

NATHANS FAMOUS INC
Form 10-K
June 10, 2009

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

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended March 29, 2009

or

TRANSITION REPORT PURSUANT TO SECTION 13 or 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission File No. 0-3189

NATHAN'S FAMOUS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or
organization)

11-3166443
(I.R.S. Employer Identification No.)

1400 Old Country Road, Westbury, New York
(Address of principal executive offices)

11590
(Zip Code)

Registrant's telephone number, including area code: 516-338-8500

Securities registered pursuant to Section 12(g) of the Act:
Common Stock – par value \$.01
(Title of class) Nasdaq Stock Market
Name of each exchange on which registered

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

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements

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incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.x

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

Large Accelerated Filer <input type="checkbox"/>	Accelerated Filer <input checked="" type="checkbox"/>
Non-accelerated Filer <input type="checkbox"/>	Smaller reporting company <input type="checkbox"/>

(Do not check if a 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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of the last business day of the Registrant’s most recently completed second fiscal quarter – September 28, 2008 - was approximately \$79,580,000.

As of June 4, 2009, there were outstanding 5,611,877 shares of Common Stock, par value \$.01 per share.

DOCUMENTS INCORPORATED BY REFERENCE– The information required by Part III, Items 10, 11, 12, 13 and 14 is incorporated by reference from the registrant’s definitive proxy statement for the 2009 Annual Meeting of Shareholders to be filed pursuant to Regulation 14A of the Securities Exchange Act of 1934.

PART I

Forward-Looking Statements

Statements in this Form 10-K annual report may be “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to, statements that express our intentions, beliefs, expectations, strategies, predictions or any other statements relating to our future activities or other future events or conditions. These statements are based on current expectations, estimates and projections about our business based, in part, on assumptions made by management. These statements are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict. These risks and uncertainties, many of which are not within our control, include but are not limited to: economic, weather, legislative and business conditions; the collectibility of receivables; changes in consumer tastes; the ability to continue to attract franchisees; no material increases in the minimum wage; our ability to attract competent restaurant and managerial personnel; and the future effects of bovine spongiform encephalopathy, BSE, first identified in the United States on December 23, 2003; as well as those risks discussed from time to time in this Form 10-K annual report for the year ended March 29, 2009, and in other documents which we file with the Securities and Exchange Commission. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in the forward-looking statements. We generally identify forward-looking statements with the words “believe,” “intend,” “plan,” “expect,” “anticipate,” “estimate,” “will,” “should” and similar expressions. Any forward-looking statements speak only as of date on which they are made, and we do not undertake any obligation to update any forward-looking statement to reflect events or circumstances after the date of this Form 10-K.

Item 1. Business.

As used herein, unless we otherwise specify, the terms “we,” “us,” “our,” “Nathan’s”, “Nathan’s Famous” and the “Company” mean Nathan’s Famous, Inc. and its subsidiaries, including NF Treachers Corp., owner of the Arthur Treachers brand, Miami Subs Corporation through May 30, 2007, owner of the Miami Subs brand and NF Roasters Corp. through April 23, 2008, owner of the Kenny Rogers Roasters brand.

We are engaged primarily in the marketing of the “Nathan’s Famous” brand and the sale of products bearing the “Nathan’s Famous” trademarks through several different channels of distribution. Historically, our business has been the operation and franchising of quick-service restaurant units featuring Nathan’s World Famous Beef Hot Dogs, crinkle-cut French-fried potatoes, and a variety of other menu offerings. Our Nathan’s brand Company-owned and franchised units operate under the name “Nathan’s Famous,” the name first used at our original Coney Island restaurant which opened in 1916.

In addition to our Company-owned and franchised traditional restaurant operations, we introduced our Branded Menu Program, previously known as our Limited-menu Frank and Fry Franchise Program, in 2007. Pursuant to this program, qualified foodservice operators are offered the ability to offer a menu of Nathan’s World Famous Beef Hot Dogs, crinkle-cut French fries, proprietary toppings and other Nathan’s Famous menu offerings.

