

BSML INC
Form 10-Q
November 21, 2008
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

For the Quarterly Period Ended: September 27, 2008

.. 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: 1-11064

BSML, INC.

(Exact name of registrant as specified in its charter)

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UTAH
(State or other jurisdiction of
incorporation or organization)

87-0410364
(IRS employer
identification no.)

301 Yamato Road

Boca Raton, Florida
(Address of principal executive offices)

33431
(Zip Code)

(561) 988-9046

(Issuer's telephone number, including area code)

Former name:

(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 if 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.

Large Accelerated Filer

Accelerated Filer

Non-accelerated Filer

Smaller Reporting Company

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

BSML, Inc. had 12,332,544 shares of common stock outstanding at September 27, 2008.

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BSML, INC. AND SUBSIDIARIES

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Table of Contents**ITEM 1. FINANCIAL STATEMENTS****BSML, INC.****CONDENSED CONSOLIDATED BALANCE SHEETS**

(\$ in thousands, except share data)

	September 27, 2008 (Unaudited)	December 29, 2007
ASSETS		
Current Assets		
Cash and cash equivalents	\$ 73	\$ 3,512
Trade accounts receivable, net	555	241
Inventories	857	753
Investments, restricted as to use	302	2,288
Prepaid expenses and other current assets	404	370
Total current assets	2,191	7,164
Property and equipment, net	1,834	3,036
Investments, restricted as to use	85	290
Deposits	789	899
Other assets	23	19
Total assets	\$ 4,922	\$ 11,408
LIABILITIES AND SHAREHOLDERS (DEFICIT)		
Current liabilities:		
Accounts payable	\$ 2,496	\$ 1,555
Accrued liabilities	3,215	4,970
Accrual for Center closures	128	129
Prepaid and gift certificate liability	405	1,721
Deferred revenue	1,460	2,746
Total current liabilities	7,704	11,121
Long term liabilities:		
Accrual for Center closures		202
Deferred revenue		585
Other long term liabilities	305	632
Total long term liabilities	305	1,419
Total liabilities	8,009	12,540
Shareholders (deficit):		
Common stock, \$0.001 par value, 50,000,000 shares authorized and 12,332,544 and 11,203,713 shares issued and outstanding at September 27, 2008 and December 29, 2007, respectively	40	39
Preferred stock, no par value, 5,000,000 shares authorized, none outstanding at September 27, 2008 and December 29, 2007		
Additional paid-in capital	175,620	175,452

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Accumulated deficit	(178,747)	(176,623)
Total shareholders' (deficit)	(3,087)	(1,132)
Total liabilities and shareholders' (deficit)	\$ 4,922	\$ 11,408

See notes to condensed consolidated financial statements.

Table of Contents**BSML, INC.****CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS****(unaudited)****(\$ in thousands, except share data)**

	13 Weeks Ended September 27, 2008	13 Weeks Ended September 29, 2007	39 Weeks Ended September 27, 2008	39 Weeks Ended September 29, 2007
Revenues	\$ 4,311	\$ 5,681	\$ 14,065	\$ 19,620
Operating costs and expenses:				
Operating and occupancy costs	3,417	3,457	10,626	10,686
Selling, general and administrative expenses	1,051	2,843	4,122	10,202
Depreciation and amortization	341	356	1,112	1,079
Total operating costs and expenses	(4,809)	6,656	15,860	21,967
Loss from operations	(498)	(975)	(1,795)	(2,347)
Other income/(expense), net	2	279	27	596
Loss on impairment	(356)		(356)	
(Loss) from continuing operations before income tax provision	(852)	(696)	(2,124)	(1,751)
Income tax provision		20		57
Net loss from continuing operations	(852)	(716)	(2,124)	(1,808)
Loss from discontinued operations (Note 5)		(857)		(857)
Net loss	\$ (852)	\$ (1,573)	\$ (2,124)	\$ (2,665)
Basic and diluted (loss) per common share from continuing operations	\$ (.07)	\$ (.07)	\$ (.19)	\$ (.17)
Basic and diluted (loss) per common share from discontinued operations	\$	\$ (.08)	\$	\$ (.08)
Basic and diluted net (loss) per common share	\$ (.07)	\$ (.15)	\$ (.19)	\$ (.25)
Shares used in computing (loss) per common share, basic and diluted	12,022	10,840	11,477	10,768

See notes to condensed consolidated financial statements.

Table of Contents**BSML, INC.****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS****Unaudited**

(\$ in thousands, except share data)

	39 Weeks Ended September 27, 2008	39 Weeks Ended September 29, 2007
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net (loss)	\$ (2,124)	\$ (2,665)
Adjustments to reconcile to net cash provided by (used in) operating activities:		
Depreciation and amortization	1,112	1,079
Loss on disposal of property and equipment		32
Loss on impairment	356	
Loss from discontinued operations		857
Stock compensation expense	191	326
Changes in assets and liabilities:		
Trade accounts receivable	(314)	(47)
Inventories	(104)	253
Prepaid expenses and other	(34)	(185)
Other assets and deposits	106	21
Accounts payable	941	(661)
Accrued liabilities	(1,777)	(2,023)
Gift certificate and prepaid appointment deferred revenue	(1,316)	(657)
Store closure accrual	(203)	(77)
Deferred revenue	(1,871)	(277)
Other long term liabilities	(327)	(176)
Net cash used by operating activities	(5,364)	(4,200)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of equipment	(266)	(260)
Investments, restricted as to use	2,191	1,633
Net cash provided by (used in) investing activities	1,925	1,373
NET (DECREASE) IN CASH AND CASH EQUIVALENTS	(3,439)	(2,827)
CASH AND CASH EQUIVALENTS AT BEGINNING OF THE PERIOD	3,512	4,734
CASH AND CASH EQUIVALENTS AT END OF THE PERIOD	\$ 73	\$ 1,907
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Cash paid for interest	\$	\$
Cash paid for income taxes	\$	\$ 313

See notes to condensed consolidated financial statements.

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BSML, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

1. Description of Business and Basis of Presentation

The accompanying financial statements for the interim periods are unaudited and include the accounts of BSML and its subsidiaries, which are collectively referred to as we, us, our, BSML, or the Company. The accompanying unaudited consolidated financial statements have been prepared in accordance with the instructions to Form 10-Q for interim financial reporting pursuant to the rules and regulations of the Securities and Exchange Commission (SEC). While these statements reflect all normal recurring adjustments which are, in the opinion of management, necessary for fair presentation of the results of the interim period, they do not include all of the information and footnotes required by US generally accepted accounting principles for complete financial statements. Therefore, the interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes included in our Annual Report on Form 10-K for the fiscal year ended December 29, 2007 (fiscal 2007). All significant intercompany transactions have been eliminated. BSML, Inc. is a Utah corporation formerly known as BriteSmile, Inc. The Company and its affiliates develop, distribute, market and sell advanced teeth whitening technology, products, systems and services. The Company s operations include the development of technologically advanced teeth whitening processes that are distributed in professional salon settings known as BriteSmile Professional Teeth Whitening Centers (Centers).

Going Concern

To date, the Company has yet to achieve profitability. The Company had an accumulated deficit of \$178,747,000 and working capital deficiency of \$5,513,000 as of September 27, 2008. The Company s net loss and net cash used by operating activities were \$2,124,000 and \$5,364,000, respectively, for the thirty-nine weeks ended September 27, 2008. At September 27, 2008, the Company had \$73,000 in unrestricted cash and cash equivalents. The Company s principal sources of liquidity historically have been proceeds from issuance of common stock and debt and related financial instruments, and more recently, from the sale of its Associated Centers business. The Company is not certain if its cash will be sufficient to maintain operations of the continuing company at least through the next year due to the uncertainty of the Company s ability to generate positive cash flow from the Centers business operations.

