1,828	2,083
Provision for doubtful accounts	60,580	60,000
Equity in income of unconsolidated joint venture, net of distributions	(27,326)	(65,676)
Share-based compensation		5,920
Provision for deferred income taxes (benefit)	(170,778)	229,435
(Increase) decrease in current assets and other assets	86,435	(96,629)
Increase in current liabilities and other liabilities	217,387	232,273
	694,911	896,931
Investment activities:		
Realized losses on sales of marketable securities, net	39,852	
Unrealized losses on marketable securities, net	6,443,124	
Minority interest in net loss of limited partnership	(950,828)	
Proceeds from sales of marketable securities	91,979	
Purchase of marketable securities	(1,389,438)	(833,218)
Decrease in due to broker	(341,654)	
Provision for deferred income taxes	67,743	
Decrease in current liabilities	(97,498)	
	3,863,280	(833,218)
Net cash provided by (used in) operating activities	(1,248,828)	445,833
Cash flows used in investing activities:		
Additions to property and equipment	(12,074)	(14,120)
Net cash used in investing activities	(12,074)	(14,120)
Cash flows from financing activities:		
Cash received from exercise of stock options	59,057	85,290
Proceeds from issuance of long-term debt	2,641,220	
Payments on long-term debt	(67,822)	(79,514)
Payments on line of credit borrowings	(2,000,000)	
Capital contributions from minority interests in limited partnership	540,000	
Net cash provided by financing activities	1,172,455	5,776
Net increase (decrease) in cash and cash equivalents	(88,447)	437,489
Cash and cash equivalents at beginning of the period	727,378	2,344,644
Cash and cash equivalents at end of the period	$ 638,931	$ 2,782,133
Supplemental disclosure of cash flow information:		
Cash payments for interest	$ 108,448	$ 40,710
Adoption of FIN-48 (non-cash)	$	$ 118,375
Income taxes paid, net of refunds	$ 32,946	$ 2,485
Non-cash investing activities:		
Gross unrealized gains (losses) from marketable equity securities	$ (315,247)	$ 1,600,612
Issuance of common stock for marketable securities	$ 800,744	$

See accompanying notes to consolidated financial statements.

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WESTERN SIZZLIN CORPORATION

Notes to Consolidated Financial Statements

Six Months Ended June, 2008 and 2007

(Unaudited)

(1) Introduction and Basis of Presentation

Western Sizzlin Corporation is a holding company which owns a number of subsidiaries, with its primary business activities conducted through Western Sizzlin Franchise Corporation and Western Sizzlin Stores, Inc., which franchise and operate restaurants. Financial decisions are centralized at the holding company level, and management of operating businesses is decentralized at the business unit level. The Company s prime objective centers on achieving above-average returns on capital in pursuit of maximizing the eventual net worth of its stockholders. While the Company has historically been principally engaged, and intends at this time to remain principally engaged, in franchising and operating restaurants, it has recently made selective investments in other companies. At June 30, 2008, the Company had 111 franchised, 5 Company-operated and 1 joint venture restaurant operating in 19 states.

The consolidated financial statements include the accounts of Western Sizzlin Corporation and its wholly-owned subsidiaries, Western Sizzlin Franchise Corporation, The Western Sizzlin Stores, Inc., Western Sizzlin Stores of Little Rock, Inc., Austins of Omaha, Inc., Western Investments, Inc., Western Properties, Inc., a majority-owned limited partnership, Western Acquisitions, L.P., and a solely-owned limited partnership, Western Real Estate, L.P. (collectively the Company). All significant intercompany accounts and transactions have been eliminated in consolidation.

The accompanying unaudited consolidated financial statements of Western Sizzlin Corporation, (the Company) have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial reporting information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by accounting principles generally accepted in the United States of America for complete financial statements. In the opinion of management, all material reclassifications and adjustments, consisting of normal recurring accruals, considered necessary for a fair presentation of the results of operations, financial position and cash flows for each period shown have been included. The unaudited consolidated financial statements and notes are presented as permitted by Form 10-Q and do not contain certain information included in the Company s annual consolidated financial statements and notes. For further information, refer to the consolidated financial statements and notes thereto included in the Company s annual report on Form 10-K for the year ended December 31, 2007.

Certain reclassifications have been made to the 2007 consolidated statements of operations and cash flows to place them on a basis comparable with 2008 information. The reclassifications have had no impact on net income or equity.