We and certain authorized third parties also sell Nathan’s World Famous Beef Hot Dogs to foodservice operators outside of the realm of a traditional franchise relationship. We refer to this line of business as the Branded Product Program. Introduced in fiscal 1998, our Branded Product Program allows foodservice operators to prepare and sell Nathan’s World Famous Beef Hot Dogs and certain other proprietary products while making limited use of the Nathan’s Famous trademark.

Finally, certain authorized third parties also manufacture, market and distribute various packaged products bearing the Nathan’s Famous trademarks to retail customers through supermarkets, club stores and other grocery-type outlets. Our

retail program began in 1978 with the introduction at supermarkets of packaged Nathan's World Famous Beef Hot Dogs and other meat products.

We also own the Arthur Treacher's brand and trademarks, which our NF Treachers Corp. subsidiary acquired on February 28, 2006. Before the acquisition, we were party to a licensing arrangement with the prior owners of Arthur Treacher's that permitted us to include limited menu Arthur Treacher's operations within our restaurant system. Today, we continue to use the Arthur Treacher's brand, products and trademarks as a branded seafood menu-line extension for inclusion in certain Nathan's Famous restaurants.

We recently sold our interests in two other branded restaurant systems. On June 7, 2007, Nathan's completed the sale of its wholly-owned subsidiary, Miami Subs Corporation, to Miami Subs Capital Partners I, Inc. effective as of May 31, 2007. Pursuant to the Stock Purchase Agreement, Nathan's sold all of the stock of Miami Subs Corporation in exchange for \$3,250,000, consisting of \$850,000 in cash and the Purchaser's promissory note in the principal amount of \$2,400,000. Miami Subs Corporation had been acquired by us in September 1999.

Similarly, on April 23, 2008, Nathan's completed the sale of its wholly-owned subsidiary, NF Roasters Corp., to Roasters Asia Pacific (Cayman) Limited. Pursuant to the Stock Purchase Agreement, Nathan's sold its stock in NF Roasters Corp. in exchange for approximately \$4,000,000 in cash. NF Roasters Corp. was formed by Nathan's in 1999 to become the franchisor of the Kenny Rogers Roasters restaurant system through the acquisition of the intellectual property rights, including trademarks, recipes and franchise agreements, of Roasters Corp. and Roasters Franchise Corp., both of which were then involved in bankruptcy proceedings. During our period of ownership, we used the Kenny Rogers Roasters trademarks and products primarily as a branded chicken menu-line extension for inclusion in certain Nathan's Famous and Miami Subs restaurants.

For the past several years, our primary focus has been the expansion of the Nathan's Famous brand. Specifically, we have sought to maximize the number of points of brand representation and product sales throughout our various channels of distribution. In this regard, we have concentrated our efforts on: expanding the number of foodservice locations participating in the Nathan's Famous Branded Product Program; expanding the number of domestic franchised and licensed Nathan's Famous restaurant units through the development and opening of new and different types of locations, such as the Branded Menu Program, as well as the development of an international franchising program; expanding our retail licensing programs for packaged Nathan's Famous products through new product introductions and geographic expansion; and operating our existing Company-owned restaurants. In addition, during the period that we owned the Miami Subs and Kenny Rogers brands, we sought to expand our sales by introducing those brands in Nathan's locations and the Nathan's brand in Miami Subs locations.

As a result of our efforts to expand the Nathan's Famous brand, as of March 29, 2009, our Nathan's Famous restaurant system consisted of 249 franchised or licensed units and five Company-owned units (including one seasonal unit) located in 25 states and four countries, our Nathan's Famous Branded Product Program had approximately 13,000 participating foodservice locations throughout 50 states and the District of Columbia and Nathan's Famous packaged hot dogs and other products were offered for sale within supermarkets and club stores in 39 states.

Our revenues are generated primarily from sales of products pursuant to our Branded Product Program and in our Company-owned restaurants, as well as from the fees, royalties and other sums we earn from our franchising and retail licensing activities.