The financial statements reflect a going concern basis of accounting. The Company cannot currently provide assurance that it can become profitable. If it cannot become profitable, and without additional financing, which may be impossible to secure, the Company may not have sufficient liquidity to support its operating requirements through 2008. Accordingly, BSML management believes that these factors raise substantial doubt as to whether the going concern basis of accounting reflected in these financial statements continues to be appropriate. Our liquidity projections may improve or deteriorate depending on these changing conditions. The accompanying financial statements do not include any adjustments that may be necessary if the Company unable to continue as a going concern.

Recent Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board (FASB) issued SFAS No. 157, Fair Value (SFAS 157). SFAS 157 provides guidance for using fair value to measure assets and liabilities. The standard expands required disclosures about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value, and the effect of fair value measurements on earnings. SFAS 157 is effective for fiscal years beginning after November 15, 2007. The Company adopted SFAS 157 which did not have an impact on our consolidated financial statements.

In May 2008, the Financial Accounting Standards Board (FASB) issued SFAS No. 162, The Hierarchy of Generally Accepted Accounting Principles (SFAS 162). SFAS 162 identifies the sources of accounting principles and the framework for selecting the principles used in the preparation of financial statements of nongovernmental entities that are presented in conformity with generally accepted accounting principles (GAAP) in the United States (the GAAP hierarchy). SFAS 162 will become effective following approval by the Securities and Exchange Commission. Company does not believe SFAS 162 will have an impact on our consolidated financial statements.

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In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations*. SFAS 141(R), a replacement of SFAS No. 141, *Business Combinations*. The provisions of SFAS 141(R) establish principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any non-controlling interest acquired and the goodwill acquired. SFAS 141(R) also establishes disclosure requirements which will enable users to evaluate the nature and financial effects of a business combination, and applies to business combinations for which the acquisition date is on or after December 15, 2008, and may not be early adopted. The effect of SFAS 141(R) on the Company will be dependent upon any business combination activity in the future.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities*, (SFAS No. 161). SFAS No. 161 amends and expands the disclosure requirements of SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*. SFAS No. 161 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of gains and losses on derivative instruments and disclosures about credit-risk-related contingent features in derivative agreements. This statement is effective for financial statements issued for fiscal years beginning after November 15, 2008. The adoption of SFAS No. 161 will not affect our financial condition and results of operations, but may require additional disclosures if we enter into derivative and hedging activities.

From time to time, new accounting pronouncements are issued by FASB that are adopted by the Company as of the specified effective date. Unless otherwise discussed, the Company believes that the impact of recently issued standards, which are not yet effective, will not have a material impact on the Company's consolidated financial statements upon adoption.

2. Stock Based Compensation

Effective January 1, 2006, we adopted FAS 123(R), which requires that compensation cost relating to share-based payment transactions be recognized in our financial statements. We have adopted FAS 123(R) on a modified prospective basis, which requires that compensation cost relating to all new awards and to awards modified, repurchased, forfeited/cancelled be recognized in our financial statements beginning January 1, 2006. Additionally, compensation cost for the portion of awards for which the requisite vesting period has not been completed that are outstanding as of January 1, 2006 will be recognized as the requisite vesting is rendered on or after January 1, 2006. The pro forma disclosures previously permitted under SFAS No. 123, *Accounting for Stock-Based Compensation*, are no longer an alternative to financial statement recognition.

In January 1997, the Company adopted the 1997 Stock Option and Incentive Plan (the 1997 Plan). Under the terms of the 1997 Plan, as amended to date, and as approved by the Company's shareholders, 1,900,000 of the Company's common stock shares are available for issuance. Options may be granted at exercise prices of no less than the fair market value on the date of the grant, as determined by the Board of Directors and quoted market prices. Options generally vest over a two to five-year period and have a maximum term of ten years. No further options can be issued as the 1997 Plan expired in January 2007.

For the 13-week and the 39-week periods ended September 27, 2008, and September 29, 2007, the Company recognized stock-compensation costs of approximately \$ 169,000 and \$191,000 and \$0 and \$326,000, respectively. The \$169,000 recognized in the 13-week period ended September 27, 2008, consisted of 1,128,831 shares of restricted \$0.001 par value common stock with a fair value of \$0.15 per share, issued to the Company's Chief Executive Officer who is also Chairman of the Company's Board of Directors as a recruitment incentive. Of the \$326,000 recognized in the 39-week period ended September 29, 2007, approximately \$140,000 had been previously accrued as an expense related to an expected legal settlement; this amount was reclassified to stock-compensation expense in the first quarter of 2007 matching the period of final settlement and issuance of shares. The Company recognized no tax benefit related to these share-based arrangements as we have been in a loss position historically and have a full valuation allowance against our tax benefits.

Based on current assumptions, currently outstanding option grants and restricted common shares expected to vest and become unrestricted in the future, the remaining value as stock-compensation cost in the future is approximately \$0.

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The following table represents stock option activity for the 39-week period ended September 27, 2008:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value (In thousands)
Options outstanding at December 29, 2007	101,750	\$ 2.15	7.16	
Granted	261,000	0.40	9.5	\$
Exercised				
Cancelled	287,750			
Options outstanding at September 27, 2008	75,000	0.40	9.0 years	
Vested or expected to vest at September 27, 2008	25,000	0.40	9.0 years	
Exercisable at September 27, 2008	25,000		2.5 years	\$

The Company made stock-based compensation awards to employees and directors in 2008, which accounts for the Company's stock-based compensation expense for 2008. The Company's stock-based compensation expense for the thirty-nine (39) weeks ended September 29, 2007 is entirely due to employee stock and stock-based awards made prior to the beginning of the Company's fiscal 2007 year, 40,000 options awarded to directors and to an immediately vested stock award made to a non-employee. For options granted in the thirty-nine (39) week periods ended September 27, 2008, and September 29, 2007, respectively, the Company used the Black-Scholes option pricing model to estimate the fair value of employee stock-based awards with the following assumptions:

	39 Weeks Ended September 27, 2008	39 Weeks Ended September 29, 2007
Risk-Free Interest Rate	1.65%	4.61%
Expected Life of Options (years)	2.00	2.66
Expected Volatility	112%	121%
Expected Dividends		
Forfeiture Rate	30%	10%

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The assumptions above are based on multiple factors, including historical exercise patterns of employees. We used historical data to estimate the options' expected term, which represents the period of time that options granted are expected to be outstanding. Volatility is also based on historical rate. Since we have never paid dividends and do not anticipate paying any dividends at least through the expected life of our stock options outstanding, we use an expected dividend yield of zero when calculating the fair value of stock options. The risk-free interest rate for periods within the contractual life of the option was based on the U.S. Treasury yield curve.

3. Income/Loss Per Common Share

Basic net income/loss per share is calculated as net income/loss divided by the weighted-average number of common shares outstanding. Stock options and warrants totaling the following number of shares have been excluded from the calculation of net loss per share for the following periods in this report, as their effect is anti-dilutive:

Potentially dilutive securities:	September 27, 2008	September 29, 2007
Options	75,000	233,778
Warrants	354,551	354,551
Total	429,551	588,329

4. Product line revenues

The Company operates in one business segment, products and procedures to whiten teeth. Components of the Company's revenue for the thirteen-week and thirty-nine week periods ended September 27, 2008, and September 29, 2007, respectively, are as follows (in thousands):

	Thirteen weeks ended		Thirty-nine weeks ended	
	September 27, 2008	September 29, 2007	September 27, 2008	September 29, 2007
Center whitening fees, net	\$ 3,028	\$ 3,318	\$ 9,525	\$ 12,372
Product and other revenue	1,283	2,363	4,540	7,248
Total	\$ 4,311	\$ 5,681	\$ 14,065	\$ 19,620

5. Discontinued Operations

For the thirteen and thirty-nine week periods ended September 29, 2007, the Company's had a loss from discontinued operations of \$857,000 resulting from settlement of a claim involving Longlife Health, Ltd.