(2) Stock Options

The Company has three stock option plans: the 2005 Stock Option Plan, the 2004 Non-Employee Directors Stock Option Plan, and the 1994 Incentive and Non-qualified Stock Option Plan. Options are no longer granted under the 1994 Plan; however, 7,500 options granted to James C. Verney under the plan were exercised in the second quarter ended June 30, 2008. Under the 2005 and 2004 Plans, employees and directors may be granted options to purchase shares of common stock at the fair market value on the date of the grant.

Options granted under the 2005 and 2004 Plans vest at the date of the grant. The fair value of each option award is estimated on the date of grant using the Black-Scholes option-pricing model. Assumptions utilized in the model are evaluated and revised, as necessary, to reflect market conditions and experience on the respective dates of grant. The risk-free interest rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of the grant. Expected volatilities are based on the historical volatility of the Company s stock for a period equal to the expected term of the options. The expected term of the options represents the period of time that options granted are outstanding and is estimated using historical exercise and termination experience.

Prior to the adoption of SFAS No. 123R, the benefit of tax deductions in excess of recognized stock compensation expense was reported as a reduction of taxes paid within operating cash flows. SFAS No. 123R requires that such

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benefits be recognized as a financing cash flow. The benefits of tax deductions in excess of recognized stock compensation expense for the three and six months ended June 30, 2008 and 2007 were immaterial.

There were 1,000 stock options granted during the six month period ended June 30, 2007, all at an estimated fair value of $5.92. There were no stock options granted during the six month period ended June 30, 2008. The total value of shares vested (and related compensation expense) during the six month periods ended June 30, 2008 and 2007 was $0 and $5,920, respectively.

The fair values of options granted during the six months ended June 30, 2007 were estimated on the date of grant using the Black-Scholes option pricing model based on the following weighted average assumptions in the table below:

Expected term (years)	5
Risk-free interest rate	4.50%
Volatility	78.83%
Dividend yield	

The following table summarizes stock options outstanding as of June 30, 2008, as well as activity during the six month period then ended:

	Options Outstanding	Exercise Price Per Share Weighted Average	Contractual Term Weighted Average	Aggregate Intrinsic Value
Balance, December 31, 2007	36,000	$ 7.10	5.85	$ 374,264
Granted				
Exercised	8,500	6.95		
Expired/Forfeited				
Balance, June 30, 2008	27,500	$ 7.15	5.15	$ 211,418

All options outstanding at June 30, 2008 are fully vested and exercisable. At June 30, 2008, there were 40,000 shares available for future grants under the plans; however, on April 25, 2007, the Company s Board of Directors elected to suspend future grants under all plans indefinitely.

(3) Investments in Marketable Securities

All investment and capital allocation decisions are made by Mr. Sardar Biglari, the Company s Chairman and Chief Executive Officer, under limited authority delegated by the Board of Directors. The delegated authority includes the authority to borrow funds in connection with making investments in marketable securities or derivative securities, subject to Board reporting requirements and various limitations. As of the date of this filing, Mr. Biglari has authority to manage surplus cash up to $10 million, and in addition, has authority to borrow a maximum of $5 million. The Company has a margin securities account with a brokerage firm. The margin account bears interest at the Federal Funds Target Rate quoted by the Wall Street Journal, plus .5%, or approximately 2.50% as of the date of this report, with the minimum and maximum amount of any particular loan to be determined by the brokerage firm, in its discretion, from time to time. The collateral securing the margin loans would be the Company s holdings in marketable securities. The minimum and maximum amount of any particular margin may be established by the brokerage firm, in its discretion, regardless of the amount of collateral delivered to the brokerage firm, and the brokerage firm may change such minimum and maximum amounts from time to time.

Marketable equity securities held by Western Sizzlin Corporation are held for an indefinite period and thus are classified as available-for-sale. Available-for-sale securities are recorded at fair value in Investments in Marketable Securities on the consolidated balance sheet, with the change in fair value during the period excluded from earnings and recorded, net of tax, as a component of other comprehensive income.

The Company completed its exchange offer for shares of ITEX Corporation on May 13, 2008. A total of 864,487 shares of ITEX common stock were validly tendered. The Company has issued 57,196 shares of common stock in exchange for ITEX shares tendered, based upon the exchange ratio of one share of ITEX common stock for ..06623 shares of the Company s common stock as set forth in the tender offer. After the completed exchange, the Company owns 1,565,201 shares of ITEX common stock, which represents approximately 9% of ITEX s total outstanding stock.

