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

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Form 10-Q

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(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended September 30, 2008

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 number: 1-32381

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**HERBALIFE LTD.**

*(Exact name of registrant as specified in its charter)*

**Cayman Islands**  
*(State or other jurisdiction of  
incorporation or organization)*

**98-0377871**  
*(I.R.S. Employer  
Identification No.)*

**P.O. Box 309GT**  
**Ugland House, South Church Street**  
**Grand Cayman, Cayman Islands**  
*(Address of principal executive offices) (Zip code)*

**(310) 410-9600**  
*(Registrant's telephone number, including area code)*

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller reporting company)

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

Number of shares of registrant's common shares outstanding as of October 30, 2008 was 63,824,832

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HERBALIFE LTD.

<u>PART I. FINANCIAL INFORMATION</u>		
<u>Item 1.</u>	<u>Financial Statements</u>	3
	<u>Unaudited Consolidated Balance Sheets</u>	3
	<u>Unaudited Consolidated Statements of Income</u>	4
	<u>Unaudited Consolidated Statements of Cash Flows</u>	5
	<u>Notes to Consolidated Financial Statements (Unaudited)</u>	6
<u>Item 2.</u>	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	19
<u>Item 3.</u>	<u>Quantitative and Qualitative Disclosures About Market Risk</u>	36
<u>Item 4.</u>	<u>Controls and Procedures</u>	38
	<u>Forward Looking Statements</u>	38
<u>PART II. OTHER INFORMATION</u>		
<u>Item 1.</u>	<u>Legal Proceedings</u>	40
<u>Item 1.a.</u>	<u>Risk Factors</u>	40
<u>Item 2.</u>	<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	55
<u>Item 3.</u>	<u>Defaults Upon Senior Securities</u>	55
<u>Item 4.</u>	<u>Submission of Matters to a Vote of Security Holders</u>	55
<u>Item 5.</u>	<u>Other Information</u>	55
<u>Item 6.</u>	<u>Exhibits</u>	55
<u>Signatures and Certifications</u>		61
<u>EX-10.76</u>		
<u>EX-31.1</u>		
<u>EX-31.2</u>		
<u>EX-32.1</u>		

PART I. FINANCIAL INFORMATION

Item 1. FINANCIAL STATEMENTS

HERBALIFE LTD.  
CONSOLIDATED BALANCE SHEETS

	September 30, 2008 (Unaudited)	December 31, 2007
(In thousands, except share amounts)		
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 149,394	\$ 187,407
Receivables, net of allowance for doubtful accounts of \$8,994 (2008) and \$7,863 (2007)	73,058	58,729
Inventories, net	136,566	128,648
Prepaid expenses and other current assets	110,093	72,193
Deferred income taxes	40,054	40,119
Total current assets	<u>509,165</u>	<u>487,096</u>
Property, at cost, net of accumulated depreciation and amortization of \$93,289 (2008) and \$66,000 (2007)	167,703	121,027
Deferred compensation plan assets	17,827	19,315
Deferred financing costs, net of accumulated amortization of \$1,166 (2008) and \$807 (2007)	2,111	2,395
Marketing related intangibles	310,060	310,060
Goodwill	111,327	111,477
Other assets	26,083	15,873
Total assets	<u>\$ 1,144,276</u>	<u>\$ 1,067,243</u>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 42,525	\$ 35,377
Royalty overrides	139,661	127,227
Accrued compensation	60,714	54,067
Accrued expenses	119,452	114,083
Current portion of long-term debt	12,186	4,661
Advance sales deposits	18,180	11,599
Income taxes payable	15,288	28,604
Total current liabilities	<u>408,006</u>	<u>375,618</u>
<b>NON-CURRENT LIABILITIES:</b>		
Long-term debt, net of current portion	313,987	360,491
Deferred compensation	18,551	20,233
Deferred income taxes	105,371	107,584
Other non-current liabilities	23,126	21,073
Total liabilities	<u>869,041</u>	<u>884,999</u>
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>SHAREHOLDERS' EQUITY:</b>		
Common shares, \$0.002 par value, 500.0 million shares authorized, 63.8 million (2008) and 64.4 million (2007) shares issued and outstanding	128	129
Paid-in-capital in excess of par value	199,602	160,872
Accumulated other comprehensive loss	(10,943)	(3,947)
Retained earnings	86,448	25,190
Total shareholders' equity	<u>275,235</u>	<u>182,244</u>
Total liabilities and shareholders' equity	<u>\$ 1,144,276</u>	<u>\$ 1,067,243</u>

See the accompanying notes to consolidated financial statements

**HERBALIFE LTD.**  
**CONSOLIDATED STATEMENTS OF INCOME**

	Three Months Ended		Nine Months Ended	
	September 30, 2008	September 30, 2007	September 30, 2008	September 30, 2007
	(Unaudited)			
	(In thousands, except per share amounts)			
Product sales	\$ 517,896	\$ 457,604	\$ 1,589,298	\$ 1,352,504
Handling & freight income	84,303	71,939	257,038	215,238
Net sales	602,199	529,543	1,846,336	1,567,742
Cost of sales	116,620	105,886	362,335	324,531
Gross profit	485,579	423,657	1,484,001	1,243,211
Royalty overrides	200,323	186,497	628,343	555,266
Selling, general & administrative expenses	196,761	158,864	584,274	460,449
Operating income	88,495	78,296	271,384	227,496
Interest expense, net	3,407	2,740	10,364	7,218
Income before income taxes	85,088	75,556	261,020	220,278
Income taxes	27,004	27,226	73,489	82,660
NET INCOME	\$ 58,084	\$ 48,330	\$ 187,531	\$ 137,618
Earnings per share:				
Basic	\$ 0.91	\$ 0.71	\$ 2.93	\$ 1.96
Diluted	\$ 0.89	\$ 0.67	\$ 2.83	\$ 1.87
Weighted average shares outstanding:				
Basic	63,594	68,513	64,062	70,282
Diluted	65,439	71,657	66,269	73,543

See the accompanying notes to consolidated financial statements

**HERBALIFE, LTD.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Nine Months Ended	
	September 30, 2008	September 30, 2007
	(Unaudited)	
	(In thousands)	
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income	\$ 187,531	\$ 137,618
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	34,789	25,854
Stock-based compensation expense	13,877	10,220
Excess tax benefits from share-based payment arrangements	(12,659)	(14,499)
Amortization of discount and deferred financing costs	359	221
Deferred income taxes	1,348	(2,661)
Unrealized foreign exchange gain	(4,580)	(2,571)
Write-off of deferred financing costs and unamortized discounts	—	204
Other	891	76
Changes in operating assets and liabilities:		
Receivables	(16,483)	(2,040)
Inventories	(11,232)	25,879
Prepaid expenses and other current assets	(37,392)	(23,535)
Other assets	(1,613)	(774)
Accounts payable	8,155	(9,582)
Royalty overrides	14,201	2,929
Accrued expenses and accrued compensation	18,851	9,059
Advance sales deposits	6,877	(2,720)
Income taxes payable	359	39,026
Deferred compensation liability	(1,682)	2,250
<b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>	<b>201,597</b>	<b>194,954</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchases of property	(68,325)	(30,635)
Proceeds from sale of property	67	71
Deferred compensation plan assets	1,488	(1,644)
<b>NET CASH USED IN INVESTING ACTIVITIES</b>	<b>(66,770)</b>	<b>(32,208)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Borrowings from long-term debt	50,000	150,221
Principal payments on long-term debt	(117,652)	(103,391)
Dividends paid	(38,338)	(27,906)
Increase in deferred financing cost	(75)	(749)
Share repurchases	(94,193)	(204,030)
Proceeds from exercise of stock options and sale of stock under employee stock purchase plan	18,275	10,107
Excess tax benefits from share-based payment arrangements	12,659	14,499
<b>NET CASH USED IN FINANCING ACTIVITIES</b>	<b>(169,324)</b>	<b>(161,249)</b>
<b>EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS</b>	<b>(3,516)</b>	<b>5,025</b>
<b>NET CHANGE IN CASH AND CASH EQUIVALENTS</b>	<b>(38,013)</b>	<b>6,522</b>
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF THE PERIOD</b>	<b>187,407</b>	<b>154,323</b>
<b>CASH AND CASH EQUIVALENTS, END OF THE PERIOD</b>	<b>\$ 149,394</b>	<b>\$ 160,845</b>
<b>CASH PAID FOR:</b>		
Interest	\$ 10,365	\$ 10,548
Income taxes	\$ 68,597	\$ 52,067
<b>NON-CASH ACTIVITIES:</b>		
Assets acquired under capital leases and other long-term debt	\$ 28,785	\$ 1,208

See the accompanying notes to consolidated financial statements

HERBALIFE LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)

1. Organization

Herbalife Ltd. (and together with its subsidiaries, "Herbalife" or the "Company") is a leading global network marketing company that sells weight management products, nutritional supplements, energy & fitness products and personal care products through a network of over 1.9 million independent distributors, except in China, where the Company currently sells its products through retail stores and an employed sales force. The Company reports revenue in five geographic regions: North America, which consists of the U.S., Canada and Jamaica; Mexico and Central America, which consists of Mexico, Costa Rica, El Salvador, Panama and Dominican Republic; South America, which includes Brazil; EMEA, which consists of Europe, the Middle East and Africa; and Asia Pacific, which consists of Asia, New Zealand and Australia.

2. Basis of Presentation

The unaudited interim financial information of the Company has been prepared in accordance with Article 10 of the Securities and Exchange Commission's Regulation S-X. Accordingly, it does not include all of the information required by generally accepted accounting principles, or GAAP, in the U.S. for complete financial statements. The Company's unaudited consolidated financial statements as of September 30, 2008, and for the three and nine months ended September 30, 2008 and 2007, include Herbalife and all of its direct and indirect subsidiaries. In the opinion of management, the accompanying financial information contains all adjustments, consisting of normal recurring adjustments, necessary to present fairly the Company's unaudited consolidated financial statements as of September 30, 2008, and for the three and nine months ended September 30, 2008 and 2007. These unaudited consolidated financial statements should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2007. Operating results for the three and nine months ended September 30, 2008 are not necessarily indicative of the results that may be expected for the year ending December 31, 2008.

*New Accounting Pronouncements*

In March 2008, the Financial Accounting Standards Board, or FASB, issued Statement of Financial Accounting Standards, or SFAS, No. 161, *Disclosures about Derivative Instruments and Hedging Activities — An Amendment of FASB Statement No. 133*, or SFAS 161. SFAS 161 expands the disclosure requirements for derivative instruments and hedging activities. SFAS 161 specifically requires entities to provide enhanced disclosures addressing the following: (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, or SFAS 133, and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. SFAS 161 is effective for fiscal years and interim periods beginning after November 15, 2008. The Company is currently evaluating the potential impact, if any, of the adoption of SFAS 161 on the Company's consolidated financial statements.

In February 2008, the FASB issued FASB Staff Position FAS 157-2, or FSP FAS 157-2. FSP FAS 157-2 will delay the effective date of SFAS No. 157, *Fair Value Measurement*, or SFAS 157, for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). FSP FAS 157-2 partially defers the effective date of SFAS 157 to fiscal years beginning after November 15, 2008, and interim periods within those fiscal years for items within the scope of FSP FAS 157-2. The Company is currently evaluating the potential impact, if any, of the application of FSP FAS 157-2 to its nonfinancial assets and nonfinancial liabilities on its consolidated financial statements.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), *Business Combinations*, or SFAS 141R, which replaces FASB Statement No. 141. SFAS 141R establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any non

**HERBALIFE LTD.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**  
**(Unaudited)**

controlling interest in the acquiree and the goodwill acquired. SFAS 141R also modifies the recognition for preacquisition contingencies, such as environmental or legal issues, restructuring plans and acquired research and development value in purchase accounting. SFAS 141R amends SFAS 109, *Accounting for Income Taxes*, to require the acquirer to recognize changes in the amount of its deferred tax benefits that are recognizable because of a business combination either in income from continuing operations in the period of the combination or directly in contributed capital, depending on the circumstances. SFAS 141R also establishes disclosure requirements which will enable users to evaluate the nature and financial effects of the business combination. SFAS 141R is effective for fiscal years beginning after December 15, 2008. The Company is currently evaluating the potential impact, if any, of the adoption of SFAS 141R on the Company's consolidated financial statements.

**Reclassifications**

Certain reclassifications were made to the prior period financial statements to conform to current period presentation.

**3. Long-Term Debt**

Long-term debt consists of the following:

	As of	
	September 30, 2008	December 31, 2007
	(In millions)	
Borrowings under senior secured credit facility	\$ 302.9	\$ 357.1
Capital leases	5.6	7.4
Other debt	17.7	0.7
Total	326.2	365.2
Less: current portion	12.2	4.7
Long-term portion	<u>\$ 314.0</u>	<u>\$ 360.5</u>

On July 21, 2006, the Company entered into a \$300.0 million senior secured credit facility, comprised of a \$200.0 million term loan and a \$100.0 million revolving credit facility, with a syndicate of financial institutions as lenders and replaced the \$225.0 million senior secured credit facility, originally entered into on December 21, 2004. The term loan bears interest at LIBOR plus a margin of 1.5%, or the base rate, which represents the prime rate offered by major U.S. banks, plus a margin of 0.50%, and matures on July 21, 2013. The revolving credit facility bears interest at LIBOR plus a margin of 1.25%, or the base rate, which represents the prime rate offered by major U.S. banks, plus a margin of 0.25%, and is available until July 21, 2012.

The Company incurred approximately \$2.3 million of debt issuance costs in connection with entering into the senior secured credit facility in July 2006, which are being amortized over the term of the senior secured credit facility.

On August 23, 2006, the Company borrowed \$200.0 million pursuant to the term loan under its senior secured credit facility to fund the redemption of its 9<sup>1</sup>/<sub>2</sub>% Notes due 2011 and all amounts remaining outstanding under the old credit facility. In September 2006, the Company prepaid \$20.0 million of its new term loan borrowings. In March 2007, the Company made another prepayment of \$29.5 million and expensed approximately \$0.2 million of related unamortized deferred financing costs. As of September 30, 2008 and December 31, 2007, the amounts outstanding under the term loan were \$147.2 million and \$148.4 million, respectively.

In September 2007, the Company and its lenders amended the credit agreement governing the senior secured credit facility, increasing the amount of the revolving credit facility by an aggregate principal amount of

HERBALIFE LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)  
(Unaudited)

\$150.0 million to finance the increase in the Company's share repurchase program (see Note 11 of the notes to unaudited consolidated financial statements for further discussion on the share repurchase program). During 2007, the Company borrowed an aggregate amount of \$293.7 million under the revolving credit facility to fund its share repurchase program and paid down \$85.0 million of the revolving credit facility. During the first quarter of 2008, the Company paid \$30.0 million of the revolving credit facility. In May 2008, the Company borrowed an additional \$40.0 million under the revolving credit facility to fund its share repurchase program and in June 2008 paid \$28.0 million of the revolving credit facility. During the third quarter of 2008, the Company paid \$45.0 million of the revolving credit facility, and in September 2008, the Company borrowed an aggregate amount of \$10.0 million under the revolving credit facility. As of September 30, 2008 and December 31, 2007, the amounts outstanding under the revolving credit facility were \$155.7 million and \$208.7 million, respectively.

**4. Contingencies**

The Company is from time to time engaged in routine litigation. The Company regularly reviews all pending litigation matters in which it is involved and establishes reserves deemed appropriate by management for these litigation matters when a probable loss estimate can be made.

As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, the Company has been and is currently subjected to various product liability claims. The effects of these claims to date have not been material to the Company, and the reasonably possible range of exposure on currently existing claims is not material to the Company. The Company believes that it has meritorious defenses to the allegations contained in the lawsuits. The Company currently maintains product liability insurance with an annual deductible of \$10 million.

Certain of the Company's subsidiaries have been subject to tax audits by governmental authorities in their respective countries. In certain of these tax audits, governmental authorities are proposing that significant amounts of additional taxes and related interest and penalties are due. The Company and its tax advisors believe that there are substantial defenses to their allegations that additional taxes are owed, and the Company is vigorously contesting the additional proposed taxes and related charges.