6. Commitments and contingencies

The following table sets for the Company's future minimum payments due under operating leases, consulting agreements and office equipment service agreements:

	Payments Due by Period (in thousands)				
	Total	Remaining 2008 (Three Months)	2009-2010	2011-2012	2013 and Thereafter
Contractual Obligations					
Operating leases	\$ 4,340	\$ 1,098	\$ 2,664	\$ 246	\$ 332
Consulting and office equipment service contracts	49	16	28	5	

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Total	\$ 4,389	\$	1,114	\$	2,692	\$	251	\$	332
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The Company is party to certain legal proceedings and claims in the ordinary course of business. There are no current pending legal activities that are expected to have a material adverse effect on the company's financial position or results of operations. Current pending legal claims are as follows:

Andrew Rudnick & Sleek, Inc., v. BSML, Inc., Circuit Court, 17th Judicial Circuit, Broward County, Florida, Case No. 08 30137. On June 30, 2008, Andrew Rudnick, the Company's former CEO, and Sleek, Inc. a company controlled by Rudnick (the Rudnick Plaintiffs) filed suit against the Company alleging breach of an Amended and Restated Support Services Agreement and breach of a Separation and Release of Claims Agreement and fraud in the inducement relating to both agreements. The Rudnick Plaintiffs subsequently amended the complaint to allege conversion and to seek specific performance and permanent injunctive relief against the Company. The Company intends to defend itself vigorously against the allegations of the amended complaint and to assert various counter claims against the Rudnick Plaintiffs. The Company recorded an expense and charge to paid in capital for the fair value of 1,240,000 shares to be issued to Sleek, Inc., an entity controlled by Mr. Rudnick, the former CEO of the Company, as of December 29, 2007, because the notification of the transfer agent to issue the shares was considered ministerial. However, due to delays, resulting from a dispute between the Company and Mr. Rudnick during the first and second quarters of 2008, the Company determined during the second quarter of 2008 that it no longer had an obligation to issue the shares. Accordingly, the number of common shares outstanding was reduced by 1,240,000 as of June 30, 2008.

2012710 Ontario Inc. Pure Laser Hair Removal & Treatment Clinic (carrying on business as Pure Med Spa, Pure Laser Hair Removal and Treatment Clinics, Inc.) and Investment Partnership (2006) LP v. BSML, Inc., and Jeff Nourse, Ontario Superior Court of Justice, Court File CV-08-00359260-0000. In July 2008, 2012710 Ontario Inc. Pure Laser Hair Removal & Treatment Clinic and Investment Partnership (2006) LP (the Canadian Plaintiffs) brought an action against the Company and Jeff Nourse, the Company's current CEO, alleging, among other claims, breach of Mr. Nourse's fiduciary duty while an officer with Pure Med Spa, breach of duties following his resignation from Pure Med Spa, breach of a non-competition agreement, interference with Pure Med Spa's suppliers, interference with potential investors, misappropriation of Pure Med Spa's website, and improper disclosure of Pure's confidential information. The Canadian Plaintiffs seek compensatory damages and punitive damages. The Company intends to defend itself vigorously against the allegations set forth in the statement of claims and to assert various counter claims against the Canadian Plaintiffs.

Green River Junction, Inc. v. BSML, Inc., United States District Court for the Eastern District of Pennsylvania, Civil Action No. 08CV2372. In May 2008, Green River Junction, Inc. (Green River Plaintiffs) brought action against the Company alleging, among other claims breach of contract, unjust enrichment and wrongful withholding of commissions. On September 23, 2008, the parties participated in a court-ordered settlement conference. No settlement was reached by the financial statement date. On October 22, 2008, the Company settled the lawsuit with the Green River Plaintiffs. The settlement calls for the Company to pay as full settlement of all claims the sum of \$180,000. Payments are due as follows: \$30,000 immediately; \$3,000 in December 2008; monthly payments of \$9,000 from January through September 2009 and monthly payments of \$11,000 from October 2009 through March 2010. The settlement amount was fully accrued by the Company during the thirty-nine weeks ended September 27, 2008.

7. Subsequent Events

The Company relocated an existing center on September 30, 2008 in an effort to increase revenues and reduce costs. In accordance with generally accepted accounting principles, the Company is including the effects of the relocation in its financial statements for the 13 week and 39 week periods ended September 27, 2008. This is a Type 1 subsequent event since it occurred after the end of the 13 week and 39 week periods but prior to the filing of the Company's Form 10-Q for the 13 week and 39 week periods ended September 27, 2008. As a result, the Company recorded a \$356,000 pre-tax expense for the 13 week and 39 week periods ended September 27, 2008. Earnings per share have been reduced by \$.03 per share for both the 13 week and 39 week periods ended September 27, 2008.

Effective October 18, 2008, Marc P. Applebaum resigned as the Chief Financial Officer and a Director of the Company.

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The Company has one customer, the QVC Network, which comprised more than 10% of the company's revenues for the thirteen week and thirty-nine week periods ended September 27, 2008 and September 29, 2007, respectively, as follows (in thousands):

	13 Weeks Ended September 27, 2008	13 Weeks Ended September 29, 2007	39 Weeks Ended September 27, 2008	39 Weeks Ended September 29, 2007
QVC Network revenue	\$ 782	\$ 645	\$ 2,462	\$ 1,981
Other revenue	3,529	\$ 5,036	11,603	\$ 17,639
Total Revenue	\$ 4,311	\$ 5,681	\$ 14,065	\$ 19,620

9. Reclassification

Other items contained in the 2007 financial statement have been reclassified to agree with the 2008 presentation.

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ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

The Company's discussion and analysis of its financial condition and results of operations are based upon the Company's consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On this basis, the Company evaluates its estimates, including those related to customer programs and incentives, bad debts, inventories, income taxes, warranty obligations, financing operations, restructuring, contingencies and litigation. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

BSML, Inc., and its affiliates market and sell advanced teeth whitening products and services. Unless specified to the contrary herein, references to BSML or to the Company refer to the Company and its subsidiaries on a consolidated basis. The Company's operations include the development of technologically advanced teeth whitening processes that are distributed in professional salon settings known as BriteSmile Professional Teeth Whitening Centers (Centers).

The Company's products and services are ultimately directed to consumers in the global marketplace for aesthetic enhancement. As such, general economic factors that affect consumer confidence and spending also affect the Company. The primary source of revenue for the Company is from consumers who are seeking to whiten their teeth using the most advanced technology available. This technology is offered through the Company's 16 Centers in the U.S. The Company promotes demand for its products and services by advertising directly to the consumer, while also offering a range of whitening and post-whitening maintenance retail products that generate additional revenue.

Management of the Company focuses on optimizing the productivity of the existing Center locations, both in terms of the number of procedures performed per system and retail product revenue per procedure or venue. The marketing initiatives of the Company are usually constructed and monitored in such a way that management can determine their impact on revenue generation.

In addition, management seeks to leverage a cost base that includes, among other items, the cost of materials for the procedures and retail products, property and lease expenses, employee salaries and marketing expenses.

Critical Accounting Policies And Estimates

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States, which require the Company to make estimates and assumptions. The Company believes that the following critical accounting policies require significant management judgments, estimates and assumptions in the preparation of the consolidated financial statements.

Revenue Recognition

The Company recognizes revenue related to retail products at the time such products are shipped to customers and procedure revenues at the time the procedure is performed. Revenue is reported net of discounts and allowances. In the third quarter of 2004, the Company introduced its SmileForever program. Under this program, Center customers may, for an additional fee, receive a limited number of touch-up procedures over a specified term, typically one to two-years. The revenue associated with this program is deferred and recognized over the contractual term. Additionally, in cases where SmileForever revenue is bundled with procedure revenue and / or revenue from retail product sales, revenue is allocated to SmileForever using the fair values of the components of the bundle per the requirements of EITF 00-21 and any revenue so allocated is then deferred and recognized over the contractual term. At September 27, 2008, and December 29, 2007, the deferred revenue balances associated with the SmileForever program were \$1,375,000 and \$3,331,000, respectively.