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Following is a summary of marketable equity securities held by Western Sizzlin Corporation as of June 30, 2008 and December 31, 2007:

	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
June 30, 2008:	$ 1,409,003	$	$ 186,402	$ 1,222,601
December 31, 2007:	$ 605,689	$ 128,845	$	$ 734,534

There were no realized gains or losses from marketable equity securities held by Western Sizzlin Corporation for the three or six months ended June 30, 2008 and 2007. Management has also evaluated unrealized losses on marketable equity securities held by Western Sizzlin Corporation to determine if such impairment is other than temporary, and has concluded that they are temporary as of June 30, 2008 and that the Company has the ability and the intent to hold such securities until they recover their value. In the event management concludes in future periods that such losses are other than temporary, a charge will be taken in the statement of operations to reduce the cost of the securities to their fair value.

In April 2007, the Company formed Western Investments, Inc., a Delaware corporation and wholly-owned subsidiary to serve as the general partner of Western Acquisitions, L.P., a Delaware limited partnership that operates as a private investment fund. Through Western Investments, Inc., Mr. Biglari operates as the portfolio manager to the fund. During the third quarter of 2007, the Company contributed cash along with its holdings in the common stock of The Steak n Shake Company to Western Investments, Inc., which in turn contributed these assets to Western Acquisitions, L.P. During the third and fouth quarters of the year ended December 31, 2007, cash contributions from outside investors of $2,225,000 were made to the limited partnership. During the six months ended June 30, 2008, cash contributions from outside investors of $540,000 were made to the limited partnership.

As of June 30, 2008, Western Investments, Inc. owned 85.36% of Western Acquisitions, L.P. As such, Western Acquisitions, L.P. has been consolidated into the accompanying financial statements with the 14.64% ownership by minority limited partners presented as minority interest on the accompanying consolidated balance sheet as of June 30, 2008. Western Acquisitions, L.P. is, for GAAP purposes, an investment company under the AICPA Audit and Accounting Guide *Investment Companies*. The Company has retained the specialized accounting for Western Acquisitions, L.P. pursuant to EITF Issue No. 85-12, *Retention of Specialized Accounting for Investment in Consolidation*. As such, marketable equity securities held by Western Acquisitions, L.P. are recorded at fair value in Investments in Marketable Securities, with unrealized gains and losses resulting from changes in fair value reflected in the Consolidated Statements of Operations. Net unrealized losses in marketable securities held by the limited partnership totaled $6,443,124 and $-0- for the six month periods ended June 30, 2008 and 2007, respectively.

Following is a summary of marketable equity securities held by Western Acquisitions, L.P. as of June 30, 2008 and December 31, 2007, of which all are in the United States:

	As of June 30, 2008		As of December 31, 2007	
	Cost	Fair Value	Cost	Fair Value
The Steak n Shake Co.	$ 19,159,412	$ 9,833,940	$ 17,902,714	$ 15,046,851
Other	136,999	140,304	138,660	115,480
Total marketable equity securities	$ 19,296,411	$ 9,974,244	$ 18,041,374	$ 15,162,331

Realized gains, net, and net change in unrealized losses from marketable equity securities held by Western Acquisitions, L.P. were as follows:

	Three Months Ended June 30, 2008	Six Months Ended June 30, 2008
Realized gains	$ 2,104	$
Realized losses	(1,350)	(39,852)
Net realized loss on sales of marketable securities	$ 754	$ (39,852)
Net unrealized losses on marketable securities held by limited partnership	$ (2,280,461)	$ (6,443,124)

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(4) Investment in Real Estate

On December 13, 2007, Western Real Estate, L.P., a newly-formed Delaware limited partnership, managed by Western Properties, Inc., a newly-formed Delaware corporation and wholly-owned subsidiary of the Company, purchased approximately 23 acres of real property located in Bexar County, Texas, from unaffiliated third parties. Western Properties, Inc. serves as the general partner of Western Real Estate, L.P., which intends to operate as a private real estate investment fund. Land held for investment by Western Real Estate, L.P. at December 31, 2007 and June 30, 2008 of $3,745,152 is recorded at cost. The land was originally purchased using available cash and a $2,000,000 draw on the Company s existing line of credit. On February 1, 2008, the purchase was refinanced through the issuance of a note payable of $2,641,220, secured by the land held for investment. Interest accrues on the unpaid principal balance at prime minus 0.5%, or 4.50% as of June 30, 2008 with one payment of principal of $264,122 due on January 29, 2009, and all remaining principal and accrued interest due on January 30, 2010.