These matters may take several years to resolve, and the Company cannot be sure of their ultimate resolution. However, it is the opinion of management that adverse outcomes, if any, will not likely result in a material adverse effect on the Company's financial condition and operating results. This opinion is based on the belief that any losses suffered in excess of amounts reserved would not be material, and that the Company has meritorious defenses. Although the Company has reserved an amount that the Company believes represents the most likely outcome of the resolution of these disputes, if the Company is incorrect in the assessment the Company may have to record additional expenses.



**HERBALIFE LTD.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**  
**(Unaudited)**

**5. Comprehensive Income**

Total comprehensive income consisted of the following:

	Three Months Ended		Nine Months Ended	
	September 30, 2008	September 30, 2007	September 30, 2008	September 30, 2007
	(In millions)			
Net income	\$ 58.1	\$ 48.3	\$ 187.5	\$ 137.6
Unrealized gain/(loss) on derivative instruments, net of tax	0.4	(0.6)	0.3	(0.3)
Foreign currency translation adjustment	(7.6)	0.3	(7.3)	0.7
Comprehensive income	<u>\$ 50.9</u>	<u>\$ 48.0</u>	<u>\$ 180.5</u>	<u>\$ 138.0</u>

**6. Segment Information**

The Company is a global network marketing company that sells a wide range of weight management products, nutritional supplements, energy and fitness products and personal care products within one industry segment as defined under SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*. The Company's products are primarily manufactured by third party providers and then sold to independent distributors who sell Herbalife products to retail consumers or other distributors.

As of September 30, 2008 the Company sold products in 66 countries throughout the world and is organized and managed by geographic regions. The Company aggregates its operating segments into one reporting segment, as management believes that the Company's operating segments have similar operating characteristics and similar long term operating performance. In making this determination, management believes that the operating segments are similar in the nature of the products sold, the product acquisition process, the types of customers products are sold to, the methods used to distribute the products, and the nature of the regulatory environment.

HERBALIFE LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)  
(Unaudited)

In late 2007, the Company changed its geographic regions from seven to five regions as part of the Company's on-going Realignment for Growth plan. This updated regional structure allows the Company to better support the distributor leadership and enhance synergies within the regions. Historical information presented related to the Company's geographic regions has been reclassified to conform with its current geographic presentation. The Company's reporting segment's operating information and sales by product line are as follows:

	Three Months Ended		Nine Months Ended	
	September 30, 2008	September 30, 2007	September 30, 2008	September 30, 2007
	(In millions)			
<b>Net Sales:</b>				
United States	\$ 130.9	\$ 106.1	\$ 372.5	\$ 313.9
Mexico	91.6	89.1	288.0	277.8
Others	379.7	334.3	1,185.8	976.0
Total Net Sales	<u>\$ 602.2</u>	<u>\$ 529.5</u>	<u>\$ 1,846.3</u>	<u>\$ 1,567.7</u>
<b>Operating Margin(1):</b>				
United States	\$ 57.2	\$ 47.9	\$ 157.9	\$ 122.1
Mexico	40.5	35.8	122.6	112.3
Others	187.6	153.4	575.2	453.5
Total Operating Margin	285.3	237.1	855.7	687.9
Selling, general and administrative expenses	196.8	158.9	584.3	460.4
Interest expense, net	3.4	2.7	10.4	7.2
Income before income taxes	85.1	75.5	261.0	220.3
Income taxes	27.0	27.2	73.5	82.7
Net Income	<u>\$ 58.1</u>	<u>\$ 48.3</u>	<u>\$ 187.5</u>	<u>\$ 137.6</u>
<b>As of</b>				
	September 30, 2008	December 31, 2007		
	(In millions)			
<b>Total Assets:</b>				
United States	\$ 604.6	\$ 668.6		
Mexico	78.9	62.3		
Others	460.8	336.3		
Total Assets	<u>\$ 1,144.3</u>	<u>\$ 1,067.2</u>		

**HERBALIFE LTD.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**  
**(Unaudited)**

	Three Months Ended		Nine Months Ended	
	September 30, 2008	September 30, 2007	September 30, 2008	September 30, 2007
	(In millions)			
<b>Net sales by product line:</b>				
Weight Management	\$ 379.2	\$ 334.0	\$ 1,165.2	\$ 993.6
Targeted Nutrition	124.7	105.3	380.8	313.4
Energy and Fitness	27.6	24.1	78.1	66.9
Outer Nutrition	34.7	34.0	114.2	104.5
Literature, promotional and other(2)	36.0	32.1	108.0	89.3
Total Net Sales	<u>\$ 602.2</u>	<u>\$ 529.5</u>	<u>\$ 1,846.3</u>	<u>\$ 1,567.7</u>
<b>Net sales by geographic region:</b>				
North America(3)	\$ 135.9	\$ 110.7	\$ 387.7	\$ 329.1
Mexico and Central America(4)	100.2	93.0	305.2	286.8
South America(5)	85.8	75.9	281.8	200.9
EMEA(6)	135.4	133.8	453.3	423.0
Asia Pacific(7)	144.9	116.1	418.3	327.9
Total Net Sales	<u>\$ 602.2</u>	<u>\$ 529.5</u>	<u>\$ 1,846.3</u>	<u>\$ 1,567.7</u>

- (1) Operating margin consists of net sales less cost of sales and royalty overrides.
- (2) Product buybacks and returns in all product categories are included in the literature, promotional and other category.
- (3) Consists of the U.S., Canada and Jamaica.
- (4) Consists of Mexico, Costa Rica, El Salvador, Panama and Dominican Republic.
- (5) Includes Brazil.
- (6) Consists of Europe, Middle East and Africa.
- (7) Consists of Asia, New Zealand and Australia.

**7. Stock Based Compensation**

The Company has five stock-based compensation plans, the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan, or the Management Plan, the WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Incentive Plan, or the Independent Directors Plan, the Herbalife Ltd. 2004 Stock Incentive Plan, or the 2004 Stock Incentive Plan, the Herbalife Ltd. 2005 Stock Incentive Plan, or the 2005 Stock Incentive Plan, and the Herbalife Ltd. Independent Directors Deferred Compensation and Stock Unit Plan, or the Independent Director Stock Unit Plan. The Management Plan provides for the grant of options to purchase common shares of Herbalife to members of the Company's management. The Independent Directors Plan provides for the grant of options to purchase common shares of Herbalife to the Company's independent directors. The 2004 Stock Incentive Plan replaced the Management Plan and the Independent Directors Plan and after the adoption thereof, no additional awards were made under either the Management Plan or the Independent Directors Plan. However, the shares remaining available for issuance under these plans were absorbed by and became available for issuance under the 2004 Stock Incentive Plan. The terms of the 2005 Stock Incentive Plan are substantially similar to the terms of the 2004 Stock Incentive Plan. The 2005 Stock Incentive Plan authorizes the issuance of 4,000,000 common shares pursuant to awards, plus any shares that remained available for issuance under the 2004 Stock Incentive Plan at the time of the

HERBALIFE LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)  
(Unaudited)

adoption of the 2005 Stock Incentive Plan. The purpose of the Independent Directors Stock Unit Plan is to facilitate equity ownership in the Company by its independent directors through the award of stock units and to allow for deferral by the independent directors of compensation realized in connection with such stock units.

The Company records compensation expense over the requisite service period which is equal to the vesting period. For awards granted prior to January 1, 2006, compensation expense is recognized on a graded-vesting basis over the vesting term. For awards granted on or after January 1, 2006, compensation expense is recognized on a straight-line basis over the vesting term. Stock-based compensation expense is included in selling, general and administrative expenses in the consolidated statements of income. For the three and nine months ended September 30, 2008, stock-based compensation expenses amounted to \$5.2 million and \$13.9 million, respectively, and the related income tax benefits recognized in earnings amounted to \$1.9 million and \$5.2 million, respectively. For the three and nine months ended September 30, 2007, stock-based compensation expenses amounted to \$3.6 million and \$10.2 million, respectively, and the related income tax benefits recognized in earnings amounted to \$1.4 million and \$3.9 million, respectively.

As of September 30, 2008, the total unrecognized compensation cost related to non-vested stock awards was \$56.6 million and the related weighted-average period over which it is expected to be recognized is approximately 1.8 years.

For the three and nine months ended September 30, 2008, a tax deficiency of \$0.1 million and excess tax benefits of \$13.3 million, respectively, were generated from option exercises. For the three and nine months ended September 30, 2007, excess tax benefits of \$9.5 million and \$14.9 million, respectively, were generated from option exercises.

The Company's stock-based compensation plans provide for grants of stock options, stock appreciation rights, or SARS, and stock units, which are collectively referred to herein as awards. Stock options typically vest quarterly over a five-year period beginning on the grant date, and certain stock option grants vest over a period of less than five years. Certain SARS vest quarterly over a five-year period beginning on the grant date. Other SARS vest annually over a three-year period. The contractual term of stock options and SARS is ten years. Stock unit awards under the 2005 Incentive Plan, or Incentive Plan Stock Units, vest annually over a three year period which is equal to the contractual term. Stock units awarded under the Independent Directors Stock Unit Plan, or Independent Director Stock Units, vest at a rate of 25% on each January 15, April 15, July 15 and October 15. In March 2008, the Company granted stock unit awards to its Chairman and Chief Executive Officer, which vest over a four-year period at a rate of 30% during each of the first three years and 10% during the fourth year. Unless otherwise determined at the time of grant, the value of each stock unit shall be equal to one common share of Herbalife. The Company's stock compensation awards outstanding as of September 30, 2008 include stock options, SARS, and stock units.

In March 2008, the Company granted SARS with market conditions to its Chairman and Chief Executive Officer which will fully vest at the end of four years subject to his continued employment through that date and the achievement of certain conditions related to the market value of the Company's common shares. The market conditions include targets for stock price appreciation of both a 10% and a 15% compound annual growth rate. The fair value of the SARS with market conditions is estimated on the date of the grant using the Monte Carlo lattice model.

With the exception of awards with market conditions, the fair value of each award is estimated on the date of grant using the Black-Scholes-Merton option-pricing model based on the assumptions in the following tables. The expected term of the award is based on the simple average of the average vesting period and the life of the award because of the limited historical data. All groups of employees have been determined to have similar historical exercise patterns for valuation purposes. The expected volatility of stock awards is primarily based upon the historical volatility of the Company's common shares and, due to the limited period of public trading data for its common shares, it is also validated against the volatility rates of a peer group of companies. The risk free interest

HERBALIFE LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)  
(Unaudited)

rate is based on the implied yield on a U.S. Treasury zero-coupon issue with a remaining term equal to the expected term of the award. The dividend yield reflects that the Company has not historically paid regular cash dividends from inception to the first quarter of 2007. Dividends paid by the predecessor company in 2002 and prior and special dividends paid in 2004 in connection with the Company's initial public offering have been excluded from the calculation. Commencing in the second quarter of 2007, the board of directors approved a regular quarterly dividend program and the Company declared a \$0.20 per share cash dividend for each of the succeeding quarters. However, there is no guarantee that the board of directors will not terminate the quarterly dividend program.

There were no stock options granted during the three and nine months ended September 30, 2008 and 2007. The following table summarizes the weighted average assumptions used in the calculation of fair market value for SARS and stock units granted during the three and nine months ended September 30, 2008 and 2007:

	SARS		Incentive Plan Stock Units		Independent Directors Stock Units	
	Three Months Ended September 30,		Three Months Ended September 30,		Three Months Ended September 30,	
	2008	2007	2008	2007	2008	2007
Expected volatility	39.70%	40.02%	39.70%	39.96%	—	—
Dividends yield	1.87%	2.00%	zero	zero	—	—
Expected term	6.2 years	6.2 years	2.5 years	2.5 years	—	—
Risk-free interest rate	3.21%	4.45%	2.43%	4.23%	—	—

  

	SARS		Incentive Plan Stock Units		Independent Directors Stock Units	
	Nine Months Ended September 30,		Nine Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007	2008	2007
Expected volatility	39.51%	41.16%	39.49%	41.16%	39.73%	41.82%
Dividends yield	1.94%	2.00%	zero	zero	zero	zero
Expected term	5.81 years	6.2 years	2.76 years	2.5 years	3.0 years	3.0 years
Risk-free interest rate	2.61%	4.80%	2.00%	4.81%	2.49%	5.00%

The following tables summarize the activity under the stock-based compensation plans for the nine months ended September 30, 2008:

Stock Options & SARS	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
	(In thousands)			(In millions)
Outstanding at December 31, 2007	8,159	\$ 20.80		
Granted	1,880	46.24		
Exercised	(1,484)	14.33		
Forfeited	(1,371)	33.13		
Outstanding at September 30, 2008	7,184	\$ 26.44	6.5 years	\$ 103.8
Exercisable at September 30, 2008	3,708	\$ 18.49	5.5 years	\$ 78.1

**HERBALIFE LTD.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**  
**(Unaudited)**

<u>Incentive Plan and Independent Directors Stock Units</u>	<u>Shares</u> <u>(In thousands)</u>	<u>Weighted Average</u> <u>Grant Date Fair Value</u>	<u>Aggregate</u> <u>Fair Value</u> <u>(In millions)</u>
Outstanding and nonvested at December 31, 2007	273.9	\$ 38.40	\$ 10.5
Granted	511.1	45.35	23.2
Vested	(89.9)	37.00	(3.3)
Cancelled	(196.4)	43.29	(8.7)
Outstanding and nonvested at September 30, 2008	<u>498.70</u>	<u>\$ 43.39</u>	<u>\$ 21.7</u>

The weighted-average grant date fair value of stock awards granted during the three and nine months ended September 30, 2008 was \$21.73 and \$21.96, respectively. The total intrinsic value of stock awards exercised during the three and nine months ended September 30, 2008 was \$4.6 million and \$44.9 million, respectively.

***Employee Stock Purchase Plan***

During 2007, the Company adopted a qualified employee stock purchase plan, or ESPP, which was implemented during the first quarter of 2008. In connection with the adoption of the ESPP, the Company has reserved for issuance a total of 1 million common shares. Under the terms of the ESPP, rights to purchase common shares may be granted to eligible qualified employees subject to certain restrictions. The ESPP enables the Company's eligible employees, through payroll withholdings, to purchase a limited number of common shares at 85% of the fair market value of a common share at the purchase date. Purchases are made on a quarterly basis.

**8. Income Taxes**

As of September 30, 2008, the total amount of unrecognized tax benefits, related interest and penalties was \$43.9 million, \$9.5 million and \$3.9 million, respectively. During the nine months ended September 30, 2008, the Company recorded tax, interest and penalties related to uncertain tax positions of \$4.7 million, \$1.5 million and \$0.8 million, respectively. The unrecognized tax benefits relate primarily to uncertainties from international transfer pricing issues and the deductibility of certain operating expenses in various jurisdictions. If the total amount of unrecognized tax benefits was recognized, \$37.8 million of unrecognized tax benefits, \$9.5 million of interest and \$3.9 million of penalties, would impact the effective tax rate and \$6.1 million would result in an increase to goodwill.

During the nine months ended September 30, 2008, the Company benefited from the terms of a tax holiday in the People's Republic of China. The tax holiday commenced on January 1, 2008 and will terminate on December 31, 2012. Under the terms of the holiday, the Company is subject to a zero tax rate in China during the 2008 and 2009 years and a concessionary tax rate in China for the remaining years included in the holiday period.

**9. Derivative Instruments and Hedging Activities**

***Interest Rate Risk Management***

The Company engages in an interest rate hedging strategy for which the hedged transactions are forecasted interest payments on the Company's variable rate term loan. The hedged risk is the variability of forecasted interest rate cash flows, where the hedging strategy involves the purchase of interest rate swaps. For the outstanding cash flow hedges on interest rate exposures at September 30, 2008 the maximum length of time over which the Company is hedging these exposures is approximately one year.