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Inventories are stated at the lower of average cost or market. The Company writes down its inventory for estimated obsolescence or unmarketable inventory equal to the difference between the cost of inventory and the estimated market value based upon assumptions about future demand and market conditions, as well as for damaged goods. If market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

Sales Tax Liability

Through the date of this report, certain states have issued initial assessments against the Company claiming insufficient remittance of sales taxes on revenues from past procedure sales at Associated Centers, which the Company is disputing. Based upon the circumstances and the advice of its independent counsel and advisors, management has estimated and accrued approximately \$1.2 million through September 27, 2008, for potential additional sales tax liability related to these assessments and related state sales tax matters.

The Company may further increase its tax reserve in 2008 in response to tax assessments received to date. The Company intends to vigorously challenge the imposition of these tax assessments, and believes it has substantial grounds for its position. Nonetheless, the Company may attempt to negotiate a resolution of such assessments and may also initiate discussions with some other states that have not asserted additional assessments against the Company. An unfavorable outcome with respect to some or all of these tax assessments discussions could have a material adverse affect on the Company's financial position and results of operations, and no assurance can be given that these tax matters will be resolved in the Company's favor in view of the inherent uncertainties involved in tax proceedings. The Company believes that it has provided adequate accruals for additional taxes and related interest expense that may ultimately result from the assessments, and will re-evaluate the adequacy of its reserves as new information or circumstances warrant.

Forward Looking Statements

The statements contained in this Report that are not purely historical are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act. These statements relate to the Company's expectations, hopes, beliefs, anticipations, commitments, intentions and strategies regarding the future. They may be identified by the use of words or phrases such as believes, expects, anticipates, should, plans, estimates, and potential, among others. Forward-looking statements include, but are not limited to, statements contained in Management's Discussion and Analysis of Financial Condition and Results of Operations regarding the Company's financial performance, revenue and expense levels in the future and the sufficiency of its existing assets to fund future operations and capital spending needs. Actual results could differ materially from the anticipated results or other expectations expressed in such forward-looking statements. The Company believes that many of the risks set forth here and in the Company's filings with the SEC, is part of doing business in the industry in which the Company operates and competes and will likely be present in all periods reported. The forward-looking statements contained in this Report are made as of the date of this Report and the Company disclaims any intention or obligation to update them or to update the reasons why actual results could differ from those projected in such forward-looking statements. Among others, risks and uncertainties that may affect the business, financial condition, performance, development, and results of operations of the Company include those risks set forth under Item 1A. Risk Factors.

Results of Operations

The following are explanations of significant changes for the 13-week period ended September 27, 2008 compared to the 13-week period ended September 29, 2007:

Total Revenues, Net declined 25%, to \$4.3 million in our third quarter of 2008 compared to \$5.7 million in the third quarter of 2007. Whitening revenues declined to \$3.0 million in the third quarter of 2008 compared to \$3.3 million in the third quarter of 2007. This decrease reflects difficulties in attempting to change the whitening procedure from one performed by dentists for an hour period to one that is self administered over a shorter period of time. Effective May 2008, the Company returned to its original procedure utilizing dentists. However the disruption to the business and confusion by the customer impacted the third quarter. Overall economic conditions affecting consumer spending also adversely impacted revenues.

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In addition, the price for the shorter procedure was lower than that which was charged for the longer procedure. In addition, SmileForever revenue decreased to \$0.6 million in the third quarter of 2008 from \$0.9 million in the third quarter of 2007, and revenue sold to QVC increased by \$137 thousand.

Operating and occupancy costs decreased 3%, to \$3.4 million in the third quarter of 2008 compared to \$3.5 million in the third quarter of 2007, reflecting decrease in cost of goods sold relating to our lower retail sales and increase in QVC network sales and a decrease in our accrual for center closures. Our spa occupancy costs were nearly identical in the two periods.

Selling, General and Administrative expenses decreased to \$1.1 million in the third quarter of 2008 from \$2.8 million in the third quarter of 2007. This decrease was primarily due to our continued downsizing activities as well as a decrease in advertising and professional fees.

Depreciation and Amortization expense decreased to \$341,000 in the third quarter of 2008 compared to \$356,000 in the third quarter of 2007.

Other Income and expense, net. For the thirteen week periods ended September 27, 2008 and September 29, 2007, other income, net of expenses was \$2,000 and \$279,000, respectively, reflecting the decrease in interest earned as a result of the company's utilization of its cash.

The following are explanations of significant changes for the 39-week period ended September 27, 2008 compared to the 39-week period ended September 29, 2007:

Total Revenues, Net declined to \$14.1 million from \$19.6 million or 28%. This decline reflects the Company's attempt, beginning during the middle of the first quarter and into the second quarter, to change the whitening procedure from one performed by dentists for an hour period to one that is self administered over a shorter period of time. The Company had difficulties implementing this change and returned to its original procedure utilizing dentists during May 2008. QVC revenues increased by 25% reflecting strong sales. The SmileForever program revenue decreased 8% to \$2.3 million.

Operating and occupancy costs decreased slightly to \$10.6 million for 2008 from \$10.7 for 2007.

Selling, General and Administrative expenses decreased to \$4.1 million from \$10.2 million or 60%. This decrease was primarily due to downsizing activities and a decrease in advertising and professional fees.

Depreciation and Amortization expense was unchanged at \$1.1 million for both 2008 and 2007.

Other Income and expense net decreased to \$2 thousand as the cash available for investment purposes declined from 2007 to 2008.

Liquidity and Capital Resources

General

At September 27, 2008, the Company had approximately \$73,000 in unrestricted cash. The Company expects that its principal uses of cash will be to provide working capital to meet corporate expenses and satisfy outstanding liabilities. The financial statements reflect a going concern basis of accounting. While the Company was able to pay its debts as of the date of this Report, and had a plan to generate positive cash flow from its Centers business operations, the Company has yet to achieve profitability from operations and may require additional funds to continue to operate. The Company's ongoing operations may be negatively impacted if it is unable to either generate internally or obtain such funds through new debt or equity issuance. There can be no assurance that such funds will be available and if so, at an acceptable cost.

Sources and Uses of Cash

Through the third quarter of 2008, the Company used \$5.4 million in cash in operating activities. The Company's net loss for the thirty-nine weeks ended September 27, 2008 was \$2.1 million. Changes in working capital accounts and other operating assets and liabilities were \$1.1 million, while cash declined \$3.4 million for the 39 weeks period ended September 27, 2008.

In the 39 week period ended September 27, 2008, the Company's investing activities were related to the release of previously restricted cash balances of \$2.2 million and capital expenditures of \$0.3 million.

ITEM 3. QUALITATIVE AND QUANTITATIVE DISCLOSURE ABOUT MARKET RISK

We believe there has been no material change in the Company's exposure to Market Risk from that discussed in the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 2007.

ITEM 4. CONTROLS AND PROCEDURES

Internal Control over Financial Reporting

The Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. The Company's internal control over financial reporting is a process designed under the supervision of the Company's Chief Executive Officer that: (i) pertains to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the Company's assets; (ii) provides reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements for external reporting in

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accordance with accounting principles generally accepted in the United States, and that receipts and expenditures are being made only in accordance with authorization of the Company's management and directors; and (iii) provides reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedure may deteriorate. As a non-accelerated filer, management has assessed the effectiveness of the Company's internal control over financial reporting as of September 27, 2008. In making its assessment of internal control over financial reporting, management used the criteria set forth by the Committee of Sponsoring Organizations (COSO) of the Treadway Commission in *Internal Control - Integrated Framework*.

As a result of this assessment, the Company's management has determined that there is one deficiency that constitutes a material weakness in the Company's internal control over financial reporting for the period. A material weakness in internal control over financial reporting is a control deficiency (within the meaning of the Public Company Accounting Oversight Board (PCAOB) Auditing Standard No. 5), or a combination of control deficiencies, that results in a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected. The one deficiency that the Company's management has determined constitutes a material weakness is discussed below.