We plan to continue expanding the scope and market penetration of our Branded Product and Branded Menu Programs, further develop the restaurant operations of existing Nathan's Famous franchised and Company-owned outlets, open new Nathan's Famous franchised outlets in traditional or captive market environments and expand the Nathan's Famous retail licensing programs. We may also selectively consider opening new Company-owned restaurants. We expect to further seek to develop our international presence through the use of franchising and distribution agreements based upon individual or combined use of our business alternatives.

We were incorporated in Delaware on July 10, 1992 under the name "Nathan's Famous Holding Corporation" to act as the parent of a Delaware corporation then-known as Nathan's Famous, Inc. On December 15, 1992, we changed our name to Nathan's Famous, Inc. and our Delaware subsidiary changed its name to Nathan's Famous Operating Corporation. The Delaware subsidiary was organized in October 1989 in connection with its re-incorporation in Delaware from that of a New York corporation named "Nathan's Famous, Inc." The New York Nathan's was incorporated on July 10, 1925 as a successor to the sole proprietorship that opened the first Nathan's restaurant in Coney Island in 1916. On July 23, 1987, Equicor Group, Ltd. was merged with and into the New York Nathan's in a

“going private” transaction. The New York Nathan’s, the Delaware subsidiary and Equicor may all be deemed to be our predecessors.

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Restaurant Operations

Nathan's Concept and Menus

Our Nathan's concept offers a wide range of facility designs and sizes, suitable to a vast variety of locations, and features a core menu consisting of Nathan's World Famous Beef Hot Dogs, crinkle-cut French fries and beverages. Nathan's menu is designed to take advantage of site-specific market opportunities by adding complementary food items to the core menu. The Nathan's concept is suitable to stand-alone or can be co-branded with other nationally recognized brands.

Nathan's World Famous Beef Hot Dogs are flavored with the original secret blend of spices provided by Ida Handwerker in 1916, which historically have distinguished Nathan's World Famous Beef Hot Dogs. Our hot dogs are prepared and served in accordance with procedures which have not varied significantly in more than 90 years. Our signature crinkle-cut French fried potatoes are featured at each Nathan's restaurant. Nathan's French fried potatoes are cooked in 100% cholesterol-free oil. We believe that the majority of sales in our Company-owned units consist of Nathan's World Famous Beef Hot Dogs, crinkle-cut French fried potatoes and beverages.

Individual Nathan's restaurants supplement their core menu of hot dogs, French fries and beverages with a variety of other quality menu choices including: char-grilled hamburgers, crispy chicken tenders, char-grilled chicken sandwiches, Philly cheese-steaks, selected seafood items, a breakfast menu and assorted desserts and snacks. While the number of supplemental menu items carried varies with the size of the unit, the specific supplemental menus chosen are tailored to local food preferences and market conditions. Each of these supplemental menu options consists of a number of individual items; for example, the hamburger menu may include char-grilled bacon cheeseburgers, double-burgers and super cheeseburgers. We maintain the same quality standard with each of Nathan's supplemental menus as we do with Nathans' core hot dog and French fried potato menu. Thus, for example, hamburgers and sandwiches are prepared to order and not pre-wrapped or kept warm under lights. Nathan's also has a "Kids Meal" program in which various menu alternatives are combined with toys designed to appeal to the children's market. Soft drinks, iced tea, coffee and old fashioned lemonade and orangeade are also offered. The Company continually evaluates new products. In the course of its evaluations, the Company is cognizant of consumer trends, including a trend toward perceived "healthier" products. In addition to its well-established, signature products, the Company offers for sale in many of its restaurants up to seven chicken products, six fish products, and five salad, soup, and vegetable products. Additionally, in all restaurants French fries are prepared in cholesterol-free oil.

Nathan's restaurant designs are available in a range of sizes from 300 to 4,000 square feet. We have also developed various Nathan's carts, kiosks, and modular units. Our smaller units may not have customer seating areas, although they may often share seating areas with other fast food outlets in food court settings. Other units generally provide seating for 45 to 125 customers. Carts, kiosks and modular units generally carry only the core menu. This menu is supplemented by a number of other menu selections in our other restaurant types.