Under its senior secured credit facility, the Company is obligated to enter into interest rate hedges for up to 25% of the aggregate principal amount of the term loan for a minimum of three years. On August 23, 2006, the Company entered into an interest rate swap agreement. The agreement provides for the Company to pay interest for

HERBALIFE LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)  
(Unaudited)

a three-year period at a fixed rate of 5.26% on various notional amounts while receiving interest for the same period at the LIBOR rate on the same notional principal amounts. The swap has been designated as a cash flow hedge against the variability in LIBOR interest rate on the new term loan at LIBOR plus 1.50%, thereby fixing the Company's effective rate on the notional amounts at 6.76%. The Company formally assesses, both at inception and at least quarterly thereafter, whether the derivatives used in hedging transactions are effective in offsetting changes in cash flows of the hedged item. As of September 30, 2008 and December 31, 2007, the hedge relationship qualified as an effective hedge under SFAS 133. Consequently, all changes in the fair value of the derivative are deferred and recorded in other comprehensive income until the related forecasted transaction is recognized in the consolidated statements of income. The fair value of the interest rate swap agreement is based on third-party bank quotes and the Company recorded the interest rate swap as a liability at fair value of \$0.7 million and \$1.4 million as of September 30, 2008 and December 31, 2007, respectively.

**Foreign Currency Instruments**

The Company also designates certain derivatives, such as foreign currency forward and option contracts, as freestanding derivatives for which hedge accounting does not apply. The changes in the fair market value of the derivatives are included in selling, general and administrative expenses in the Company's consolidated statements of income. The Company uses foreign currency forward contracts to hedge foreign-currency-denominated intercompany transactions and to partially mitigate the impact of foreign currency fluctuations. The Company also uses foreign currency option contracts to partially mitigate the impact of foreign currency fluctuations. The fair value of the forward and option contracts are based on third-party bank quotes. As of September 30, 2008, all of the Company's outstanding foreign exchange forward and option contracts have maturity dates of less than one year. See Part I, Item 3 — *Quantitative and Qualitative Disclosures About Market Risk* in this Quarterly Report on Form 10-Q for foreign currency instruments outstanding as of September 30, 2008.

**10. Restructuring Reserve**

In July 2006, the Company initiated the realignment of its employee base as part of the first phase of its Realignment for Growth plan and during the fourth quarter of 2007, the Company initiated the second phase of its Realignment for Growth plan. In connection therewith, the Company recorded \$0.1 million and \$1.9 million of professional fees, severance and related costs for the three and nine months ended September 30, 2008, respectively. For the three and nine months ended September 30, 2007, the Company recorded expenses related to the Realignment for Growth plan of \$0.1 million and \$1.8 million, respectively. All such amounts were included in selling, general and administrative expenses.

The following table summarizes the components of this reserve as of September 30, 2008 (in millions):

	<u>Severance</u>	<u>Retention Benefits</u>	<u>Others</u>	<u>Total</u>
Balance as of December 31, 2007	\$ 2.9	\$ —	\$ 0.6	\$ 3.5
Charges	1.4	—	0.5	1.9
Cash payments	(4.1)	—	(1.1)	(5.2)
Balance as of September 30, 2008	<u>\$ 0.2</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 0.2</u>

**11. Shareholders' Equity**

**Dividends**

During the second quarter of 2007, the Company's board of directors adopted a regular quarterly cash dividend program. On January 31, 2008, the Company's board of directors approved a quarterly cash dividend of \$0.20 per

HERBALIFE LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)  
(Unaudited)

common share in an aggregate amount of \$12.9 million, for the fourth quarter of 2007 that was paid to shareholders of record on March 14, 2008. On May 1, 2008, the Company's board of directors approved a quarterly cash dividend of \$0.20 per common share in an aggregate amount of \$12.7 million, for the first quarter of 2008 that was paid to shareholders of record on June 13, 2008. On August 5, 2008, the Company's board of directors approved a quarterly cash dividend of \$0.20 per common share in an aggregate amount of \$12.8 million, for the second quarter of 2008 that was paid to shareholders of record on August 27, 2008. For the nine months ended September 30, 2008, and 2007, the Company has paid cash dividends of approximately \$38.4 million and \$27.9 million, respectively.

**Share Repurchases**

On April 18, 2007, the Company's board of directors authorized the repurchase of up to \$300 million of the Company's common shares during the next two years, at such times and prices as determined by Company management, as market conditions warrant. On August 23, 2007, the Company's board of directors approved an increase of \$150 million to the share repurchase program raising the total value of Company common shares authorized to be repurchased to \$450 million. During the quarter ended March 31, 2008, the Company repurchased approximately 0.4 million of its common shares through open market purchases at an aggregate cost of \$17.7 million or an average cost of \$39.28 per share. On May 20, 2008, the Company's board of directors approved an additional increase of \$150 million to the share repurchase program raising the total value of Company common shares authorized to be repurchased to \$600 million. During the quarter ended June 30, 2008, the Company repurchased approximately 1.8 million of its common shares through open market purchases at an aggregate cost of \$76.5 million or an average cost of \$43.23 per share. There were no share repurchases during the quarter ended September 30, 2008. As of September 30, 2008, since the inception of the share repurchase program, the Company has repurchased approximately 11.3 million of its common shares at an aggregate cost of \$460.0 million or an average cost of \$40.82 per share.

The aggregate purchase price of the common shares repurchased was reflected as a reduction to shareholders' equity. The Company allocated the purchase price of the repurchased shares as a reduction to retained earnings, common shares and additional paid-in-capital.

**12. Earnings Per Share**

Basic earnings per share represents net income for the period common shares were outstanding, divided by the weighted average number of common shares outstanding for the period. Diluted earnings per share represents net income divided by the weighted average number of common shares outstanding, inclusive of the effect of dilutive securities such as outstanding stock options, SARS, stock units and warrants.

The following are the common share amounts used to compute the basic and diluted earnings per share for each period (in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2008	2007	2008	2007
Weighted average shares used in basic computations	63,594	68,513	64,062	70,282
Dilutive effect of exercise of equity grants outstanding	1,649	2,859	2,012	2,991
Dilutive effect of warrants	196	285	195	270
Weighted average shares used in diluted computations	65,439	71,657	66,269	73,543

Equity grants, such as stock options, SARS or stock units, to purchase or acquire 1.4 million common shares were outstanding during the three and nine months ended September 30, 2008 but were not included in the computation of diluted earnings per share because the exercise prices were greater than the average market price of a common share and therefore such equity grants would be anti-dilutive. Equity grants, such as stock options, SARS



HERBALIFE LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)  
(Unaudited)

or stock units, to purchase or acquire 0.9 million common shares were outstanding during the nine months ended September 30, 2007, but were considered anti-dilutive and were not included in the computation of diluted earnings per share. There were no outstanding anti-dilutive equity grants during the three months ended September 30, 2007.

**13. Fair Value Measurement**

In September 2006, the FASB issued SFAS 157, which defines fair value, establishes a framework for measuring fair value in accordance with GAAP and expands disclosures about fair value measurements. The provisions of SFAS 157 are effective for fiscal years beginning after November 15, 2007. In February 2008, the FASB issued FASB Staff Position, FAS 157-1, or FSP FAS 157-1. FSP 157-1 amends SFAS 157 to exclude SFAS 13, *Accounting for Leases*, and its related interpretive accounting pronouncements that address leasing transactions. On January 1, 2008, the Company adopted the provisions of SFAS 157 related to its financial assets and liabilities, except as it applies to those nonfinancial assets and nonfinancial liabilities as noted in FSP FAS 157-2. The adoption did not have a material impact on the Company's consolidated financial statements.

SFAS 157, defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). SFAS 157 establishes a fair value hierarchy, which prioritizes the inputs used in measuring fair value into three broad levels as follows:

Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date.

Level 2 inputs include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability and inputs that are derived principally from or corroborated by observable market data by correlation or other means.

Level 3 inputs are unobservable inputs for the asset or liability.

The Company measures certain assets and liabilities at fair value as discussed throughout the notes to its consolidated financial statements. Assets or liabilities that have recurring measurements and are measured at fair value are shown below:

**Fair Value Measurements at Reporting Date Using**

Description	September 30, 2008	Quoted Prices in Active Markets for Identical Assets/Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
		(In millions)		
<b>Financial Assets:</b>				
Foreign currency forward and option contracts	\$ 6.5	\$ —	\$ 6.5	\$ —
<b>Total financial assets</b>	<b>\$ 6.5</b>	<b>\$ —</b>	<b>\$ 6.5</b>	<b>\$ —</b>
<b>Financial Liabilities:</b>				
Foreign currency forward and option contracts	\$ 1.7	\$ —	\$ 1.7	\$ —
Interest rate swap	0.7	—	0.7	—
<b>Total financial liabilities</b>	<b>\$ 2.4</b>	<b>\$ —</b>	<b>\$ 2.4</b>	<b>\$ —</b>

**HERBALIFE LTD.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**  
**(Unaudited)**

In January 2008, the Company adopted SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, or SFAS 159, which permits entities to choose to measure many financial instruments, and certain other items, at fair value. SFAS 159 also establishes presentation and disclosure requirements designed to facilitate comparisons between entities that choose different measurement attributes for similar types of assets and liabilities. The adoption of SFAS 159 did not have a material impact on the Company's consolidated financial statements.

**14. Subsequent Event**

On October 30, 2008, the Company announced that its board of directors has authorized a \$0.20 per common share cash dividend for the third quarter of 2008, payable on December 9, 2008 to shareholders of record on November 25, 2008.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

**Overview**

Herbalife is a global network marketing company that sells weight management products, nutritional supplements, energy & fitness products and personal care products. We pursue our mission of "changing people's lives" by providing a financially rewarding business opportunity to distributors and quality products to distributors and their customers who seek a healthy lifestyle. We are one of the largest network marketing companies in the world with net sales of approximately \$2.1 billion for the year ended December 31, 2007. As of September 30, 2008, we sold our products in 66 countries through a network of over 1.9 million independent distributors except in China, where we sell our products through retail stores and an employed sales force. We believe the quality of our products and the effectiveness of our distribution network, coupled with geographic expansion, have been the primary reasons for our success throughout our 28-year operating history. Unless otherwise noted, the terms "we," "our," "us," "Company" and "Herbalife" refer to Herbalife Ltd. and its subsidiaries.

Our products are grouped in four principal categories: weight management, targeted nutrition, energy & fitness and Outer Nutrition. Our products are often sold in programs that are comprised of a series of related products designed to simplify weight management and nutrition for consumers and maximize our distributors' cross-selling opportunities.

Industry-wide factors that affect us and our competitors include the increasing prevalence of obesity and the aging of the worldwide population, which are driving demand for nutrition and wellness-related products and the recruitment and retention of distributors.

The opportunities and challenges upon which we are most focused are retailing of our products, recruitment and retention of distributors, improving distributor productivity, entering new markets, further penetrating existing markets including China, globalizing successful distributor methods of operation such as Nutrition Clubs, introducing new products, developing niche market segments and further investing in our infrastructure.

In late 2007, we changed our geographic regions. This updated regional structure allows us to better support the distributor leadership and enhance synergies within the regions. Under the new geographic regions, we report revenue from:

- North America, which consists of the U.S., Canada and Jamaica;
- Mexico and Central America, which consists of Mexico, Costa Rica, El Salvador, Panama and Dominican Republic;
- South America, which includes Brazil;
- EMEA, which consists of Europe, the Middle East and Africa; and
- Asia Pacific, which consists of Asia, New Zealand and Australia.

Historical information presented in this Quarterly Report on Form 10-Q relating to our geographic regions has been reclassified to conform with our current geographic presentation.

**Volume Points by Geographic Region**

A key non-financial measure we focus on is Volume Points on a Royalty Basis, or Volume Points, which is essentially our weighted unit measure of product sales volume. It is a useful measure for us, as it excludes the impact of foreign currency fluctuations and ignores the differences generated by varying retail pricing across geographic markets. In general, an increase in Volume Points in a particular geographic region or country indicates an increase in local currency net sales.

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2008	2007	% Change	2008	2007	% Change
	(Volume points in millions)					
North America	202.8	173.1	17.2%	586.2	510.5	14.8%
Mexico & Central America	139.6	149.1	(6.4)%	456.0	459.0	(0.7)%
South America	93.9	99.6	(5.7)%	308.5	273.1	13.0%
EMEA	116.2	125.2	(7.2)%	382.3	402.1	(4.9)%
Asia Pacific	139.1	120.0	15.9%	409.9	343.9	19.2%
Worldwide	691.6	667.0	3.7%	2,142.9	1,988.6	7.8%

**Number of New Sales Leaders by Geographic Region during the Reporting Period**

Another key non-financial measure on which we focus is the number of distributors qualified as new sales leaders under our compensation system. Excluding China, distributors qualify for supervisor status based on their Volume Points. The growth in the number of new sales leaders is a general indicator of the level of distributor recruitment, which generally drives net sales in a particular country or geographic region.

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2008	2007	% Change	2008	2007	% Change
North America	11,723	10,728	9.3%	33,862	31,699	6.8%
Mexico & Central America	6,695	8,512	(21.3)%	22,982	25,433	(9.6)%
South America	10,306	11,554	(10.8)%	35,494	31,805	11.6%
EMEA	6,052	7,391	(18.1)%	21,107	24,112	(12.5)%
Asia Pacific (excluding China)	10,532	10,253	2.7%	30,676	29,918	2.5%
Total New Supervisors	45,308	48,438	(6.5)%	144,121	142,967	0.8%
New China Sales Employees(1)	7,283	4,544	60.3%	19,500	10,353	88.4%
Worldwide Total New Sales Leaders	52,591	52,982	(0.7)%	163,621	153,320	6.7%

(1) China sales employees represent the cumulative total employed sales force, both active and inactive, operating under our China marketing plan where we sell our products through retail stores. We will begin an annual re-evaluation process commencing in early 2009 to determine the ongoing active sales employees in China and we anticipate a reduction in this figure following this annual re-evaluation process.

**Number of Supervisors and Retention Rates by Geographic Region as of Re-qualification Period**

Our compensation system requires each supervisor to re-qualify for such status each year, prior to February, in order to maintain their 50% discount on product and be eligible to receive royalty payments. In February of each year, we demote from the rank of supervisor those distributors who did not satisfy the supervisor re-qualification requirements during the preceding twelve months. The re-qualification requirement does not apply to new supervisors (i.e. those who became supervisors subsequent to the January re-qualification of the prior year).

<b>Supervisor Statistics (Excluding China)</b>	<b>2008</b>	<b>2007</b>
	<b>(In thousands)</b>	
January 1 total supervisors	451.6	400.6
January & February new supervisors	28.6	26.7
Demoted supervisors (did not re-qualify)	(167.7)	(135.9)
Other supervisors (resigned, etc)	(2.8)	(1.4)
End of February total supervisors	<u>309.7</u>	<u>290.0</u>

The distributor statistics below further highlight the calculation for retention.

<b>Supervisor Retention (Excluding China)</b>	<b>2008</b>	<b>2007</b>
	<b>(In thousands)</b>	
Supervisors needed to re-qualify	284.0	236.2
Demoted supervisors (did not re-qualify)	(167.7)	(135.9)
Total requalified	<u>116.3</u>	<u>100.3</u>
Retention rate	<u>41.0%</u>	<u>42.5%</u>

The table below reflects the number of sales leaders as of February (subsequent to the annual re-qualification date) and supervisor retention rate by year and by region.

	<b>Number of Sales Leaders</b>		<b>Supervisor Retention Rate</b>	
	<b>2008</b>	<b>2007</b>	<b>2008</b>	<b>2007</b>
	North America	64,383	54,314	43.5%
Mexico & Central America	62,418	62,683	44.4%	55.2%
South America	66,075	51,302	34.4%	32.9%
EMEA	59,446	64,862	46.6%	46.2%
Asia Pacific (excluding China)	<u>57,355</u>	<u>56,871</u>	34.3%	35.0%
Total Supervisors	309,677	290,032	41.0%	42.5%
China Sales Employees(1)	<u>25,294</u>	<u>8,759</u>		
Worldwide Total Sales Leaders	<u>334,971</u>	<u>298,791</u>		

(1) China sales employees represent the cumulative total employed sales force, both active and inactive, operating under our China marketing plan where we sell our products through retail stores. We will begin an annual re-evaluation process commencing in early 2009 to determine the ongoing active sales employees in China and we anticipate a reduction in this figure following this annual re-evaluation process.