Material Weakness No. 1 Entity Level Controls

During the Company's assessment of the Entity Level control environment, management noted that design over the entity level controls was not sufficient to prevent a material weakness. The Company identified the following areas that were considered weaknesses at the Entity Level. The deficiencies in the design of the controls result in a reasonable possibility that a material misstatement may not be prevented or detected in the annual or interim financial statements in a timely manner.

Audit committee oversight of financial reporting

Senior management oversight of financial reporting

Inadequate number of technically skilled accounting personnel within the Company's corporate accounting department with relevant financial reporting expertise to identify technical accounting issues on a timely basis

Ineffective process of identifying and assessing risks within the Company

Turnover of Management and Employees

Based on our evaluation under the framework in Internal Control, Integrated Framework, our management concluded that our internal control over financial reporting was not effective as of September 27, 2008.

Changes in Internal Control over Financial Reporting

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the third quarter ended September 27, 2008 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

The certifications of our chief executive officer and chief financial officer attached as Exhibits 31.1 and 31.2 to this Quarterly Report on Form 10-Q include, in paragraph 4 of such certifications, information concerning our disclosure controls and procedures and internal control over financial reporting. Such certifications should be read in conjunction with the information contained in this Item 4 for a more complete understanding of the matters covered by such certifications.

Table of Contents**PART II OTHER INFORMATION****ITEM 1. LEGAL PROCEEDINGS**

A summary of legal matters settled or dismissed prior to September 27, 2008 is provided in the Company's annual report on Form 10-K for the year ended December 29, 2007.

The Company is party to certain legal proceedings and claims in the ordinary course of business. There are no current pending legal activities that are expected to have a material adverse effect on the company's financial position or results of operations. Current pending legal claims are as follows:

Andrew Rudnick & Sleek, Inc., v. BSML, Inc., Circuit Court, 17th Judicial Circuit, Broward County, Florida, Case No. 08 30137. On June 30, 2008, Andrew Rudnick, the Company's former CEO, and Sleek, Inc. a company controlled by Rudnick (the Rudnick Plaintiffs) filed suit against the Company alleging breach of an Amended and Restated Support Services Agreement and breach of a Separation and Release of Claims Agreement and fraud in the inducement relating to both agreements. The Rudnick Plaintiffs subsequently amended the complaint to allege conversion and to seek specific performance and permanent injunctive relief against the Company. The Company intends to defend itself vigorously against the allegations of the amended complaint and to assert various counter claims against the Rudnick Plaintiffs. The Company recorded an expense and charge to paid in capital for the fair value of 1,240,000 shares to be issued to Sleek, Inc., an entity controlled by Mr. Rudnick, the former CEO of the Company, as of December 29, 2007, because the notification of the transfer agent to issue the shares was considered ministerial. However, due to delays, resulting from a dispute between the Company and Mr. Rudnick during the first and second quarters of 2008, the Company determined during the second quarter of 2008 that it no longer had an obligation to issue the shares. Accordingly, the number of common shares outstanding was reduced by 1,240,000 as of June 30, 2008.

2012710 Ontario Inc. Pure Laser Hair Removal & Treatment Clinic (carrying on business as Pure Med Spa, Pure Laser Hair Removal and Treatment Clinics, Inc.) and Investment Partnership (2006) LP v. BSML, Inc., and Jeff Nourse, Ontario Superior Court of Justice, Court File CV-08-00359260-0000. In July 2008, 2012710 Ontario Inc. Pure Laser Hair Removal & Treatment Clinic and Investment Partnership (2006) LP (the Canadian Plaintiffs) brought an action against the Company and Jeff Nourse, the Company's current CEO, alleging, among other claims, breach of Mr. Nourse's fiduciary duty while an officer with Pure Med Spa, breach of duties following his resignation from Pure Med Spa, breach of a non-competition agreement, interference with Pure Med Spa's suppliers, interference with potential investors, misappropriation of Pure Med Spa's website, and improper disclosure of Pure's confidential information. The Canadian Plaintiffs seek compensatory damages and punitive damages. The Company intends to defend itself vigorously against the allegations set forth in the statement of claims and to assert various counter claims against the Canadian Plaintiffs.

Green River Junction, Inc. v. BSML, Inc., United States District Court for the Eastern District of Pennsylvania, Civil Action No. 08CV2372. In May 2008, Green River Junction, Inc. (Green River Plaintiffs) brought action against the Company alleging, among other claims breach of contract, unjust enrichment and wrongful withholding of commissions. On September 23, 2008, the parties participated in a court-ordered settlement conference. No settlement was reached by the financial statement date. On October 22, 2008, the Company settled the lawsuit with Green River Plaintiffs. The settlement calls for the Company to pay as full settlement of all claims the sum of \$180,000. Payments are due as follows: \$30,000 immediately; \$3,000 in December 2008; monthly payments of \$9,000 from January through September 2009 and monthly payments of \$11,000 from October 2009 through March 2010. The settlement amount was fully accrued by the Company during the thirty-nine weeks ended September 27, 2008.

The litigation and other claims noted in this report are subject to inherent uncertainties and it is possible that future results of operations for any particular quarterly or annual period could be materially affected by changes in management's assumptions and the effectiveness of the Company's strategies related to these legal actions.

ITEM 1A. RISK FACTORS**Forward Looking Statements**

The statements contained in this Report that are not purely historical are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act. These statements relate to the Company's expectations, hopes, beliefs, anticipations, commitments, intentions and strategies regarding the future. They may be identified by the use of words or phrases such as believes, expects, anticipates, should, plans, estimates, and potential, among others. Forward-looking statements include, but are not li

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statements contained in Management's Discussion and Analysis of Financial Condition and Results of Operations regarding the Company's financial performance, revenue and expense levels in the future and the sufficiency of its existing assets to fund future operations and capital spending needs. Actual results could differ materially from the anticipated results or other expectations expressed in such forward-looking statements. The Company believes that many of the risks set forth Company here and in the Company's filings with the Securities and Exchange Commission, (the "SEC"), are part of doing business in the industry in which the operates and competes and will likely be present in all periods reported. The forward-looking statements contained in this Report are made as of the date of this Report, and the Company expressly disclaims any intention or obligation to update them or to update the reasons why actual results could differ from those projected in such forward-looking statements. Among others, risks and uncertainties that may affect the business, financial condition, performance, development, and results of operations of the Company include:

There is a limited public market for our common stock, which may adversely affect the price and trading volume of our common stock.

We received notice on April 12, 2007, that we did not meet the requirements of the NASDAQ stock market and were subsequently delisted by that market. Trading in our stock is presently conducted on the Over The Counter Bulletin Board (OTCBB). The Company has no plans to re-list its stock on the NASDAQ stock market in the near future.

The Company's certifying officers are not able to represent that the Company's internal controls over financial reporting are functioning adequately to prevent material misrepresentation of the Company's results of operations.

Extensive effort has been made to insure that the Company's results of operations and financial position are fairly presented in accordance with accounting principles generally accepted in the United States of America. However, the relocation of the corporate office from California to Florida resulted in a change in accounting department personnel at or subsequent to the end of the fiscal year. Also, the Company's Chief Executive Officer was appointed at or subsequent to the fiscal year end, and has a relatively

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short tenure in his respective positions and therefore have only limited experience with the Company's internal controls over financial reporting. The Company's Chief Financial Officer resigned in October 2008 and has not yet been replaced. Further, we remain heavily dependent on legacy information technology systems that lack adequate documentation and require substantial manual supplementary efforts in support of some of our revenue recognition processes. These factors, singly and in combination, result in risk that the Company's financial results could be materially incorrect.

Our stock price may be volatile and you could lose all or part of your investment.

We expect that the market price of our common stock will be volatile. Stock prices have risen and fallen in response to a variety of factors, including quarterly variations in operating results and market conditions in the economy as a whole.

The market price for our common stock may also be affected by our ability to meet investors' or securities analysts' expectations. Any failure to meet these expectations, even slightly, may result in a decline in the market price of our common stock. In addition, the stock market is subject to extreme price and volume fluctuations. This volatility has had a significant effect on the market prices of securities issued by many companies for reasons unrelated to the operating performance of these companies. In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted against that company. If similar litigation were instituted against us, it could result in substantial costs and a diversion of our management's attention and resources.