We believe Nathan's carts, kiosks, modular units and food court designs are particularly well-suited for placement in non-traditional sites, such as airports, travel plazas, stadiums, schools, convenience stores, entertainment facilities, military facilities, business and industry foodservice, within larger retail operations and other captive markets. Many of these settings may also be appropriate for our expanding Branded Menu Program or Branded Product Program. All of these units feature the Nathan's logo and utilize a contemporary design.

Arthur Treacher's Fish-n-Chips Concept and Menu

Arthur Treacher's Fish-n-Chips, Inc. was originally founded in 1969. Arthur Treacher's main product is its "Original Fish N Chips" consisting of fish fillets coated with a special batter prepared under a proprietary formula, deep-fried golden brown, and served with English-style chips and corn meal "hush puppies." The full menu restaurants

emphasize the preparation and sale of batter-dipped fried seafood and chicken dishes served in a quick-service environment. Other Arthur Treacher's products that may be offered in full menu restaurants include chicken, shrimp, clams and an assortment of other seafood combination dishes. The full menu restaurants operate a sit-down style, quick serve operation under a uniform business format consisting of methods, procedures, building designs, décor, color schemes and trade dress. The restaurant format also utilizes certain service marks, logos, copyrights and commercial symbols. Currently, Arthur Treacher's products are served within 58 Nathan's Famous and 42 Miami Subs restaurants, whereby the menu generally consists of fish fillets, shrimp, clams and hush puppies. The Arthur Treacher's brand is generally represented in these restaurants by the use of limited trade dress, certain service marks, logos, copyrights and commercial symbols.

Kenny Rogers Roasters Menu

Over the last five years, Nathan's focused the use of the Kenny Roger Roasters brand as a co-brand that was located within its restaurants utilizing certain Kenny Rogers Roasters products, which included chicken sandwiches, chicken tenders and chicken wings, as part of the restaurant's menu offering.

At March 30, 2008, the Kenny Rogers Roasters restaurant system consisted primarily of approximately 98 traditional restaurants operating internationally and approximately 100 co-branded representations whereby certain signature items were included on the menu within the Nathan's Famous and Miami Subs domestic restaurant systems. On April 23, 2008, we sold NF Roasters Corp., our Kenny Rogers Roasters subsidiary, but retained the right to continue using the Kenny Rogers Roasters trademarks for the continued sale of the Kenny Rogers Roasters products in the then-existing Nathan's Famous and Miami Subs restaurants, where the Kenny Rogers products had already been introduced.

Miami Subs Menu

Prior to the sale of Miami Subs effective May 31, 2007, Nathan's operated Miami Subs as the franchisor of the Miami Subs concept, which featured a wide variety of moderately-priced lunch, dinner and snack foods, including hot and cold submarine sandwiches, various ethnic foods such as gyros and pita sandwiches, flame grilled hamburgers and chicken breast sandwiches, cheese-steaks, chicken wings, fresh salads, ice cream and other desserts and beverages. Nathan's also introduced its Nathan's, Kenny Rogers Roasters and Arthur Treacher's signature products into a number of Miami Subs restaurants.

At the time of sale, the Miami Subs restaurant system consisted of approximately 65 restaurants. In connection with the sale, Miami Subs retained the right to continue offering the Nathan's, Kenny Rogers Roasters and Arthur Treacher's signature products within their restaurant system. At March 29, 2009, Nathan's and Arthur Treacher's products were sold in 41 and 42 Miami Subs locations, respectively.

Franchise Operations

At March 29, 2009, our Nathan's Famous franchise system, including our Branded Menu Program, consisted of 249 units operating in 25 states and four foreign countries.

Our franchise system counts among its 127 franchisees and licensees such well-known companies as HMS Host, ARAMARK Leisure Services, Inc., Delaware North, Centerplate (formerly known as Service America Corp.), Culinart, National Amusements, Hershey Entertainment and Six Flags Theme Parks. We continue to seek to market our franchising programs to larger, experienced and successful operators with the financial and business capability to develop multiple franchise units, as well as to individual owner-operators with evidence of restaurant management experience, net worth and sufficient capital.