The number of supervisors by geographic region as of the quarterly reporting dates will normally be higher than the number of supervisors by geographic region as of the re-qualification period because supervisors who do not re-qualify during the relevant twelve-month period will be dropped from the rank of supervisor the following February. Since supervisors purchase most of our products for resale to other distributors and consumers, comparisons of supervisor totals on a year-to-year basis are good indicators of our recruitment and retention efforts in different geographic regions.

The value of the average monthly purchase of Herbalife products by our sales leaders has remained relatively constant over time. Consequently, increases in our sales are driven primarily by our retention of supervisors and by our recruitment and retention of distributors, rather than through increases in the productivity of our overall supervisor base.

We provide distributors with products, support materials, training, special events and a competitive compensation program. If a distributor wants to pursue the Herbalife business opportunity, the distributor is responsible for growing his or her business and personally pays for the sales activities related to attracting new customers and recruiting distributors by hosting events such as Herbalife Opportunity Meetings or Success Training Seminars; by advertising Herbalife's products; by purchasing and using promotional materials such as t-shirts, buttons and caps; by utilizing and paying for direct mail and print material such as brochures, flyers, catalogs, business cards, posters and banners and telephone book listings; by purchasing inventory for sale or use as samples; and by training, mentoring and following up (in person or via the phone or internet) with customers and recruits on how to use Herbalife products and/or pursue the Herbalife business opportunity.

#### **Presentation**

"Retail sales" represent the gross sales amounts on our invoices to distributors before distributor allowances, as defined below, and "net sales," which reflect distribution allowances and handling and freight income, represent what we collect and recognize as net sales in our financial statements. We discuss retail sales because of its fundamental role in our compensation systems, internal controls and operations, including its role as the basis upon which distributor discounts, royalties and bonuses are awarded. In addition, it is used as the basis for certain information included in daily and monthly reports reviewed by our management. However, such a measure is not in accordance with Generally Accepted Accounting Principles in the U.S., or GAAP. You should not consider retail sales in isolation from, nor as a substitute for, net sales and other consolidated income or cash flow statement data prepared in accordance with GAAP, or as a measure of profitability or liquidity. A reconciliation of net sales to retail sales is presented below under "Results of Operations." "Product sales" represent the actual product purchase price paid to us by our distributors, after giving effect to distributor discounts referred to as "distributor allowances," which approximate 50% of retail sales prices. Distributor allowances as a percentage of retail sales may vary by country depending upon regulatory restrictions that limit or otherwise restrict distributor allowances.

Our "gross profit" consists of net sales less "cost of sales," which represents the prices we pay to our raw material suppliers and manufacturers of our products as well as costs related to product shipments, duties and tariffs, freight expenses relating to shipment of products to distributors and importers and similar expenses.

"Royalty overrides" are our most significant expense and consist of:

- royalty overrides and production bonuses which total approximately 15% and 7%, respectively, of the retail sales of weight management, targeted nutrition, energy & fitness, Outer Nutrition and promotional products;
- the Mark Hughes bonus payable to some of our most senior distributors in the aggregate amount of up to 1% of retail sales of weight management, targeted nutrition, energy & fitness and Outer Nutrition; and
- other discretionary incentive cash bonuses to qualifying distributors.

Royalty overrides are generally earned based on retail sales and approximate in the aggregate about 21% of retail sales or approximately 34% of our net sales. Royalty overrides together with distributor allowances represent the potential earnings to distributors of up to approximately 73% of retail sales. The compensation to distributors is generally for the development, retention and improved productivity of their distributor sales organizations and is paid to several levels of distributors on each sale. Due to restrictions on direct selling in China, our full-time employed sales representatives in China are compensated with wages, bonuses and benefits instead of the distributors earnings, distributor allowances and royalty overrides. Because of local country regulatory constraints, we may be required to modify our typical distributor incentive plans as described above. Consequently, the total distributor discount percentage may vary over time. We also offer reduced distributor allowances and pay reduced royalty overrides with respect to certain products worldwide.

Our "operating margins" consist of net sales less cost of sales and royalty overrides.

“Selling, general and administrative expenses” represent our operating expenses, components of which include labor and benefits, sales events, professional fees, travel and entertainment, distributor marketing, occupancy costs, communication costs, bank fees, depreciation and amortization, foreign exchange gains and losses and other miscellaneous operating expenses.

Most of our sales to distributors outside the United States are made in the respective local currencies. In preparing our financial statements, we translate revenues into U.S. dollars using average exchange rates. Additionally, the majority of our purchases from our suppliers generally are made in U.S. dollars. Consequently, a strengthening of the U.S. dollar versus a foreign currency can have a negative impact on our reported sales and operating margins and can generate transaction losses on intercompany transactions. Throughout the last five years, foreign currency exchange rates have fluctuated significantly. From time to time, we enter into foreign exchange forward and option contracts to mitigate our foreign currency exchange risk as discussed in further detail in Part I, Item 3 — *Quantitative and Qualitative Disclosures about Market Risk*.

#### **Summary Financial Results**

Net sales for the three and nine months ended September 30, 2008 increased 13.7% and 17.8% to \$602.2 million and \$1,846.3 million, respectively, compared to the same periods in 2007. For the three months ended September 30, 2008, net sales in our top countries including the U.S., China, Brazil, Italy and Taiwan increased 23.4%, 87.3%, 47.3%, 27.1% and 20.0%, respectively, as compared to the same period in 2007. For the nine months ended September 30, 2008, net sales in our top countries including the U.S., China, Venezuela, Brazil and Italy increased 18.7%, 105.7%, 115.5%, 23.7% and 27.6%, respectively, as compared to the same period in 2007. These increases in net sales were mainly due to the continued success of our various daily methods of operations, or DMO’s, like the Nutrition Club DMO and its expansion into Commercial Clubs and Central Clubs, Wellness Coach DMO, Weight Loss Challenge DMO and Healthy Breakfast DMO, distributor momentum from sales Extravaganzas held during the third quarter and an increase in the number of new sales employees in China compared to the prior year period. Overall, the appreciation of foreign currencies had a \$25.8 million and \$102.4 million favorable impact on net sales for the three and nine months ended September 30, 2008, respectively, representing 35.5% and 36.7% of the total net sales increase of \$72.7 million and \$278.6 million, respectively.

Net income for the three months ended September 30, 2008 increased 20.2% to \$58.1 million, or \$0.89 per diluted share, compared to \$48.3 million, or \$0.67 per diluted share, for the same period in 2007. Net income for the nine months ended September 30, 2008 increased 36.3% to \$187.5 million, or \$2.83 per diluted share, compared to \$137.6 million, or \$1.87 per diluted share, for the same period in 2007. These increases were driven by revenue growth in many of our markets and a lower effective tax rate, partially offset by higher labor costs, sales events costs, advertising and promotion expenses and depreciation expense.

Net income for the nine months ended September 30, 2008 included a \$1.1 million unfavorable after tax impact in connection with the Realignment for Growth plan. Net income for the nine months ended September 30, 2007 included an unfavorable after tax impact of \$1.0 million in connection with the Realignment for Growth plan, an increase in tax reserve of \$3.6 million and the impact of a \$0.6 million tax benefit resulting from an international income tax settlement.

#### **Results of Operations**

Our results of operations for the periods described below are not necessarily indicative of results of operations for future periods, which depend upon numerous factors, including our ability to recruit new distributors and retain existing distributors, open new markets, further penetrate existing markets, introduce new products and programs that will help our distributors increase their retail efforts and develop niche market segments.

The following table sets forth selected results of our operations expressed as a percentage of net sales for the periods indicated.

	Three Months Ended		Nine Months Ended	
	September 30, 2008	September 30, 2007	September 30, 2008	September 30, 2007
<b>Operations:</b>				
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales	19.4	20.0	19.6	20.7
Gross profit	80.6	80.0	80.4	79.3
Royalty overrides	33.3	35.2	34.0	35.4
Selling, general and administrative expenses	32.6	30.0	31.7	29.4
Operating income	14.7	14.8	14.7	14.5
Interest expense, net	0.6	0.5	0.6	0.5
Income before income taxes	14.1	14.3	14.1	14.0
Income taxes	4.5	5.2	4.0	5.3
Net income	9.6%	9.1%	10.1%	8.7%

**Net Sales**

The following chart reconciles retail sales to net sales:

**Sales by Geographic Region**

	Three Months Ended September 30,										Change in Net Sales
	2008					2007					
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	
	(Dollars in millions)										
North America	\$ 218.9	\$ (104.5)	\$ 114.4	\$ 21.5	\$ 135.9	\$ 179.2	\$ (85.5)	\$ 93.7	\$ 17.0	\$ 110.7	22.8%
Mexico & Central America	165.6	(80.8)	84.8	15.4	100.2	156.4	(76.2)	80.2	12.8	93.0	7.7%
South America	143.7	(70.1)	73.6	12.2	85.8	134.0	(67.2)	66.8	9.1	75.9	13.0%
EMEA	219.4	(106.3)	113.1	22.3	135.4	217.1	(104.7)	112.4	21.4	133.8	1.2%
Asia Pacific	215.6	(83.6)	132.0	12.9	144.9	179.4	(74.9)	104.5	11.6	116.1	24.8%
Worldwide	\$ 963.2	\$ (445.3)	\$ 517.9	\$ 84.3	\$ 602.2	\$ 866.1	\$ (408.5)	\$ 457.6	\$ 71.9	\$ 529.5	13.7%

  

	Nine Months Ended September 30,										Change in Net Sales
	2008					2007					
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	
	(Dollars in millions)										
North America	\$ 621.8	\$ (296.6)	\$ 325.2	\$ 62.5	\$ 387.7	\$ 531.8	\$ (253.7)	\$ 278.1	\$ 51.0	\$ 329.1	17.8%
Mexico & Central America	507.2	(247.7)	259.5	45.7	305.2	482.4	(234.8)	247.6	39.2	286.8	6.4%
South America	487.6	(242.9)	244.7	37.1	281.8	347.9	(171.8)	176.1	24.8	200.9	40.3%
EMEA	735.9	(355.7)	380.2	73.1	453.3	689.1	(332.2)	356.9	66.1	423.0	7.2%
Asia Pacific	633.1	(253.4)	379.7	38.6	418.3	512.3	(218.5)	293.8	34.1	327.9	27.6%
Worldwide	\$ 2,985.6	\$ (1,396.3)	\$ 1,589.3	\$ 257.0	\$ 1,846.3	\$ 2,563.5	\$ (1,211.0)	\$ 1,352.5	\$ 215.2	\$ 1,567.7	17.8%



Changes in net sales are directly associated with the recruiting and retention of our distributor force, retailing of our products, the quality and completeness of the product offerings that the distributor force has to sell and the number of countries in which we operate. Management's role, both in-country and at the corporate level is to provide distributors with a competitive and broad product line, encourage strong teamwork and leadership among the Chairman's Club and President's Team distributors and offer leading edge business tools to make doing business with Herbalife simple. Management uses the distributor marketing program coupled with educational and motivational tools and promotions to incentivize distributors to increase recruiting, retention and retailing, which in turn affect net sales. Such tools include Company sponsored sales events such as Extravaganzas and World Team Schools where large groups of distributors gather, thus allowing them to network with other distributors, learn recruiting, retention and retailing techniques from our leading distributors and become more familiar with how to market and sell our products and business opportunities. Accordingly, management believes that these development and motivation programs increase the productivity of the supervisor network. The expenses for such programs are included in selling, general and administrative expenses. Sales are driven by several factors, including the number and productivity of distributors and supervisors who continually build, educate and motivate their respective distribution and sales organizations. We also use event and non-event product promotions to motivate distributors to increase recruiting, retention and retailing activities. These promotions have prizes ranging from qualifying for events to product prizes and vacations. The costs of these promotions are included in selling, general and administrative expenses.

The factors described above have helped distributors increase their business, which in turn has driven growth in our business. The discussion below of net sales by geographic region further details some of the above factors and describes unique growth factors specific to certain major countries. We believe that the correct business foundation, coupled with ongoing training and promotional initiatives, is required to increase recruiting and retention of distributors and retailing our products. The correct business foundation includes strong country management that works closely with the distributor leadership, unified distributor leadership, a broad product line that appeals to local consumer needs, a favorable regulatory environment, a scalable and stable technology platform and an attractive distributor marketing plan. Initiatives, such as Success Training Seminars, World Team Schools, Promotional Events and regional Extravaganzas, are integral components of developing a highly motivated and educated distributor sales organization that will work toward increasing the recruitment and retention of distributors.

Our strategy will continue to include creating and maintaining growth within existing markets, while expanding into new markets. In addition, new ideas and DMOs are being generated in our regional markets and globalized where applicable, either by distributors, country management or corporate management. Examples of DMOs include the Nutrition Clubs in Mexico, the Total Plan in Brazil, the Wellness Coach in France and the Internet/Sampling in the U.S. Management's strategy is to review the applicability of expanding successful country initiatives throughout a region, and where appropriate, financially support the globalization of these initiatives.

#### ***North America***

The North America region reported net sales of \$135.9 million and \$387.7 million for the three and nine months ended September 30, 2008, respectively. Net sales increased \$25.2 million, or 22.8%, and \$58.6 million, or 17.8%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. In local currency, net sales increased 22.6% and 17.5% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. The fluctuation of foreign currency rates had a neutral impact on net sales for the three months and a positive \$0.9 million impact on net sales for the nine months ended September 30, 2008. The overall increase was a result of net sales growth in the U.S. of \$24.8 million, or 23.4%, and \$58.6 million, or 18.7%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007.

The increase in net sales in North America was primarily due to the continued success of our distributors converting their business focus toward a daily consumption business model, especially the Nutrition Club DMO, and its extension into Commercial Clubs and Central Clubs, along with the recent development of the Weight Loss Challenge DMO. The mix of business in the U.S. was 66% Spanish speaking and 34% Non-Spanish speaking for the three months ended September 30, 2008 and 65% and 35%, respectively, for the nine months ended September 30,

2008. In October 2008, the region hosted an Extravaganza in Los Angeles that was attended by over 13,000 distributors, an increase compared to a similar event in 2007.

New supervisors in the region increased 9.3% and 6.8% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. New supervisor growth in the United States was 9.6% and 7.6% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007.

We believe the fiscal year 2008 net sales in North America should continue to show year over year positive growth primarily as a result of continued momentum in the United States resulting from the transformation of our distributor business focus to a daily consumption model.

***Mexico and Central America***

The Mexico and Central America region reported net sales of \$100.2 million and \$305.2 million for the three and nine months ended September 30, 2008, respectively. Net sales increased \$7.2 million, or 7.7%, and \$18.4 million, or 6.4%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. In local currency, net sales increased by 1.4% and 2.1% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. The fluctuation of foreign currency rates had a favorable impact of \$6.0 million and \$12.5 million on net sales for the three and nine months ended September 30, 2008, respectively. Net sales in Mexico increased \$2.5 million, or 2.8%, and \$10.2 million, or 3.7%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007.

During the third quarter we began collecting a Value Added Tax, or VAT, from our distributors that has been levied by the Mexican government on the import and resale of certain products. Distributors previously paid 0% VAT on purchases of most of our products. This VAT increase impacted approximately 60% of our volume in the Mexican market and the fact that the predominant DMO in Mexico is retail price-sensitive caused volumes to decline sequentially from the second quarter. We are in the process of challenging this assessment on several fronts, however in the near-term while the products continue to be subject to VAT, we expect volume growth to be constrained.

The region hosted an extravaganza in Mexico City in July 2008 that was attended by over 15,000 distributors, a decrease compared to a similar event in 2007.

New supervisors in the region decreased 21.3% and 9.6% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. Mexico's new supervisors decreased by 23.5% and 11.1% for the three and nine months ended September 30, 2008, respectively.