We have a history of losses and accumulated deficit and this trend of losses may continue in the future.

For the thirty-nine week period ended September 27, 2008, we had a net loss of \$2.1 million. For 2007, we had a net loss of \$5.2 million, including \$0.8 million in income from discontinued operations. As of September 27, 2008, our accumulated deficit was \$179 million, and we had a capital deficiency of \$5.4 million. We currently intend to continue to operate our Centers business. We have not been able to operate profitably in the past and we cannot guarantee that our business will be profitable on a sustained basis.

We may not be able to renew the leases on our various Centers on terms that are favorable or agreeable to the Company, which could have an adverse impact on our business.

All of our Centers operate their facilities under operating leases that expire at various dates through July 2015. As these leases expire, we may not be able to renew them at acceptable rates or at all. In addition, we may consider closing some of our non-performing Centers. Our ability to vacate these premises including related lease obligations without ongoing costs is uncertain. We are currently operating one Center on a month-to-month rental basis because that Center's lease has expired. Higher lease rates will negatively affect our results of operations. If, in any case, we are required to relocate to a different facility, we will be subject to additional costs for new leasehold improvements and we may incur higher lease costs and /or loss of business, negatively impacting our results of operations.

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Our business is subject to risks from economic conditions including inflation.

Most of our products are purchased in finished form and packaged by the supplier or at our headquarters. We anticipate usual inflationary increases in the price of our products and do not intend to pass these increases along to our customers. In general, we do not believe that inflation has had a material effect on our results of operations in recent years. However, there can be no assurance that our business will not be affected by inflation in the future.

Additionally, demand for consumer spending which, in turn, drives our services and products is affected by general economic conditions. We have observed some variability in demand as a result of changing economic conditions, which we believe may relate to fluctuations in the level of consumer discretionary spending. We believe that our performance will continue to be affected by such economic parameters.

Our business tends to follow seasonal trends, and our performance may suffer in off-seasons.

We believe that our business follows seasonal trends due to increased consumer demand during certain seasons and around public and national holidays. As a result, our sales performance could potentially be affected.

Our success will depend on our ability to update our technology to remain competitive.

The dental device and supply industry is subject to technological change. As technological changes occur in the marketplace, we may have to modify our products in order to become or remain competitive or to ensure that our products do not become obsolete. We sold virtually our entire technology portfolio to Discus and although we have a license to use the existing technology in the Centers, we cannot give assurances that we will be able to either acquire or develop newer technology in the future. If we fail to anticipate or respond in a cost-effective and timely manner to government requirements, market trends or customer demands, or if there are any significant delays in product development or introduction, our revenues and profit margins may decline, which could adversely affect our cash flows, liquidity and operating results.

Our future growth will depend in part on adding new services to our Centers and expanding the outlet of our products to other retail channels.

One of the drivers for future growth will be our ability to increase the amount of sales each Center produces. We have begun the process of offering additional services, including the performance of cosmetic dentistry procedures at our Centers. We cannot give assurance that this will be successful. We also sell our products through other retail channels including QVC. We are investigating the expansion of existing channels as well as other avenues for distributing our products. We cannot give any assurance that we will be successful at expanding our channels of distribution or the products we distribute.

We may have problems financing our future growth.

Our growth strategy includes investment in and expansion of Centers throughout the United States and internationally, increasing awareness of the BriteSmile brand, and developing and marketing our brand name and retail products. To finance our prior growth we have sold debt and equity securities. Additional funds may be needed in the future for continued expansion. We cannot give assurance that additional financing will be available or that, if available, it will be on terms favorable to our stockholders or us. If needed funds are not available, we may be required to close existing Centers, and/or limit or forego the establishment of new Centers and the development of new products, or limit the scope of our current operations, which could have a material adverse effect on our business, operating results and financial condition. We may be required to take other actions that may lessen the value of our common stock, including borrowing money on terms that are not favorable to us. Raising the needed funds through the sale of additional shares of our common stock or securities convertible into shares of common stock may result in dilution to current stockholders.

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Our ability to utilize our net operating loss carryforward may be limited or eliminated in its entirety.

We have a substantial net operating loss carryforward that we plan to use to offset future federal tax liability. As of December 30, 2007, we had net operating loss carryforwards of approximately \$133 million that we anticipate may be used in the future to reduce our federal tax liability. We established a full valuation allowance against the net operating loss carryforward, along with all other deferred tax assets, to reflect the uncertainty of the recoverability of this asset. The utilization of this asset in the future is dependent upon our having positive earnings. Furthermore, the likelihood of an annual limitation on our ability to utilize our net operating loss carryforward to offset future U.S. federal taxable income is increased by (i) the issuance of certain convertible preferred stock, options, warrants, or other securities exercisable for common stock, (ii) changes in our equity ownership occurring in the last three years and (iii) potential future changes in our equity ownership. The amount of an annual limitation can vary significantly based on factors existing at the date of an ownership change. If such limitations were imposed, they could have a material adverse impact on our results of operations and cash flows.

We are subject to competition from other companies that offer similar products and services.

The market for teeth whitening products and services is highly competitive. Competition in the market for teeth whitening products and services may intensify in the future. Numerous well-established companies and smaller entrepreneurial companies are focusing significant resources on developing and marketing products and services that will compete with our products and services. As a result of our sale to Discuss, BriteSmile products are now offered by independent dental offices. In addition, many of our current and potential competitors have greater financial, technical, operational and marketing resources. Teeth whitening products and services offered by our competitors include traditional and often less expensive bleaching tray methods and other forms of heat or light activated curing methods. We may not be able to compete successfully against these competitors in developing, marketing and distributing our services and products, which could result in the loss of customers and could have a material adverse effect on our business. Competitive pressures may also force prices for teeth whitening services down and such price reductions may adversely affect our potential future revenue and profitability.

We may experience shortages of the supplies we need because we do not have long-term agreements with certain suppliers and rely on sole sources for key equipment.

Successful operation of our Centers business depends to a degree on our ability to provide our Centers a sufficient supply of teeth whitening gels and maintenance products. Since our BS2000 LATW system was first used commercially, we have relied upon manufacturing and supply agreements with multiple suppliers, but only one manufacturer of our LATW devices. Effective April 2001, the Company's LATW devices are manufactured by Delphi Medical Systems Corporation, Longmont, Colorado, pursuant to an agreement between the Company and Delphi. We have recently contracted with Docland to provide LATW devices for use in our Centers; however, Docland has not yet delivered LATW devices and we do not know whether the devices, when delivered, will meet our specifications.

We have no long-term purchase contracts or other contractual assurance of continued supply, pricing or access to new products. While we believe that we have good relationships with our suppliers and our manufacturer, if we are unable to extend or secure manufacturing services or to obtain component parts or finished products from one or more key vendors on a timely basis and on acceptable commercial terms, our results of operations could be seriously harmed.

We operate our Centers using intellectual property under a license granted to us by Discus Dental, and we cannot guarantee that competitors will not infringe the underlying patents or that certain patents that we have applied for will be granted.

In connection with the sale of our Associated Centers business to Discus, we sold all of our intellectual property to Discus, but we retained a license from Discus permitting us to utilize the intellectual property to operate our Centers business and manufacture and sell our retail products.

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We sold Discus an expansive portfolio of patents to protect the intellectual property rights licensed to us, including a patent covering a method of whitening teeth by exposing teeth treated with a transparent composition to light and a patent covering the light source. There can be no assurance that Discus will prosecute patent applications that are valuable to our business or pursue infringement claims against third parties who may infringe the intellectual property rights we sold to Discus. Failure by Discus to protect these intellectual property rights may have an adverse effect on our business.

The rights relied upon to protect the intellectual property licensed to us by Discus underlying our products and services may not be adequate, which could enable third parties to use the technology used by us and would reduce our ability to compete in the market.