During our fiscal year ended March 29, 2009, no single franchisee accounted for over 10% of our consolidated revenue. At March 29, 2009, HMS Host operated 71 outlets, including nine franchised units at airports, 13 franchised units within highway travel plazas and four franchised units within malls. Additionally, at March 29, 2009, HMS Host operated 45 locations featuring Nathan's products pursuant to our Branded Product Program. At March 29, 2009, there were also 45 Brusters Real Ice Cream locations selling Nathan's products under our Branded Menu Program.

Nathan's Standard Franchise Program

Franchisees are required to execute a standard franchise agreement prior to opening each Nathan's Famous unit. Our current standard Nathan's Famous franchise agreement provides for, among other things, a one-time \$30,000 franchise

fee payable upon execution of the agreement, a monthly royalty payment based on 5.5% of restaurant sales and the expenditure of up to 2.0% of restaurant sales on advertising. We may offer alternatives to the standard franchise agreement, having to do with franchise fees or advertising requirements. The initial term of the typical franchise agreement is 20 years, with a 15-year renewal option by the franchisee, subject to conditions contained in the franchise agreement.

Franchisees are approved on the basis of their business background, evidence of restaurant management experience, net worth and capital available for investment in relation to the proposed scope of the development agreement.

We provide numerous support services to our Nathan's Famous franchisees. We assist in and approve all site selections. Thereafter, we provide architectural plans suitable for restaurants of varying sizes and configurations for use in food court, in-line and free standing locations. We also assist in establishing building design specifications, reviewing construction compliance, equipping the restaurant and providing appropriate menus to coordinate with the restaurant design and location selected by the franchisee. We typically do not sell food, equipment or supplies to our standard franchisees.

We offer various management-training courses for management personnel of Company-owned and franchised Nathan's Famous restaurants. A restaurant manager from each restaurant must successfully complete our mandated management-training program. We also offer additional operations and general management training courses for all restaurant managers and other managers with supervisory responsibilities. We provide standard manuals to each franchisee covering training and operations, products and equipment and local marketing programs. We also provide ongoing advice and assistance to franchisees. We host periodic "Focus on Food" meetings with our franchisees to discuss upcoming marketing events, menu development and other topics, each of which is designed to provide system-wide benefits.

Franchised restaurants are required to be operated in accordance with uniform operating standards and specifications relating to the selection, quality and preparation of menu items, signage, decor, equipment, uniforms, suppliers, maintenance and cleanliness of premises and customer service. All standards and specifications are developed by us and applied on a system-wide basis. We regularly monitor franchisee operations and inspect restaurants. Franchisees are required to furnish us with detailed monthly sales or operating reports which assist us in monitoring the franchisee's compliance with its franchise agreement. We make both announced and unannounced inspections of restaurants to ensure that our practices and procedures are being followed. We have the right to terminate a franchise if a franchisee does not operate and maintain a restaurant in accordance with the requirements of its franchise agreement, including for non-payment of royalties, sale of unauthorized products, bankruptcy or conviction of a felony. During the fiscal year ended March 29, 2009, ("fiscal 2009") franchisees opened 46 new Nathan's Famous franchised units in the United States (including 30 Branded Menu Program units) and no agreements were terminated for non-compliance.

Franchisees who desire to open multiple units in a specific territory within the United States may enter into an area development agreement under which we would expect to receive an advance fee based upon the number of proposed units which the franchisee is authorized to open. As units are opened under such agreements, a portion of such advance may be credited against the franchise fee payable to us, as provided in the standard franchise agreement. We may also grant exclusive territorial rights in foreign countries for the development of Nathan's units based upon compliance with a predetermined development schedule. Additionally, we may further grant exclusive manufacturing and distribution rights in foreign countries. In all international situations, we expect to require an exclusivity fee to be conveyed for such exclusive rights.

Nathan's Branded Menu Program