We believe the fiscal year 2008 net sales in Mexico and Central America should show a slight year over year decrease reflecting lower volumes due to the recent VAT charge coupled with assumed unfavorable currency fluctuations in the fourth quarter 2008.

***South America***

The South America region reported net sales of \$85.8 million and \$281.8 million for the three and nine months ended September 30, 2008, respectively. Net sales increased \$9.9 million, or 13.0%, and \$80.9 million, or 40.3%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. In local currency, net sales increased 4.2% and 28.8% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. The fluctuation of foreign currency rates had a \$6.8 million and \$23.2 million favorable impact on net sales for the three and nine months ended September 30, 2008, respectively. The increase in net sales for the region was primarily attributable to net sales increases in Brazil, Venezuela, Peru and Bolivia.

In Brazil, the region's largest market, net sales increased \$14.0 million, or 47.3%, and \$22.6 million, or 23.7%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. The increase in net sales was a result of successfully transforming this market into a more balanced mix of recruiting, retailing and retention via the Nutrition Club DMO. In addition, the timing of this year's Extravaganza, which was

held in July 2008 versus December 2007 a year ago, created positive distributor momentum. Favorable foreign currency fluctuations also contributed to the increase in net sales for the three and nine months ended September 30, 2008.

Venezuela, the region's second largest market, experienced net sales increase of \$1.3 million or 8.9%, and \$35.2 million or 115.5%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007, reflecting slowing third quarter volumes as a result of price increases of 20% and 25% in January and May 2008, respectively.

New supervisors in the region decreased 10.8% and increased 11.6% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. For the three months ended September 30, 2008, the decrease was driven by declines in Argentina, Venezuela and Columbia of 62.1%, 50.2% and 23.1%, respectively, as compared to the same period in 2007. These declines were offset by increases in new supervisor growth in Bolivia and Brazil which increased 57.0% and 24.0%, respectively, for the three months ended September 30, 2008 as compared to the same period in 2007. For the nine months ended September 30, 2008, the increase was driven by increases in Bolivia, Peru and Venezuela of 119.8%, 63.3% and 52.0%, respectively, as compared to the same period in 2007. These increases were offset by declines in Argentina, Brazil and Columbia of 30.5%, 9.9% and 17.0%, respectively, for the nine months ended September 30, 2008 as compared to the same period in 2007.

We believe the fiscal year 2008 net sales in South America should show positive year over year growth reflecting the many successful DMO's and price increases partially offset by slowing volumes in Venezuela and Argentina and assumed unfavorable currency fluctuations during the fourth quarter 2008.

#### *EMEA*

The EMEA region reported net sales of \$135.4 million and \$453.3 million for the three and nine months ended September 30, 2008, respectively. Net sales increased \$1.6 million, or 1.2%, and \$30.3 million, or 7.2%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. In local currency, net sales decreased 5.7% and 3.5% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. The fluctuation of foreign currency rates had a favorable impact on net sales of \$9.3 million and \$45.1 million for the three and nine months ended September 30, 2008, respectively.

Among the largest markets in the region, Italy and France reported net sales increases of 27.1% and 17.6%, respectively, while Spain reported a net sales decrease of 27.6% for the three months ended September 30, 2008, as compared to the same period in 2007. For the nine months ended September 30, 2008, Italy and France, reported net sales increases of 27.6% and 25.8%, respectively, while Spain reported a net sales decrease of 1.9% for the nine months ended September 30, 2008, as compared to the same period in 2007. The increase in net sales for Italy and France was driven by growth in Total Plan, Wellness Evaluations and Healthy Breakfast DMOs. The decrease in net sales for Spain reflects the impact of negative media reports in April 2008 relating to the Spanish Ministry of Health issuing a press release regarding their on-going inquiry into the products that we sell in Spain. Net sales in the Netherlands increased 6.0% and 4.9% for the three months and nine months ended September 30, 2008, respectively, as compared to the same period in 2007 and reflect a re-activated distributor base that is utilizing the Wellness Evaluation and Healthy Breakfast DMOs. In addition, Eastern European countries have shown signs of potential long-term growth as net sales increased in Russia by 37.8% and 47.4% and Poland by 55.9% and 57.9% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. The increases in Russia and Poland were primarily driven by adoption of the Nutrition Club concept in the form of a Breakfast Club DMO. These increases were offset by declines in Germany and Portugal. Germany net sales declined 27.3% and 18.8% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007, as it transitions to daily consumption models including Nutrition Clubs and Wellness Evaluations. Portugal net sales declined 50.9% and 41.3% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007, due to weaker recruiting efforts as this market, similar to Brazil in 2006, transitions toward daily consumption methods.

For the three and nine months ended September 30, 2008, new supervisors for the region decreased 18.1% and 12.5%, respectively, with declines in Portugal, Spain and Germany of 77.6%, 56.9% and 50.7%, respectively, for

the three months ended September 30, 2008 and declines of 65.7%, 21.0% and 47.8%, respectively, for the nine months ended September 30, 2008. These declines were offset by increases in Russia, France and Italy, which were up 37.9%, 24.5% and 18.0%, respectively, for the three months ended September 30, 2008 and 50.2%, 21.3% and 19.8%, respectively, for the nine months ended September 30, 2008.

We believe fiscal year 2008 net sales in EMEA to show a slight increase on the strength of year to date favorable currency fluctuations partially offset by assumed unfavorable currency fluctuations during the fourth quarter 2008.

*Asia Pacific*

The Asia Pacific region reported net sales of \$144.9 million and \$418.3 million for the three and nine months ended September 30, 2008, respectively. Net sales increased \$28.8 million, or 24.8%, and \$90.4 million, or 27.6%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. In local currency, net sales increased 21.6% and 21.3% for the three and nine months ended September 30, 2008, respectively, as compared to same period in 2007. The fluctuation of foreign currency rates had a favorable impact of \$3.7 million and \$20.6 million on net sales for the three and nine months ended September 30, 2008, respectively. The increase in net sales in Asia Pacific was primarily attributable to the increases in four of our five largest markets in the region, China, Taiwan, South Korea and Malaysia, partially offset by a decrease in Japan.

China, our largest market in the region, reported net sales of \$41.2 million and \$104.5 million for the three and nine months ended September 30, 2008, respectively. Net sales increased \$19.2 million, or 87.3%, and \$53.7 million, or 105.7%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. In local currency, net sales increased 69.6% and 87.1% for the three and nine months ended September 30, 2008, respectively, as compared to same period in 2007. The fluctuation of foreign currency rates had a favorable impact of \$3.9 million and \$9.4 million on net sales for the three and nine months ended September 30, 2008, respectively. China sales during the quarter were negatively impacted by the Olympics as the Chinese government did not allow the Company to host sales employees training meetings leading up to and during the event. As of September 30, 2008, we had 89 stores in China across 30 Chinese provinces. Additionally, during the quarter we received approval for five additional direct selling licenses in the provinces of Beijing, Guangdong, Shandong, Zhejiang and Guizhou. We now have six direct selling licenses to operate in China.

Net sales in Taiwan, our second largest market in the region, increased \$5.4 million, or 20.0%, and \$14.5 million, or 17.9%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. Adoption of the Nutrition Club DMO, in the form of Commercial Clubs, has been a positive catalyst for growth in this country.

Net sales in South Korea, our third largest market in the region, increased \$4.8 million, or 30.0%, and \$9.1 million, or 18.8%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007, driven by branding activities and the adoption of the Nutrition Club DMO, in the form of Commercial Clubs.

Net sales in Japan, our fourth largest market in the region, decreased \$5.5 million, or 29.7%, and \$2.9 million, or 5.3%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007, driven by a decline in distributor recruiting.

Net sales in Malaysia increased \$5.2 million, or 88.8%, and \$13.6 million, or 85.3%, for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007, reflecting positive distributor momentum and increased recruiting.

New supervisors in the region, excluding China, increased 2.7% and 2.5% for the three and nine months ended September 30, 2008, respectively, as compared to the same period in 2007. New supervisors for Malaysia, South Korea and Taiwan increased 77.2%, 49.0% and 2.0%, respectively, for the three months ended September 30, 2008. For the nine months ended September 30, 2008, new supervisors for Malaysia, South Korea and Taiwan increased 67.9%, 24.8% and 6.4%, respectively. These increases were offset by declines in Japan and Thailand of 69.9% and 17.4%, respectively, for the three months ended September 30, 2008 and declines of 33.0% and 33.7%, respectively, for the nine months ended September 30, 2008.

We believe the fiscal year 2008 net sales in Asia Pacific should continue to show positive year over year growth, primarily as a result of the expansion of our business in China and continued growth in other key markets partially offset by assumed unfavorable foreign currency fluctuations during the fourth quarter 2008.

**Sales by Product Category**

	Three Months Ended September 30,										
	2008					2007					% Change in Net Sales
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	
(In millions)											
Weight Management	\$ 625.3	\$ (300.9)	\$ 324.4	\$ 54.8	\$ 379.2	\$ 564.3	\$ (277.1)	\$ 287.2	\$ 46.8	\$ 334.0	13.5%
Targeted Nutrition	205.9	(99.1)	106.8	17.9	124.7	177.8	(87.3)	90.5	14.8	105.3	18.4%
Energy and Fitness	45.5	(21.9)	23.6	4.0	27.6	40.7	(20.0)	20.7	3.4	24.1	14.5%
Outer Nutrition	57.2	(27.5)	29.7	5.0	34.7	57.3	(28.1)	29.2	4.8	34.0	2.1%
Literature, Promotional and Other	29.3	4.1	33.4	2.6	36.0	26.0	4.0	30.0	2.1	32.1	12.1%
Total	\$ 963.2	\$ (445.3)	\$ 517.9	\$ 84.3	\$ 602.2	\$ 866.1	\$ (408.5)	\$ 457.6	\$ 71.9	\$ 529.5	13.7%

	Nine Months Ended September 30,										
	2008					2007					% Change in Net Sales
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	
(In millions)											
Weight Management	\$ 1,940.7	\$ (942.6)	\$ 998.1	\$ 167.1	\$ 1,165.2	\$ 1,675.6	\$ (822.7)	\$ 852.9	\$ 140.7	\$ 993.6	17.3%
Targeted Nutrition	634.5	(308.2)	326.3	54.5	380.8	528.4	(259.4)	269.0	44.4	313.4	21.5%
Energy and Fitness	130.0	(63.1)	66.9	11.2	78.1	112.8	(55.4)	57.4	9.5	66.9	16.7%
Outer Nutrition	190.2	(92.4)	97.8	16.4	114.2	176.2	(86.5)	89.7	14.8	104.5	9.3%
Literature, Promotional and Other	90.2	10.0	100.2	7.8	108.0	70.5	13.0	83.5	5.8	89.3	20.9%
Total	\$ 2,985.6	\$ (1,396.3)	\$ 1,589.3	\$ 257.0	\$ 1,846.3	\$ 2,563.5	\$ (1,211.0)	\$ 1,352.5	\$ 215.2	\$ 1,567.7	17.8%

Net sales of all product categories increased for the three and nine months ended September 30, 2008, as compared to the same periods in 2007, mainly due to the sales momentum discussed above. We expect growth rates within our product categories to vary from time to time as we launch new products.

**Gross Profit**

Gross profit was \$485.6 million and \$1,484.0 million for the three and nine months ended September 30, 2008, respectively, as compared to \$423.7 million and \$1,243.2 for the same periods in 2007. As a percentage of net sales, gross profit for the three and nine months ended September 30, 2008 was 80.6% and 80.4%, respectively, as compared to 80.0% and 79.3% for the same periods in 2007. The increase in gross profit percentage was primarily due to country mix and foreign exchange fluctuations. Generally, gross profit percentages do not vary significantly as a percentage of net sales other than due to product or country mix, pricing changes, ongoing cost reduction initiatives, foreign exchange rates and provisions for slow moving and obsolete inventory. We are experiencing ingredient and product price pressure in the areas of soy, dairy products, plastics, and transportation reflecting current global economic trends. We believe that we have the ability to mitigate some of these cost increases through improved optimization of our supply chain coupled with select increases in the retail prices of our products.

**Royalty Overrides**

Royalty overrides as a percentage of net sales were 33.3% and 34.0% for the three and nine months ended September 30, 2008, respectively, as compared to 35.2% and 35.4% in the same periods of 2007. The decrease for the three and nine months ended September 30, 2008 was primarily due to product and country mix, and the increase in sales in China where the compensation paid to our full-time employee sales representatives is included

in selling, general and administrative expenses as opposed to royalty overrides where it is included for all other distributors under our worldwide marketing plan. Additionally, the timing of cash promotion awards to distributors may affect this expense item, both in absolute dollars and as a percentage of net sales. Generally, this ratio varies slightly from period to period reflecting the global nature of our marketing plan. Due to the structure of our global compensation plan coupled with expected sales increases in China, we expect to see an on-going reduction in royalty overrides as a percent of net sales.

**Selling, General and Administrative Expenses**

Selling, general and administrative expenses as a percentage of net sales were 32.6% and 31.7% for the three and nine months ended September 30, 2008, respectively, as compared to 30.0% and 29.4% for the same periods in 2007.

For the three and nine months ended September 30, 2008, selling, general and administrative expenses increased \$37.9 million and \$123.8 million to \$196.8 million and \$584.3 million, respectively, as compared to the same periods in 2007. The increase for the three and nine months ended September 30, 2008 included \$23.5 million and \$59.7 million in higher salaries and benefits, respectively, due to higher compensation costs associated with full-time employee sales representatives in China and normal merit increases, \$1.9 million and \$11.7 million in higher distributor sales events costs, respectively, \$4.1 million and \$8.7 million in higher advertising and promotion expenses, respectively, \$4.1 million and \$3.7 million in higher professional fees, respectively, and \$3.8 million and \$9.0 million in higher depreciation and amortization expenses, respectively, related mostly to the development of our technology infrastructure, including the rollout of Oracle, and the expansion and relocation to new facilities. These increases in costs were partially offset by foreign exchange gain of \$8.6 million and \$0.5 million for the three and nine months ended September 30, 2008, respectively.

We expect 2008 selling, general and administrative expenses to increase in absolute dollars over 2007 levels reflecting higher China sales employee costs, higher fixed infrastructure spending, and various sales growth initiatives, including sales events and promotions. As a result of these initiatives, selling, general and administrative expenses as a percentage of net sales should continue to be above 2007 levels.

**Net Interest Expense**

Net interest expense is as follows:

Net Interest Expense	Three Months Ended		Nine Months Ended	
	September 30, 2008	September 30, 2007	September 30, 2008	September 30, 2007
	(Dollars in millions)			
Interest expense	4.9	4.1	15.3	11.5
Interest income	(1.5)	(1.4)	(4.9)	(4.3)
Net interest expense	<u>\$ 3.4</u>	<u>\$ 2.7</u>	<u>\$ 10.4</u>	<u>\$ 7.2</u>

The increase in interest expense for the three and nine months ended September 30, 2008 as compared to the same period in 2007 was primarily due to the higher balance of long term borrowings, partially offset by lower interest rates, in 2008 as compared to 2007. See "Liquidity and Capital Resources" below for further discussion on our senior secured credit facility.

**Income Taxes**

Income taxes were \$27.0 million and \$73.5 million for the three and nine months ended September 30, 2008, respectively, as compared to \$27.2 million and \$82.7 million for the same period in 2007. As a percentage of pre-tax income, the effective income tax rate was 31.7% and 28.2% for the three and nine months ended September 30, 2008, respectively, as compared to 36.0% and 37.5% for the same periods in 2007. The decrease in the effective tax rate for the three and nine months ended September 30, 2008, as compared to the same period in 2007, was primarily due to a decrease in the operating effective tax rate reflecting country mix, the tax holiday in China and the favorable

impact of our global entity structuring and planning offset by an increase in unrecognized tax benefits during the quarter ended September 30, 2008.