The rights licensed to us by Discus rely on a combination of trade secrets, copyright and trademark laws, non-disclosure agreements and other contractual provisions and technical measures to protect our intellectual property rights. Nevertheless, these measures may not be adequate to safeguard the technology underlying our products and services. If these measures do not protect these rights, third parties could use the same technology we use, and our ability to compete in the market would be reduced. In addition, employees, consultants and others who participate in the development of our products and services may breach their agreements with us or Discus regarding intellectual property, and we may not have adequate remedies for the breach. We or Discus also may not be able to effectively protect these intellectual property rights in some foreign countries. We also realize that our and Discus' trade secrets may become known through other means not currently foreseen by us. Notwithstanding our and Discus' efforts to protect this intellectual property, our competitors may independently develop similar or alternative technologies or products that are equal or superior to the technology and products used by us without infringing on any of the intellectual property rights or designs we use.

Our products or services could infringe on the intellectual property rights of others, which may cause us to engage in costly litigation and, if we are not successful, could also cause us to pay substantial damages and prohibit us from selling our products or services.

Third parties may assert infringement or other intellectual property claims against us. In the event of such a suit, and further assuming a resolution to such a suit that is unfavorable to us, we may have to pay substantial damages for past infringement if it is ultimately determined that our products or services infringe a third party's proprietary rights. Further, we may be prohibited from selling our products before we obtain a license, which, if available at all, may require us to pay substantial royalties. Even if these claims are without merit, defending a lawsuit takes significant time, may be expensive and may divert management's attention from other business concerns. Notwithstanding the foregoing, we are not aware of any infringement claims asserted against us by others.

We may become subject to government regulation regarding our teeth whitening services and products.

The light used in the LATW systems is categorized as a Class I Medical Device as defined by the Food and Drug Administration (FDA). As long as the light is used specifically to perform cosmetic dental procedures (teeth whitening), it is not subject to the FDA's pre-market notification requirements, although we are subject to FDA requirements regarding handling of complaints and other general FDA record keeping standards. There can be no assurance that some or all of the existing FDA regulations will not change significantly or adversely in the future, or that we will not become subject to compliance with additional and stricter FDA regulations which could, in the future, affect our revenue.

We believe that there are no government regulations which require that a licensed dentist, dental assistant or dental hygienist perform or assist with our new self-administered teeth whitening procedure in any of the states where we operate Centers. However, there can be no assurance that one or more states where we operate Centers will not adopt regulations which materially and adversely affect the manner in which we intend to perform the self-administered teeth whitening procedure which could, in the future, affect our revenue.

Ownership of our common stock is concentrated in a limited number of shareholders.

Current and former directors and executive officers of the Company, or their affiliates, control more than a majority of the outstanding common stock of the Company and, therefore, have ultimate authority to make all major decisions affecting our business, including the identity and make-up of the Company's board of directors and any other matters requiring approval of the shareholders of the Company.

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Our efforts to build strong brand identity and customer loyalty may not be successful.

We believe that establishing and maintaining brand identity and brand loyalty is critical to attracting customers and strategic partners. In order to attract and retain these groups and respond to competitive pressures, we intend to continue advertising spending to create and maintain brand loyalty. We believe that advertising rates, and the cost of advertising campaigns in particular, could increase in the future. If our branding efforts are not successful, our results of operations could be adversely affected.

Promotion and enhancement of the Company's brand will also depend on our success in consistently providing a high-quality customer experience for our teeth whitening services and satisfaction with our products. If customers do not perceive our service and product offerings to be of high quality, or if we introduce new services and products, such as cosmetic dental procedures and our new, self-administered teeth whitening procedure, that are not favorably received, the value of the Company's brand could be harmed. Any brand impairment or dilution could decrease the attractiveness of the Company, which could harm our reputation, reduce our net revenue and cause us to lose customers.

ITEM 2. DEFAULTS ON SENIOR SECURITIES.

None.

ITEM 3. SUBMISSION OF MATTERS TO A VOTE OF THE SECURITY HOLDERS.

We did not submit any matters to a vote of our shareholders during the quarter ended September 27, 2008.

ITEM 4. OTHER INFORMATION.

None.

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ITEM 6. EXHIBITS

Exhibits

- 3.01 Articles of Restatement of the Articles of Incorporation of the Company as filed with the Utah Division of Corporations and Commercial Code on January 17, 2003 (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 2002).
- 3.02 Articles of Amendment to the Articles of Incorporation of the Company as filed with the Utah Division of Corporations and Commercial Code effective January 30, 2004 (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 2003).
- 3.03 Bylaws adopted May 2, 1996, (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 1996).
- 3.04 Amendment to Bylaws adopted July 23, 1999 (incorporated by reference to the Company's Quarterly Report on Form 10-QSB for the quarter ended June 30, 1999).
- 10.01 Registration Rights Agreement dated April 1, 1996 between the Company, LCO Investments Limited, Richard S. Braddock, and Pinnacle Fund, L.P. (incorporated by reference to the Current Report on Form 8-K of the Company dated April 1, 1996).
- 10.02 Registration Rights Agreement dated May 8, 1997 among the Company, LCO Investments Limited, and Richard S. Braddock (incorporated by reference to the Company's Annual Report on Form 10-KSB for the fiscal year ended March 31, 1997).
- 10.03 Registration Rights Agreement dated as of May 4, 1998 between the Company and LCO Investments Limited (incorporated by reference to the Company's Annual Report on Form 10-KSB for the fiscal year ended March 31, 1998).
- 10.04* Revised 1997 Stock Option and Incentive Plan of the Company, as amended through June 20, 2001 (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 29, 2001).
- 10.05* Form of Option Agreement between the Company and certain directors of the Company (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 29, 2001).
- 10.06* Form of Option Agreement between the Company and certain employees of the Company (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 29, 2001).

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- 10.07 Registration Rights Agreement dated as of June 3, 1999 between the Company and the non-management purchasers (incorporated by reference to the Company's Current Report on Form 8-K as filed June 21, 1999).
- 10.08 Amended and Restated Registration Rights Agreement dated as of June 3, 1999 between the Company and the management purchasers (incorporated by reference to the Company's Current Report on Form 8-K as filed June 21, 1999).
- 10.09 Registration Rights Agreement dated as of June 3, 1999 between the Company and certain non-management purchasers in the June 1999 Private Placement (incorporated by reference to the Company's Current Report on Form 8-K dated June 4, 1999).
- 10.10 Amended and Restated Registration Rights Agreement dated as of June 3, 1999 between the Company and certain management purchasers (incorporated by reference to the Company's Current Report on Form 8-K as filed June 4, 1999).
- 10.11 Registration Rights Agreement dated as of January 18, 2000 between the Company and the Pequot Funds (incorporated by reference to the Company's Current Report on Form 8-K dated January 18, 2000).
- 10.12 Agreement of Sublease dated December 1999 between the Company and LCO Properties, Inc. (incorporated by reference to the Company's Annual Report on Form 10-KSB for the fiscal year ended April 1, 2000).
- 10.13 Form of Warrants granted to note purchasers pursuant to the Securities Purchase Agreement dated as of June 27, 2000 (incorporated by reference to the Company's Transition Report on Form 10-K for the Nine-month Transition Period ended December 30, 2000).
- 10.14 Form of Registration Rights Agreement between the Company of the purchasers of Notes pursuant to the Securities Purchase Agreement dated as of June 27, 2000 (incorporated by reference to the Company's Transition Report on Form 10-K for the Nine-month Transition Period ended December 30, 2000).
- 10.15 Convertible Promissory Note dated December 5, 2000 in the principal amount of \$5,000,000 (incorporated by reference to the Company's Current Report on Form 8-K dated December 5, 2000).
- 10.16 Warrant to Purchase 250,000 Shares of common stock of the Company dated December 5, 2000 (incorporated by reference to the Company's Current Report on Form 8-K dated December 5, 2000).
- 10.17 Amended and Restated Agreement between Excimer Vision Leasing L.P. and the Company dated February 2001 (incorporated by reference to the Company's Transition Report on Form 10-K for the Nine-month Transition Period ended December 30, 2000).
- 10.18 Amendment dated September 18, 2002 to Amended and Restated Agreement between Excimer Vision Leasing L.P. and the Company dated February 2001 (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 28, 2002).
- 10.19 Amendment dated January 1, 2003 to Amended and Restated Agreement between Excimer Vision Leasing L.P. and the Company dated February 2001 (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 28, 2002).