(5) Goodwill and Other Intangible Assets

The Company conforms to the provisions of Statement of Financial Accounting Standards No. 142 (SFAS 142), *Goodwill and Other Intangible Assets*. Under SFAS 142, goodwill is reviewed for impairment and written down and charged to results of operations when carrying amount exceeds estimated fair value. The Company is required to perform impairment tests each year, or between yearly tests in certain circumstances, for goodwill. There can be no assurance that future impairment tests will not result in a charge to earnings.

There were no changes in the net carrying amount of goodwill for the three and six months ended June 30, 2008 and 2007.

Amortizing Intangible Assets

Franchise royalty contracts are amortized on a straight-line basis over fifteen years, the estimated average life of the franchise agreements. The Company assesses the recoverability of this intangible asset by determining whether the amortization of the franchise royalty contracts over their remaining life can be recovered through undiscounted future operating cash flows of the acquired operation. The amount of impairment, if any, is measured based on projected discounted future operating cash flows using a discount rate reflecting the Company s average cost of funds. There were no impairments to amortizing intangible assets in the six month period ended June 30, 2008 and 2007, respectively.

	As of June 30, 2008		
	Gross carrying amount	Weighted average amortization period	Accumulated amortization
Amortizing intangible assets:			
Franchise royalty contracts	$ 9,454,431	15.0 yrs.	$ 9,139,283

Aggregate amortization expense for amortizing intangible assets for the three and six month periods ended June 30, 2008 was $157,574 and $315,148, respectively. Aggregate amortization expense for amortizing intangible assets for the three and six month periods ended June 30, 2007 was $157,574 and $315,148, respectively. Estimated amortization expense is $630,296 for the year ended December 31, 2008, at which time the franchise royalty contracts will be fully amortized.

(6) Stockholders Equity

The Board of Directors approved a share repurchase program on June 24, 2008 authorizing the Company to repurchase up to 500,000 shares of the Company s common stock commencing June 25, 2008 at prices set as the Company s management deems appropriate. The program can be suspended or terminated at any time without prior notice, but in any event shall terminate no later than June 25, 2009. No repurchases were consummated during the period covered by this report.

During the quarter ended June 30, 2008, the Company issued 57,196 shares of common stock in exchange for 864,487 shares of ITEX Corporation common stock related to the exchange offer. The fair value of the Company s common stock issued was recorded at the closing market price of $14.00 per share on May 13, 2008, the expiration date of the tender offer.

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(7) Income Taxes

The Company adopted the provisions of FASB Interpretation No. 48*, Accounting for Uncertainty in Income Taxes*, an Interpretation of FASB Statement No. 109 (FIN 48), on January 1, 2007. As of June 30, 2008, the Company has a recorded liability of $16,829, including interest of $7,808, for such uncertain tax positions. The recorded liability was reduced by $11,627 during the six months ended June 30, 2008, as the Company continues to settle its estimated obligations for lesser amounts.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible.

Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Based upon the level of historical taxable income and projections for future taxable income over the periods which the deferred tax assets are deductible, management believes it is more likely than not the Company will realize the benefits of these deductible differences, net of a valuation allowance of approximately $2,256,000 and $0 at June 30, 2008 and 2007, respectively, related to the unrealized losses of marketable securities. The provision for deferred income taxes for the three and six month periods ended June 30, 2008 includes a provision for the valuation allowance of $752,000 and $2,065,000, which increased the Company s effective tax rate for the periods.

(8) Earnings (Loss) Per Share

Basic earnings (loss) per share excludes dilution and is computed by dividing income (loss) available to common stockholders by the weighted-average number of common shares outstanding for the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in the earnings of the Company.

The following is a reconciliation of the numerators and denominators of the basic and diluted earnings (loss) per share computations for the periods indicated:

	Income (Loss) (Numerator)	Weighted Average Shares (Denominator)	Earnings (Loss) Per Share Amount
Three months ended June 30, 2008			
Net loss basic	$ (1,956,024)		