#### **Restructuring Costs**

In July 2006, we initiated the realignment of our employee base as part of the first phase of the Realignment for Growth plan and during the fourth quarter of 2007, we initiated the second phase of the Realignment for Growth plan. We recorded \$0.1 million and \$1.9 million of professional fees, severance and related costs for the three and nine months ended September 30, 2008, respectively. For the three and nine months ended September 30, 2007, we recorded expenses related to the Realignment for Growth plan of \$0.1 million and \$1.8 million, respectively. All such amounts were included in selling, general and administrative expenses.

#### **Subsequent Event**

On October 30, 2008, the Company announced that its board of directors has authorized a \$0.20 per common share cash dividend for the third quarter of 2008, payable on December 9, 2008 to shareholders of record on November 25, 2008.

#### **Liquidity and Capital Resources**

We have historically met our working capital and capital expenditure requirements, including funding for expansion of operations, through net cash flows provided by operating activities. Our principal source of liquidity is our operating cash flows. Variations in sales of our products would directly affect the availability of funds. There are no material restrictions on the ability to transfer and remit funds among our international affiliated companies. We are closely monitoring various aspects of the current worldwide financial crisis and we do not believe that there has been or will be a material impact on our liquidity from this crisis. As noted above, we have historically met our funding needs utilizing cash flow from operating activities and we believe we will have sufficient resources to meet debt service obligations in a timely manner. Our existing debt has resulted from our share repurchase activities and not from the need to fund our normal operations, therefore limiting the impact that the current worldwide credit crisis has on us. While a significant net sales decline could potentially affect the availability of funds, many of our largest expenses are purely variable in nature, which could protect our funding in all but a dramatic net sales downturn. Further we maintain a revolving credit facility which has \$94.3 million of undrawn capacity as of September 30, 2008 and is comprised of banks who are continuing to support the facility through the recent worldwide financial crisis.

For the nine months ended September 30, 2008, we generated \$201.6 million of operating cash flow, as compared to \$195.0 million for the same period in 2007. The increase in cash generated from operations was primarily due to the increase in operating income of \$43.9 million driven by a 17.8% growth in net sales for the nine months ended September 30, 2008 compared to the same period in 2007, partially offset by higher income tax payments, higher receivable balance resulting from a higher sales volume and an increase in inventory purchases.

Capital expenditures, including capital leases, for the nine months ended September 30, 2008 were \$82.4 million as compared to \$31.8 million for the same period in 2007. The majority of these expenditures represented investments in management information systems, the development of our distributor internet initiatives, and the expansion of our facilities domestically and internationally. We expect to incur capital expenditures of approximately \$103.0 million in 2008.

We entered into a \$300.0 million senior secured credit facility, comprised of a \$200.0 million term loan and a revolving credit facility of \$100.0 million, with a syndicate of financial institutions as lenders in July 2006. The term loan matures on July 21, 2013 and the revolving credit facility is available until July 21, 2012. The term loan bears interest at LIBOR plus a margin of 1.5%, or the base rate, which represents the prime rate offered by major U.S. banks, plus a margin of 0.50%. The revolving credit facility bears interest at LIBOR plus a margin of 1.25%, or the base rate, which represents the prime rate offered by major U.S. banks, plus a margin of 0.25%. In March 2007, we made a prepayment of \$29.5 million on our term loan borrowings. In September 2007, the credit agreement was amended increasing the revolving credit facility by \$150.0 million to fund the increase in our share repurchase program discussed below. During 2007, we borrowed an aggregate amount of \$293.7 million under the revolving credit facility to fund our share repurchase program and paid \$85.0 million of the revolving credit facility. During

the first quarter of 2008, we paid \$30.0 million of the revolving credit facility. During the second quarter of 2008, we borrowed an aggregate amount of \$40.0 million and paid \$28.0 million of the revolving credit facility. During the third quarter of 2008, we paid \$45.0 million of the revolving credit facility, and in September 2008, we borrowed an aggregate amount of \$10.0 million under the revolving credit facility.

The following summarizes our contractual obligations including interest at September 30, 2008, and the effect such obligations are expected to have on our liquidity and cash flows in future periods:

	Payments Due by Period						
	Total	2008	2009	2010 (Dollars in millions)	2011	2012	2013 & Thereafter
Borrowings under the senior credit facility	\$ 369.4	\$ 4.3	\$ 17.1	\$ 17.0	\$ 16.9	\$ 169.1	\$ 145.0
Capital leases	6.1	0.5	2.4	1.3	1.0	0.9	—
Operating leases	121.5	8.3	29.4	22.7	14.4	11.8	34.9
Other	35.1	—	14.9	14.9	5.3	—	—
<b>Total</b>	<b>\$ 532.1</b>	<b>\$ 13.1</b>	<b>\$ 63.8</b>	<b>\$ 55.9</b>	<b>\$ 37.6</b>	<b>\$ 181.8</b>	<b>\$ 179.9</b>

**Off Balance Sheet Arrangements**

At September 30, 2008 and December 31, 2007, we had no material off-balance-sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K.

**Share Repurchases**

On April 18, 2007, our board of directors authorized the repurchase of up to \$300 million of our common shares during the next two years, at such times and prices as determined by our management, as market conditions warrant. On August 23, 2007, our board of directors approved an increase of \$150 million, raising the total value of our common shares authorized to be repurchased to \$450 million. During 2007, we repurchased approximately 9.1 million common shares through open market purchases at an aggregate cost of \$365.8 million, or an average cost of \$40.39 per share. During the first quarter 2008, we repurchased approximately 0.4 million common shares through open market purchases at an aggregate cost of \$17.7 million, or an average cost of \$39.28 per share. On May 20, 2008, our board of directors approved an additional increase of \$150 million to our previously authorized share repurchase program raising the total value of common shares authorized to be repurchased to \$600 million. During the quarter ended June 30, 2008, we repurchased approximately 1.8 million of our common shares through open market purchases at an aggregate cost of \$76.5 million, or an average cost of \$43.23 per share. There were no share repurchases during the quarter ended September 30, 2008. As of September 30, 2008, since the inception of the share repurchase program, we have repurchased 11.3 million of the our common shares at an aggregate cost of \$460.0 million, or an average cost of \$40.82 per share.

**Dividends**

During the second quarter of 2007, our board of directors adopted a regular quarterly cash dividend program. The aggregate amount of dividends paid and declared during fiscal year 2007 was \$41.5 million. On January 31, 2008, our board of directors approved a quarterly cash dividend of \$0.20 per common share or \$12.9 million, for the fourth quarter of 2007 that was paid to shareholders of record on March 14, 2008. On May 1, 2008, our board of directors approved a quarterly cash dividend of \$0.20 per common share in an aggregate amount of \$12.7 million, for the first quarter of 2008 that was paid to shareholders of record on June 13, 2008. On August 5, 2008, our board of directors approved a quarterly cash dividend of \$0.20 per common share in an aggregate amount of \$12.8 million, for the second quarter of 2008 that was paid to shareholders of record on August 27, 2008. For the nine months ended September 30, 2008 and 2007, we paid cash dividends of approximately \$38.4 million and \$27.9 million, respectively.



**Working Capital and Operating Activities**

As of September 30, 2008 and December 31, 2007, we had positive working capital of \$101.2 million and \$111.5 million, respectively. Cash and cash equivalents were \$149.4 million at September 30, 2008, compared to \$187.4 million at December 31, 2007.

We expect that cash and funds provided from operations and available borrowings under our revolving credit facility will provide sufficient working capital to operate our business, to make expected capital expenditures and to meet foreseeable liquidity requirements, including debt service on our term loan.

The majority of our purchases from suppliers are generally made in U.S. dollars, while sales to our distributors generally are made in local currencies. Consequently, strengthening of the U.S. dollar versus a foreign currency can have a negative impact on net sales and operating margins and can generate transaction losses on intercompany transactions. For discussion of our foreign exchange contracts and other hedging arrangements, see Part 1, Item 3 — *Quantitative and Qualitative Disclosures about Market Risks*.

Currency restrictions enacted by the Venezuelan government in 2003 have become more restrictive and have impacted the ability of our subsidiary in Venezuela, or Herbalife Venezuela, to obtain U.S. dollars at the official foreign exchange rate. Unless official foreign exchange is made more readily available, the results of Herbalife Venezuela's operations could be negatively impacted as it may obtain more U.S. dollars from alternative sources where the exchange rate is weaker than the official rate.

At September 30, 2008, Herbalife Venezuela had cash balances of approximately \$39.0 million, primarily denominated in bolivars. We continue to evaluate the political and economic environment in Venezuela and any potential changes which may affect our operations. We are currently making appropriate applications through the Venezuelan government for acquisition of U.S. dollars at the official exchange rate to pay for imported product and to pay an annual dividend. Herbalife Venezuela's net sales represented less than 4% of consolidated worldwide net sales for the nine months ended September 30, 2008.

**Contingencies**

We are from time to time engaged in routine litigation. We regularly review all pending litigation matters in which we are involved and establish reserves deemed appropriate by management for these litigation matters when a probable loss estimate can be made.

As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, we have been and are currently subjected to various product liability claims. The effects of these claims to date have not been material to us, and the reasonably possible range of exposure on currently existing claims is not material to us. We believe that we have meritorious defenses to the allegations contained in the lawsuits. We currently maintain product liability insurance with an annual deductible of \$10 million.

Certain of our subsidiaries have been subject to tax audits by governmental authorities in their respective countries. In certain of these tax audits, governmental authorities are proposing that significant amounts of additional taxes and related interest and penalties are due. We and our tax advisors believe that there are substantial defenses to their allegations that additional taxes are owed, and we are vigorously contesting the additional proposed taxes and related charges.

These matters may take several years to resolve, and we cannot be sure of their ultimate resolution. However, it is the opinion of management that adverse outcomes, if any, will not likely result in a material effect on our financial condition and operating results. This opinion is based on our belief that any losses we suffer would not be material and that we have meritorious defenses. Although we have reserved an amount that we believe represents the likely outcome of the resolution of these disputes, if we are incorrect in our assessment, we may have to record additional expenses.

**Critical Accounting Policies**

Our Consolidated Financial Statements are prepared in conformity with GAAP, which require us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent

assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the year. Actual results could differ from those estimates. We consider the following policies to be most critical in understanding the judgments that are involved in preparing the financial statements and the uncertainties that could impact our operating results, financial condition and cash flows.

We are a network marketing company that sells a wide range of weight management products, nutritional supplements, energy & fitness products and personal care products within one industry segment as defined under Statement of Financial Accounting Standards, or SFAS, No. 131, *Disclosures about Segments of an Enterprise and Related Information*, or SFAS 131. Our products are manufactured by third party providers and then sold to independent distributors who sell Herbalife products to retail consumers or other distributors. We sell products in 66 countries throughout the world and we are organized and managed by geographic region. We have elected to aggregate our operating segments into one reporting segment, as management believes that our operating segments have similar operating characteristics and similar long term operating performance. In making this determination, management believes that the operating segments are similar in the nature of the products sold, the product acquisition process, the types of customers products are sold to, the methods used to distribute the products, and the nature of the regulatory environment.

Revenue is recognized when products are shipped and title passes to the independent distributor or importer or as products are sold in our retail stores in China. Amounts billed for freight and handling costs are included in net sales. We generally receive the net sales price in cash or through credit card payments at the point of sale. Related royalty overrides and allowances for product returns are recorded when the merchandise is shipped.

Allowances for product returns, primarily in connection with our buyback program, are provided at the time the product is shipped. This accrual is based upon historic return rates for each country and the relevant return pattern, which reflects anticipated returns to be received over a period of up to 12 months following the original sale. Historically, product returns and buybacks have not been significant. Product returns and buybacks were approximately 0.8% of retail sales for the three and nine months ended September 30, 2008. No material changes in estimates have been recognized for the three and nine months ended September 30, 2008.

We record reserves against our inventory to provide for estimated obsolete or unsalable inventory based on assumptions about future demand for our products and market conditions. If future demand and market conditions are less favorable than management's assumptions, additional reserves could be required. Likewise, favorable future demand and market conditions could positively impact future operating results if previously reserved for inventory is sold. We reserved for obsolete and slow moving inventory totaling \$11.0 million and \$12.0 million as of September 30, 2008 and December 31, 2007, respectively.

In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, such as property, plant, and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. Assets to be disposed of would be separately presented in the balance sheet and reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposed group classified as held for sale would be presented separately in the appropriate asset and liability sections of the balance sheet.

Goodwill and other intangibles not subject to amortization are tested annually for impairment, and are tested for impairment more frequently if events and circumstances indicate that the asset might be impaired. An impairment loss is recognized to the extent that the carrying amount exceeds the asset's fair value. This determination is made at the reporting unit level and consists of two steps. First, we determine the fair value of a reporting unit and compare it to its carrying amount. Second, if the carrying amount of a reporting unit exceeds

its fair value, an impairment loss is recognized for any excess of the carrying amount of the reporting unit's goodwill and other intangibles over the implied fair value. The implied fair value is determined by allocating the fair value of the reporting unit in a manner similar to a purchase price allocation, in accordance with SFAS No. 141, *Business Combinations*, or SFAS 141. The residual fair value after this allocation is the implied fair value of the reporting unit's goodwill and other intangibles. As of September 30, 2008 and December 31, 2007 we had goodwill of approximately \$111.3 million and \$111.5 million, respectively, and marketing franchise of \$310.0 million for both periods. No goodwill impairment was needed during the three and nine months ended September 30, 2008.

Contingencies are accounted for in accordance with SFAS No. 5, *Accounting for Contingencies*, or SFAS 5. SFAS 5 requires that we record an estimated loss from a loss contingency when information available prior to issuance of our financial statements indicates that it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated. Accounting for contingencies such as legal and income tax matters requires us to use judgment. Many of these legal and tax contingencies can take years to be resolved. Generally, as the time period increases over which the uncertainties are resolved, the likelihood of changes to the estimate of the ultimate outcome increases.

Deferred income tax assets have been established for net operating loss carryforwards of certain foreign subsidiaries and have been reduced by a valuation allowance to reflect them at amounts estimated to be ultimately realized. The net operating loss carryforwards expire in varying amounts over a future period of time. Realization of the income tax carryforwards is dependent on generating sufficient taxable income prior to expiration of the carryforwards. Although realization is not assured, we believe it is more likely than not that the net carrying value of the income tax carryforwards will be realized. The amount of the income tax carryforwards that is considered realizable, however, could change if estimates of future taxable income during the carryforward period are adjusted.

We account for stock-based compensation in accordance with SFAS No. 123R, *Share-Based Payment*, or SFAS 123R. Under the fair value recognition provisions of this statement, share-based compensation cost is measured at the grant date based on the value of the award and is recognized as expense over the vesting period. Determining the fair value of share-based awards at the grant date requires judgment, including estimating our stock price volatility and employee stock award exercise behaviors. Our expected volatility is primarily based upon the historical volatility of our common shares and, due to the limited period of public trading data for our common shares, it is also validated against the volatility of a company peer group. The expected life of awards is based on observed historical exercise patterns, which can vary over time. As stock-based compensation expense recognized in the Statements of Income is based on awards ultimately expected to vest, the amount of expense has been reduced for estimated forfeitures. SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Forfeitures were estimated based on historical experience.

We account for uncertain tax positions in accordance with FIN 48, *Income taxes*, or FIN 48. FIN 48 addressed the determination of how tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under FIN 48, we must recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution.

#### **New Accounting Pronouncements**

In March 2008, the Financial Accounting Standards Board, or FASB, issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities — An Amendment of FASB Statement No. 133*, or SFAS 161. SFAS 161 expands the disclosure requirements for derivative instruments and hedging activities. SFAS 161 specifically requires entities to provide enhanced disclosures addressing the following: (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, or SFAS 133, and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. SFAS 161 is effective for fiscal years and interim periods beginning after

November 15, 2008. We are currently evaluating the potential impact, if any, of the adoption of SFAS 161 on our consolidated financial statements.