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- 10.20 Loan Agreement between Excimer Vision Leasing L.P. and the Company dated as of March 1, 2001 (incorporated by reference to the Company's Transition Report on Form 10-K for the Nine-month Transition Period ended December 30, 2000).
- 10.21 Unsecured Credit Agreement between BSML International and CAP Advisers Limited dated March 2002 (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 29, 2001).
- 10.22 Credit and Security Agreement dated December 13, 2001 between BSML International and CAP Advisers Limited (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 29, 2001).
- 10.23 Supplemental Agreement dated March 2002 to Credit and Security Agreement dated December 13, 2001 between BSML International and CAP Advisers Limited (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 29, 2001).
- 10.24 Supplemental Agreement dated July 19, 2002 to Credit and Security Agreement dated December 13, 2001, as amended, and to Unsecured Credit Agreement dated March 8, 2002 (incorporated by reference to the Quarterly Report on Form 10-Q of the Company for the 13 weeks ended June 29, 2002).
- 10.25 Supplemental Agreement dated January 9, 2003 to Credit and Security Agreement dated March 2002 (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 28, 2002).
- 10.26 Amendment to Lease Agreement between Excimer Vision Leasing L.P. and the Company dated March 8, 2002 (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 29, 2001).
- 10.27 Form of Guaranty of Fiscal 2002 Shortfall Summary of Terms dated March 2002 in connection with commitments from certain shareholders and/or directors of the Company to secure up to \$4 million of additional working capital (incorporated by reference to the Company's Annual Report on Form 10-K for the 52 weeks ended December 29, 2001).
- 10.28 Form of Convertible Promissory Note issued in connection with November 20, 2002 convertible note offering (incorporated by reference to the Current Report on Form 8-K of the Company filed on November 25, 2002).
- 10.29 CAP Line Conversion Agreement dated as of November 20, 2003 between the Company and LCO Investments Limited (incorporated by reference to the Current Report on Form 8-K of the Company filed on November 28, 2003).
- 10.30 Demand Promissory Note dated November 20, 2003 payable by the Company to LCO Investments Limited in the principal amount of \$2,000,000 (incorporated by reference to the Current Report on Form 8-K of the Company filed on November 28, 2003).
- 10.31 Amendment to Lease Agreement between Excimer Vision Leasing L.P. and the Company dated December 12, 2003 (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 2003).

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- 10.32 Receivable Conversion Agreement dated November 20, 2003 between the Company and Excimer Vision Leasing L.P. (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 2003).
- 10.33 Amended and Restated Consulting Agreement dated December 27, 2003 between the company and John Warner (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 2003).
- 10.34* Employment Agreement, Confidentiality and Rights Ownership Agreement, Common Stock Purchase Option and Restricted Stock Grant Agreement each dated January 9, 2005 between the Company and Gregg A. Coccari (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 2004).
- 10.35 Form of Securities Purchase Agreement dated as of December 16, 2004, between the Company and the Investors, together with exhibits including form of Senior Convertible Note dated December 16, 2004, due December 16, 2009; form of Warrant to Purchase Common Stock of the Company dated December 16, 2004; and form of Additional Investment Right between the Company and the Investors (incorporated by reference to the Current Report on Form 8-K of the Company filed on December 21, 2004).
- 10.36 July 2003 Asset Purchase Agreement between BDI and R. Eric Montgomery (incorporated by reference to the Quarterly Report on Form 10-Q of the Company filed on August 12, 2003).
- 10.37 Consulting Agreement between BDI and Oraceutical Innovative Properties (incorporated by reference to the Quarterly Report on Form 10-Q of the Company filed on August 12, 2003).
- 10.38 \$2 million promissory note issued by BDI to LCO Investments Limited (incorporated by reference to the Quarterly Report on Form 10-Q of the Company filed on August 12, 2003).
- 10.39 Supply Agreement dated December 21, 2004 between the Company and Oraceutical, LLC (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 2004).
- 10.40 \$2.5 million loan agreement between BSML and CAP America Trust: See Agreement dated May 7, 2003 between the Company and CAP America Trust (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 2004).
- 10.41 Amendment to Lease Agreement between Excimer Vision Leasing L.P. and the Company dated July 12, 2005 (incorporated by reference to the Company's Quarterly Report on Form 10-Q filed on November 8, 2005).
- 10.42* Letter Agreement between BSML and Nhat Ngo dated October 13, 2005. (Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005).
- 10.43* Letter Agreement between BSML and Robert Sieban, Jr. dated October 13, 2005. (Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005).
- 10.44* Letter Agreement between BSML and Ken Czaja dated November 18, 2005. (Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005).
- 10.45* Letter Agreement between BSML and Julian Feneley dated November 21, 2005. (Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005).

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10.46*	Letter Agreement between BSML and Christopher Edwards dated January 19, 2006. (Incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005).
10.47	Asset Purchase Agreement among BSML, BSML International Limited, BSML Development, Inc. and Discus Dental, Inc. dated December 30, 2005 (incorporated by reference to the Current Report on Form 8-K of the Company filed on January 4, 2006).
10.48	Limited Liability Company Membership Interest Purchase Agreement between BSML and Dental Spas, LLC dated January 13, 2006 (incorporated by reference to the Current Report on Form 8-K of the Company filed on January 19, 2006).
10.49	Contribution Agreement between BSML and BSML Spas, LLC dated January 13, 2006. (incorporated by reference to the Current Report on Form 8-K of the Company filed on January 19, 2006).
10.50*	Letter Agreement between BSML and Ken Czaja dated May 4, 2006 (Incorporated by reference to the Company's current report on Form 10-Q filed on August 21, 2006).
10.51*	Employment agreement, dated December 6, 2006, between Dr. Julian Feneley and the Company (previously filed as an exhibit to the Company's Current Report on Form 8-K, filed with the Commission on December 12, 2006, and incorporated herein by reference.)
10.52*	Employment agreement, dated December 29, 2006, between Richard De Young and the Company (previously filed as an exhibit to the Company's Annual Report on Form 10-K, filed with the Commission on April 9, 2007, and incorporated herein by reference).
10.53	Agreement by and between 18 West 57th Street, LLC, and LCO Properties, Inc., dated as of August 14, 2007 (previously filed as an exhibit to the Company's Current Report on Form 8-K, filed with the Commission on August 17, 2007, and incorporated herein by reference).
10.54	Employment Agreement between the Company and Andrew Rudnick dated as of December 6, 2007 (previously filed as an exhibit to the Company's Current Report on Form 8-K, filed with the Commission on December 11, 2007, and incorporated herein by reference).
10.55	Support Services Agreement between the Company and Sleek, Inc., dated as of December 6, 2007 (previously filed as an exhibit to the Company's Current Report on Form 8-K, filed with the Commission on December 11, 2007, and incorporated herein by reference).
14	Code of Ethics (incorporated by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 2003).
31.1	Certification of Principal Executive and Accounting Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
32.1	Certification of Principal Executive and Accounting Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).

* Denotes management contract or compensatory plan or arrangement.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

BSML, INC.

**Chairman and Chief Executive Officer
(Principal Executive Officer)**

By: /s/ Jeffrey Nourse
Jeffrey Nourse
Chairman and Chief Executive Officer

(Principal Accounting Officer)

November 21, 2008

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Louise Talbot Louise Talbot	Director	November 21, 2008
/s/ Dr. Robert J. Troell Dr. Robert J. Troell	Director	November 21, 2008

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Exhibit Index

Exhibit

Number	Description
31.1	Certification of Principal Executive and Accounting Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Principal Executive and Accounting Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002