In February 2008, the FASB issued FASB Staff Position FAS 157-2, or FSP FAS 157-2. FSP FAS 157-2 will delay the effective date of SFAS No. 157, *Fair Value Measurement*, or SFAS 157, for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). FSP FAS 157-2 partially defers the effective date of SFAS 157 to fiscal years beginning after November 15, 2008, and interim periods within those fiscal years for items within the scope of FSP 157-2. We are currently evaluating the potential impact, if any, of the adoption of FSP FAS 157-2 on our consolidated financial statements.

In December 2007, the FASB issued SFAS, No. 141 (revised 2007), *Business Combinations*, or SFAS 141R, which replaces SFAS 141. SFAS 141R establishes 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 in the acquiree and the goodwill acquired. SFAS 141R also modifies the recognition for preacquisition contingencies, such as environmental or legal issues, restructuring plans and acquired research and development value in purchase accounting. SFAS 141R amends SFAS No. 109, *Accounting for Income Taxes*, to require the acquirer to recognize changes in the amount of its deferred tax benefits that are recognizable because of a business combination either in income from continuing operations in the period of the combination or directly in contributed capital, depending on the circumstances. SFAS 141R also establishes disclosure requirements which will enable users to evaluate the nature and financial effects of the business combination. SFAS 141R is effective for fiscal years beginning after December 15, 2008. We are currently evaluating the potential impact, if any, of the adoption of SFAS 141R on our consolidated financial statements.

**Item 3. *Quantitative and Qualitative Disclosures About Market Risk***

We are exposed to market risks, which arise during the normal course of business from changes in interest rates and foreign currency exchange rates. On a selected basis, we use derivative financial instruments to manage or hedge these risks. All hedging transactions are authorized and executed pursuant to written guidelines and procedures.

We have adopted SFAS 133. SFAS 133, as amended and interpreted, established accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. All derivatives, whether designated in hedging relationships or not, are required to be recorded on the balance sheet at fair value. If the derivative is designated as a fair-value hedge, the changes in the fair value of the derivative and the underlying hedged item are recognized concurrently in earnings. If the derivative is designated as a cash-flow hedge, changes in the fair value of the derivative are recorded in other comprehensive income, or OCI, and are recognized in the statement of operations when the hedged item affects earnings. SFAS 133 defines the requirements for designation and documentation of hedging relationships as well as ongoing effectiveness assessments in order to use hedge accounting. For a derivative that does not qualify as a hedge, changes in fair value are recognized concurrently in earnings.

A discussion of our primary market risk exposures and derivatives is presented below.

**Foreign Exchange Risk**

We enter into foreign exchange derivatives in the ordinary course of business primarily to reduce exposure to currency fluctuations attributable to intercompany transactions and translation of local currency revenue. All of these foreign exchange contracts are designated as free standing derivatives for which hedge accounting does not apply.

Foreign exchange forward contracts are used to hedge advances between subsidiaries and to partially mitigate the impact of foreign currency fluctuations. Foreign exchange option contracts are also used to mitigate the impact of foreign currency fluctuations. The objective of these contracts is to neutralize the impact of foreign currency movements on the operating results of our subsidiaries. The fair value of forward and option contracts is based on

third-party bank quotes. All of our foreign exchange forward and option contracts have a maturity of less than one year as of September 30, 2008.

The following table provides information about the details of our foreign exchange forward contracts as of September 30, 2008:

Foreign Currency	Average Contract Rate	Notional Amount (In millions)	Fair Value (In millions)
<b>At September 30, 2008</b>			
Buy EUR sell MXN	15.88	\$ 56.1	\$ (1.4)
Buy SEK sell EUR	9.74	\$ 2.3	\$ —
Buy GBP sell EUR	0.80	\$ 2.3	\$ —
Buy MYR sell EUR	5.03	\$ 0.7	\$ —
Buy NZD sell EUR	2.14	\$ 0.7	\$ —
Buy DKK sell EUR	7.45	\$ 1.5	\$ —
Buy PLN sell EUR	3.39	\$ 0.2	\$ —
Buy NOK sell EUR	8.35	\$ 2.1	\$ —
Buy JPY sell EUR	154.60	\$ 22.8	\$ 0.8
Buy TWD sell EUR	45.93	\$ 5.1	\$ 0.1
Buy USD sell EUR	1.47	\$ 116.0	\$ 4.7
Buy USD sell BRL	1.86	\$ 3.2	\$ 0.1
Buy USD sell JPY	98.65	\$ 12.8	\$ 0.7
Buy USD sell MXN	11.10	\$ 47.0	\$ —
Buy EURO sell USD	1.52	\$ 42.0	\$ (3.1)
Buy MXN sell USD	10.66	\$ 48.9	\$ (1.9)
Total forward contracts		<u>\$ 363.7</u>	<u>\$ —</u>

The following table provides information about the details of our foreign exchange option contracts as of September 30, 2008:

Foreign Currency	Coverage (In millions)	Average Strike Price	Fair Value (In millions)
Purchase Puts (Company may sell EURO/buy USD) Euro	\$ 40.6	1.52 - 1.53	\$ 3.1
Purchase Puts (Company may sell MXN/buy USD) Mexican Peso	\$ 48.9	10.63 - 10.76	\$ 1.7
Total option contracts	<u>\$ 89.5</u>		<u>\$ 4.8</u>

All our foreign subsidiaries designate their local currencies as their functional currency. At September 30, 2008 and December 31, 2007, the total amount of our foreign subsidiary cash was \$145.7 million and \$154.8 million, respectively, of which \$7.6 million and \$8.4 million, respectively, was invested in U.S. dollars.

#### Interest Rate Risk

As of September 30, 2008, the aggregate annual maturities of the senior secured credit facility entered into on July 2006, as amended, were: 2008-\$0.4 million; 2009-\$1.5 million; 2010-\$1.5 million; 2011-\$1.5 million; 2012-\$157.2 million and \$140.8 million thereafter. The fair value of the senior secured credit facility approximates its carrying value of \$302.9 million as of September 30, 2008 and \$357.1 million as of December 31, 2007. The senior secured credit facility bears a variable interest rate, and on September 30, 2008 and December 31, 2007, the average interest rate was 5.08% and 6.26%, respectively.

Under our senior secured credit facility, we are obligated to enter into an interest rate hedge for up to 25% of the aggregate principal amount of the term loan for a minimum of three years. On August 23, 2006, we entered into a new interest rate swap agreement. This agreement provides for us to pay interest for a three-year period at a fixed rate of 5.26% on the initial notional principal amount of \$180.0 million while receiving interest for the same period at the LIBOR rate on the same notional principal amount. The notional amount is scheduled to be reduced by \$20 million in the second, third and fourth quarters of each year commencing January 1, 2007, throughout the term of the swap. The swap has been designated as a cash flow hedge against the variability in LIBOR interest rate on the new term loan at LIBOR plus 1.50%, thereby fixing our effective rate on the notional amounts at 6.76%. As of December 31, 2007 the swap notional amount was reduced to \$100.0 million as scheduled. As of September 30, 2008, the swap notional amount was \$60.0 million. As of September 30, 2008 and December 31, 2007, we recorded the interest rate swap as a liability at fair value of \$0.7 million and \$1.4 million, respectively, with the offsetting amounts recorded in other comprehensive income.

**Item 4. Controls And Procedures**

*Evaluation of Disclosure Controls and Procedures.* Our management, including our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of September 30, 2008.

*Changes in Internal Control over Financial Reporting.* There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-(f) under the Exchange Act) that occurred during the fiscal quarter ended September 30, 2008 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**FORWARD LOOKING STATEMENTS**

*This document contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws, including any projections of earnings, revenue or other financial items; any statements of the plans, strategies and objectives of management for future operations; any statements concerning proposed new services or developments; any statements regarding future economic conditions or performance; any statements of belief; and any statements of assumptions underlying any of the foregoing. Forward-looking statements may include the words "may," "will," "estimate," "intend," "continue," "believe," "expect" or "anticipate" and any other similar words.*

*Although we believe that the expectations reflected in any of our forward-looking statements are reasonable, actual results could differ materially from those projected or assumed in any of our forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to change and to inherent risks and uncertainties, such as those disclosed or incorporated by reference in our filings with the Securities and Exchange Commission. Important factors that could cause our actual results, performance and achievements, or industry results to differ materially from estimates or projections contained in our forward-looking statements include, among others, the following:*

- our relationship with, and our ability to influence the actions of, our distributors;
- adverse publicity associated with our products or network marketing organization;
- uncertainties relating to interpretation and enforcement of recently enacted legislation in China governing direct selling;
- our inability to obtain the necessary licenses to expand our direct selling business in China;
- adverse changes in the Chinese economy, Chinese legal system or Chinese governmental policies;

- improper action by our employees or international distributors in violation of applicable law;
- changing consumer preferences and demands;
- loss or departure of any member of our senior management team which could negatively impact our distributor relations and operating results;
- the competitive nature of our business;
- regulatory matters governing our products, including potential governmental or regulatory actions concerning the safety or efficacy of our products, and network marketing program including the direct selling market in which we operate;
- risks associated with operating internationally, including foreign exchange and devaluation risks;
- our dependence on increased penetration of existing markets;
- contractual limitations on our ability to expand our business;
- our reliance on our information technology infrastructure and outside manufacturers;
- the sufficiency of trademarks and other intellectual property rights;
- product concentration;
- our reliance on our management team;
- uncertainties relating to the application of transfer pricing, duties, value added taxes, and similar tax regulations;
- taxation relating to our distributors;
- product liability claims;
- any collateral impact resulting from the ongoing worldwide financial “crisis”, including the availability of liquidity to us, our customers and our suppliers or the willingness of our customers to purchase products in a recessionary economic environment; and
- whether we will purchase any of our shares in the open markets or otherwise.

*Additional factors that could cause actual results to differ materially from our forward-looking statements are set forth in this Quarterly Report on Form 10-Q, including under the heading “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and in our Consolidated Financial Statements and the related Notes.*

*Forward-looking statements in this Quarterly Report on Form 10-Q speak only as of the date hereof, and forward-looking statements in documents attached that are incorporated by reference speak only as of the date of those documents. We do not undertake any obligation to update or release any revisions to any forward-looking statement or to report any events or circumstances after the date hereof or to reflect the occurrence of unanticipated events, except as required by law.*

PART II. OTHER INFORMATION

Item 1. **LEGAL PROCEEDINGS**

See discussion under Note 4 to the Notes to the Consolidated Financial Statements included in Item 1 of Part I of this Quarterly Report on Form 10-Q, which is incorporated herein by reference.

Item 1.a **RISK FACTORS**

***The worldwide financial and economic "crisis" could negatively impact our access to credit and the sales of our products and could harm our financial condition and operating results.***

We are closely monitoring various aspects of the current worldwide financial and economic "crisis" and its potential impact on us, our liquidity, our access to capital, our operations and our overall financial condition. While we have historically met our funding needs utilizing cash flow from operating activities and while we believe we will have sufficient resources to meet current debt service obligations in a timely manner, no assurances can be given the current overall downturn in the world economy will not significantly adversely impact us and our business operations. We note economic and financial markets are fluid and we cannot ensure that there will not be in the near future a material adverse deterioration in our sales or liquidity.

***Our failure to establish and maintain distributor relationships for any reason could negatively impact sales of our products and harm our financial condition and operating results.***

We distribute our products exclusively through over 1.9 million independent distributors, and we depend upon them directly for substantially all of our sales. To increase our revenue, we must increase the number of, or the productivity of, our distributors. Accordingly, our success depends in significant part upon our ability to recruit, retain and motivate a large base of distributors. There is a high rate of turnover among our distributors, a characteristic of the network marketing business. The loss of a significant number of distributors for any reason could negatively impact sales of our products and could impair our ability to attract new distributors. In our efforts to attract and retain distributors, we compete with other network marketing organizations, including those in the weight management, dietary and nutritional supplement and personal care and cosmetic product industries. Our operating results could be harmed if our existing and new business opportunities and products do not generate sufficient interest to retain existing distributors and attract new distributors.

In light of the high year-over-year rate of turnover in our distributor base, we have our supervisors re-qualify annually in order to help us maintain a more accurate count of their numbers. For the latest twelve month re-qualification period ending January 2008, 41.0% of our supervisors re-qualified. Distributors who purchase our product for personal consumption or for short-term income goals may stay with us for several months to one year. Supervisors who have committed time and effort to build a sales organization will generally stay for longer periods. Distributors have highly variable levels of training, skills and capabilities. The turnover rate of our distributors, and our operating results, can be adversely impacted if we, and our senior distributor leadership, do not provide the necessary mentoring, training and business support tools for new distributors to become successful sales people in a short period of time.

We estimate that, of our over 1.9 million independent distributors, we had approximately 462,000 sales leaders as of September 30, 2008. These sales leaders, together with their downline sales organizations, account for substantially all of our revenues. Our distributors, including our sales leaders, may voluntarily terminate their distributor agreements with us at any time. The loss of a group of leading sales leaders, together with their downline sales organizations, or the loss of a significant number of distributors for any reason, could negatively impact sales of our products, impair our ability to attract new distributors and harm our financial condition and operating results.



*Since we cannot exert the same level of influence or control over our independent distributors as we could were they our own employees, our distributors could fail to comply with our distributor policies and procedures, which could result in claims against us that could harm our financial condition and operating results.*

Excluding our China sales employees, our distributors are independent contractors and, accordingly, we are not in a position to directly provide the same direction, motivation and oversight as we would if distributors were our own employees. As a result, there can be no assurance that our distributors will participate in our marketing strategies or plans, accept our introduction of new products, or comply with our distributor policies and procedures.

Extensive federal, state and local laws regulate our business, products and network marketing program. Because we have expanded into foreign countries, our policies and procedures for our independent distributors differ due to the different legal requirements of each country in which we do business. While we have implemented distributor policies and procedures designed to govern distributor conduct and to protect the goodwill associated with Herbalife trademarks and tradenames, it can be difficult to enforce these policies and procedures because of the large number of distributors and their independent status. Violations by our independent distributors of applicable law or of our policies and procedures in dealing with customers could reflect negatively on our products and operations and harm our business reputation. In addition, it is possible that a court could hold us civilly or criminally accountable based on vicarious liability because of the actions of our independent distributors.

*Adverse publicity associated with our products, ingredients or network marketing program, or those of similar companies, could harm our financial condition and operating results.*

The size of our distribution force and the results of our operations may be significantly affected by the public's perception of the Company and similar companies. This perception is dependent upon opinions concerning:

- the safety and quality of our products and ingredients;
- the safety and quality of similar products and ingredients distributed by other companies;
- our distributors;
- our network marketing program; and
- the direct selling business generally.

Adverse publicity concerning any actual or purported failure of our Company or our independent distributors to comply with applicable laws and regulations regarding product claims and advertising, good manufacturing practices, the regulation of our network marketing program, the licensing of our products for sale in our target markets or other aspects of our business, whether or not resulting in enforcement actions or the imposition of penalties, could have an adverse effect on the goodwill of our Company and could negatively affect our ability to attract, motivate and retain distributors, which would negatively impact our ability to generate revenue. We cannot ensure that all distributors will comply with applicable legal requirements relating to the advertising, labeling, licensing or distribution of our products.

In addition, our distributors' and consumers' perception of the safety and quality of our products and ingredients as well as similar products and ingredients distributed by other companies can be significantly influenced by media attention, publicized scientific research or findings, widespread product liability claims and other publicity concerning our products or ingredients or similar products and ingredients distributed by other companies. For example, in May 2008 public allegations were made that certain of our products contain excessive amounts of lead thereby triggering disclosure and labeling requirements under California Proposition 65. While we have confidence in our products because they fall within the FDA suggested guidelines for the amount of lead that consumers can safely ingest and do not believe they trigger disclosure or labeling requirements under California Proposition 65, negative publicity such as this can disrupt our business. Adverse publicity, whether or not accurate or resulting from consumers' use or misuse of our products, that associates consumption of our products or ingredients or any similar products or ingredients with illness or other adverse effects, questions the benefits of our or similar products or claims that any such products are ineffective, inappropriately labeled or have inaccurate

instructions as to their use, could lead to lawsuits or other legal challenges and could negatively impact our reputation, the market demand for our products, or our general business.

From time to time we receive inquiries from government agencies and third parties requesting information concerning our products. We fully cooperate with these inquiries including, when requested, by the submission of detailed technical dossiers addressing product composition, manufacturing, process control, quality assurance, and contaminant testing. We understand that such materials are undergoing review by regulators in certain markets. In the course of one such inquiry the Spanish Ministry of Health elected to issue a press release to inform the public of their on-going inquiry and dialogue with our Company. We are confident in the safety of our products when used as directed. However, there can be no assurance that regulators in these or other markets will not take actions that might delay or prevent the introduction of new products, or require the reformulation or the temporary or permanent withdrawal of certain of our existing products from their markets.

Adverse publicity relating to us, our products or our operations, including our network marketing program or the attractiveness or viability of the financial opportunities provided thereby, has had, and could again have, a negative effect on our ability to attract, motivate and retain distributors. In the mid-1980's, our products and marketing program became the subject of regulatory scrutiny in the United States, resulting in large part from claims and representations made about our products by our independent distributors, including impermissible therapeutic claims. The resulting adverse publicity caused a rapid, substantial loss of distributors in the United States and a corresponding reduction in sales beginning in 1985. We expect that negative publicity will, from time to time, continue to negatively impact our business in particular markets.

***Our failure to appropriately respond to changing consumer preferences and demand for new products or product enhancements could significantly harm our distributor and customer relationships and product sales and harm our financial condition and operating results.***

Our business is subject to changing consumer trends and preferences, especially with respect to weight management products. Our continued success depends in part on our ability to anticipate and respond to these changes, and we may not respond in a timely or commercially appropriate manner to such changes. Furthermore, the nutritional supplement industry is characterized by rapid and frequent changes in demand for products and new product introductions and enhancements. Our failure to accurately predict these trends could negatively impact consumer opinion of our products, which in turn could harm our customer and distributor relationships and cause the loss of sales. The success of our new product offerings and enhancements depends upon a number of factors, including our ability to:

- accurately anticipate customer needs;
- innovate and develop new products or product enhancements that meet these needs;
- successfully commercialize new products or product enhancements in a timely manner;
- price our products competitively;
- manufacture and deliver our products in sufficient volumes and in a timely manner; and
- differentiate our product offerings from those of our competitors.

If we do not introduce new products or make enhancements to meet the changing needs of our customers in a timely manner, some of our products could be rendered obsolete, which could negatively impact our revenues, financial condition and operating results.

***Due to the high level of competition in our industry, we might fail to retain our customers and distributors, which would harm our financial condition and operating results.***

The business of marketing weight management and nutrition products is highly competitive and sensitive to the introduction of new products or weight management plans, including various prescription drugs, which may rapidly capture a significant share of the market. These market segments include numerous manufacturers, distributors, marketers, retailers and physicians that actively compete for the business of consumers both in the

United States and abroad. In addition, we anticipate that we will be subject to increasing competition in the future from sellers that utilize electronic commerce. Some of these competitors have longer operating histories, significantly greater financial, technical, product development, marketing and sales resources, greater name recognition, larger established customer bases and better-developed distribution channels than we do. Our present or future competitors may be able to develop products that are comparable or superior to those we offer, adapt more quickly than we do to new technologies, evolving industry trends and standards or customer requirements, or devote greater resources to the development, promotion and sale of their products than we do. For example, if our competitors develop other diet or weight loss treatments that prove to be more effective than our products, demand for our products could be reduced. Accordingly, we may not be able to compete effectively in our markets and competition may intensify.

We are also subject to significant competition for the recruitment of distributors from other network marketing organizations, including those that market weight management products, dietary and nutritional supplements and personal care products as well as other types of products. We compete for global customers and distributors with regard to weight management, nutritional supplement and personal care products. Our competitors include both direct selling companies such as NuSkin Enterprises, Nature's Sunshine, Altacor/Amway, Melaleuca, Avon Products, Oriflame and Mary Kay, as well as retail establishments such as Weight Watchers, Jenny Craig, General Nutrition Centers, Wal-Mart and retail pharmacies.

In addition, because the industry in which we operate is not particularly capital intensive or otherwise subject to high barriers to entry, it is relatively easy for new competitors to emerge who will compete with us for our distributors and customers. In addition, the fact that our distributors may easily enter and exit our network marketing program contributes to the level of competition that we face. For example, a distributor can enter or exit our network marketing system with relative ease at any time without facing a significant investment or loss of capital because (1) we have a low upfront financial cost to become a Herbalife distributor, (2) we do not require any specific amount of time to work as a distributor, (3) we do not insist on any special training to be a distributor and (4) we do not prohibit a new distributor from working with another company. Our ability to remain competitive therefore depends, in significant part, on our success in recruiting and retaining distributors through an attractive compensation plan, the maintenance of an attractive product portfolio and other incentives. We cannot ensure that our programs for recruitment and retention of distributors will be successful, and if they are not, our financial condition and operating results would be harmed.

***We are affected by extensive laws, governmental regulations, administrative determinations, court decisions and similar constraints both domestically and abroad, and our failure or our distributors' failure to comply with these restraints could lead to the imposition of significant penalties or claims, which could harm our financial condition and operating results.***

In both domestic and foreign markets, the formulation, manufacturing, packaging, labeling, distribution, importation, exportation, licensing, sale and storage of our products are affected by extensive laws, governmental regulations, administrative determinations, court decisions and similar constraints. Such laws, regulations and other constraints may exist at the federal, state or local levels in the United States and at all levels of government in foreign jurisdictions. There can be no assurance that we or our distributors are in compliance with all of these regulations. Our failure or our distributors' failure to comply with these regulations or new regulations could lead to the imposition of significant penalties or claims and could negatively impact our business. In addition, the adoption of new regulations or changes in the interpretations of existing regulations may result in significant compliance costs or discontinuation of product sales and may negatively impact the marketing of our products, resulting in significant loss of sales revenues.

In April, 2006, the FTC issued a notice of proposed rulemaking which, if implemented in its originally proposed form, would have regulated all sellers of "business opportunities" in the United States. As originally proposed this rule would have applied to us and, if adopted in its proposed form, could have adversely impacted our U.S. business. On March 18, 2008, the FTC issued a revised proposed rule and, as indicated in the announcement accompanying the proposed rule, the revised proposal does not attempt to cover multilevel marketing companies such as Herbalife. If the revised rule were implemented as it is now proposed, we believe that it would not

significantly impact our U.S. business. Based on information currently available, we anticipate that the rule may require a year or more to become final.

Governmental regulations in countries where we plan to commence or expand operations may prevent or delay entry into those markets. In addition, our ability to sustain satisfactory levels of sales in our markets is dependent in significant part on our ability to introduce additional products into such markets. However, governmental regulations in our markets, both domestic and international, can delay or prevent the introduction, or require the reformulation or withdrawal, of certain of our products. For example, during the third quarter of 1995, we received inquiries from certain governmental agencies within Germany and Portugal regarding our product, *Thermojetics*® Instant Herbal Beverage, relating to the caffeine content of the product and the status of the product as an “instant tea,” which was disfavored by regulators, versus a “beverage.” Although we initially suspended the product sale in Germany and Portugal at the request of the regulators, we successfully reintroduced it once regulatory issues were satisfactorily resolved. In another example, during the second quarter of 2008 the Spanish Ministry of Health issued a press release informing the public of its on-going inquiry into the safety of our Company’s products sold in Spain. Any such regulatory action, whether or not it results in a final determination adverse to us, could create negative publicity, with detrimental effects on the motivation and recruitment of distributors and, consequently, on sales.

On June 25, 2007, the FDA published its final rule for cGMPs affecting the manufacture, packing, and holding of dietary supplements. The final rule requires identity testing on all incoming dietary ingredients, but permits the use of certificates of analysis or other documentation to verify the reliability of the ingredient suppliers. On the same date the FDA also published an interim final rule that outlined a petition process for manufacturers to request an exemption to the cGMP requirement for 100 percent identity testing of specific dietary ingredients used in the processing of dietary supplements. Under the interim final rule the manufacturer may be exempted from the dietary ingredient testing requirement if it can provide sufficient documentation that the reduced frequency of testing requested would still ensure the identity of the dietary ingredient. The final rule includes a phased-in effective date based on the size of the manufacturer. The final rule and the interim final rule became effective August 24, 2007. To limit any disruption for dietary supplements produced by small businesses the final rule has a three year phase in for small businesses. Firms that directly employ more than 500 full-time equivalent employees must have achieved compliance with the new cGMPs by June 25, 2008, while firms having between 20-500 full-time equivalent employees must be compliant by 2009 and firms having under 20 full-time equivalent employees must be compliant by 2010. Herbalife initiated enhancements, modifications and improvements to its manufacturing and corporate quality processes and believes we are compliant with the FDA’s cGMP final rule with respect to dietary supplements sold by Herbalife in the United States that the Company produces at its Suzhou, China facility and that are produced by contract manufacturer NBTY. These rules apply only to manufacturers and holders of finished products and not to ingredient suppliers unless the ingredient supplier is manufacturing a final dietary supplement. The final rule differs from the FDA’s 2003 proposed rule as it does not contain language regarding the regulatory status of excipients and other ingredients that are not “dietary ingredients.” Instead, the final rule relies on a requirement to comply with all other relevant regulations. Further, the final rule does not call for any specific finished product testing program nor does it require 100% testing of all finished products. Instead the final rule calls for a “scientifically valid system” for ensuring that finished products meet all specifications. The final cGMP rules will result in additional costs and possibly the need to seek alternate suppliers.

***Our network marketing program could be found to be not in compliance with current or newly adopted laws or regulations in one or more markets, which could prevent us from conducting our business in these markets and harm our financial condition and operating results.***

Our network marketing program is subject to a number of federal and state regulations administered by the FTC and various state agencies in the United States as well as regulations on direct selling in foreign markets administered by foreign agencies. We are subject to the risk that, in one or more markets, our network marketing program could be found not to be in compliance with applicable law or regulations. Regulations applicable to network marketing organizations generally are directed at preventing fraudulent or deceptive schemes, often referred to as “pyramid” or “chain sales” schemes, by ensuring that product sales ultimately are made to consumers and that advancement within an organization is based on sales of the organization’s products rather than investments

in the organization or other non-retail sales-related criteria. The regulatory requirements concerning network marketing programs do not include "bright line" rules and are inherently fact-based, and thus, even in jurisdictions where we believe that our network marketing program is in full compliance with applicable laws or regulations governing network marketing systems, we are subject to the risk that these laws or regulations or the enforcement or interpretation of these laws and regulations by governmental agencies or courts can change. The failure of our network marketing program to comply with current or newly adopted regulations could negatively impact our business in a particular market or in general.

We are also subject to the risk of private party challenges to the legality of our network marketing program. The multi-level marketing programs of other companies have been successfully challenged in the past and in a current lawsuit, allegations have been made challenging the legality of our network marketing program in Belgium. Test Ankoop-Test Achat, a Belgian consumer protection organization, sued Herbalife International Belgium, S.V., or HIB, on August 26, 2004, alleging that HIB violated Article 84 of the Belgian Fair Trade Practices Act by engaging in pyramid selling, *i.e.*, establishing a network of professional or non-professional sales people who hope to make a profit more through the expansion of that network than through the sale of products to end-consumers. The plaintiff is seeking a payment of €25,000 (equal to approximately \$36,100 as of September 30, 2008) per purported violation as well as costs of the trial. For the year ended December 31, 2007, our net sales in Belgium were approximately \$16.0 million. Currently, the lawsuit is in the pleading stage. The plaintiffs filed their initial brief on September 27, 2005. We filed a reply brief on May 9, 2006. There is no date yet for the oral hearings. An adverse judicial determination with respect to our network marketing program, or in proceedings not involving us directly but which challenge the legality of multi-level marketing systems, in Belgium or in any other market in which we operate, could negatively impact our business.

We learned on November 5, 2007 that Barry Minkow of the Fraud Discovery Institute had published a letter, dated October 29, 2007, to certain officials of the government of the People's Republic of China. The letter includes numerous allegations of allegedly wrongful conduct by Herbalife and its employees in China and elsewhere. Mr. Minkow's letter attacks, among other things, our business practices in China as illegal under Chinese law. Contrary to the allegations in the letter, we have acted in a responsible manner with regard to our business plans in China including retaining knowledgeable Chinese counsel to assist it in complying with Chinese law. In connection with our application for our direct selling license in China, our plan and methods for business in China were reviewed by members of the state and provincial governments of China and an initial license was granted in March 2007 and a subsequent expansion of that license was granted in July 2007, and in July 2008 the Company received five additional provincial licenses. We have designed and implemented systems and financial and operational controls intended to ensure compliance with applicable law. Mr. Minkow has subsequently published additional allegations regarding the Company, the Company's senior management team, and the Company's business practices in China and elsewhere. We believe that our plan and methods for business in China and elsewhere are in compliance with applicable law and we believe that the alleged misrepresentations from the Company's senior management team are unfounded, without basis or substantiation, and do not constitute misrepresentations. On August 22, 2008 the Fraud Discovery Institute (which Mr. Minkow founded) and the Company jointly issued a press release in which, among other things, the Fraud Discovery Institute retracted all prior allegations regarding our Company and its business methods.

*A substantial portion of our business is conducted in foreign markets, exposing us to the risks of trade or foreign exchange restrictions, increased tariffs, foreign currency fluctuations and similar risks associated with foreign operations.*

Approximately 80% of our net sales for the year ended December 31, 2007, were generated outside the United States, exposing our business to risks associated with foreign operations. For example, a foreign government may impose trade or foreign exchange restrictions or increased tariffs, which could negatively impact our operations. We are also exposed to risks associated with foreign currency fluctuations. For instance, purchases from suppliers are generally made in U.S. dollars while sales to distributors are generally made in local currencies. Accordingly, strengthening of the U.S. dollar versus a foreign currency could have a negative impact on us. Although we engage in transactions to protect against risks associated with foreign currency fluctuations, we cannot be certain any hedging activity will effectively reduce our exchange rate exposure. Our operations in some markets

also may be adversely affected by political, economic and social instability in foreign countries. As we continue to focus on expanding our existing international operations, these and other risks associated with international operations may increase, which could harm our financial condition and operating results.

Currency restrictions enacted by the Venezuelan government in 2003 have become more restrictive and have impacted the ability of our subsidiary in Venezuela, or Herbalife Venezuela, to obtain U.S. dollars at the official foreign exchange rate. Unless our ability to obtain U.S. dollars at the official foreign exchange rate is made more readily available, the results of Herbalife Venezuela's operations could be negatively impacted as it may need to obtain more U.S. dollars from alternative sources where the exchange rate is weaker than the official rate.

***Our expansion in China is subject to general, as well as industry-specific, economic, political and legal developments and risks in China and requires that we utilize a different business model from which we use elsewhere in the world.***

Our expansion of operations into China is subject to risks and uncertainties related to general economic, political and legal developments in China, among other things. The Chinese government exercises significant control over the Chinese economy, including but not limited to controlling capital investments, allocating resources, setting monetary policy, controlling foreign exchange and monitoring foreign exchange rates, implementing and overseeing tax regulations, providing preferential treatment to certain industry segments or companies and issuing necessary licenses to conduct business. Accordingly, any adverse change in the Chinese economy, the Chinese legal system or Chinese governmental, economic or other policies could have a material adverse effect on our business in China and our prospects generally.

In August 2005, China published regulations governing direct selling (effective December 1, 2005) and prohibiting pyramid promotional schemes (effective November 1, 2005), and a number of administrative methods and proclamations were issued in September 2005 and in September 2006. These regulations require us to use a business model different from that which we offer in other markets. To allow us to operate under these regulations, we have created and introduced a model specifically for China. In China, we have Company-operated retail stores that sell through employed sales management personnel to customers and preferred customers. We provide training and certification procedures for sales personnel in China. We also have non-employee sales representatives who sell through our retail stores. Our sales representatives are also permitted by the terms of our direct selling license to sell away from fixed retail locations in the provinces of Jiangsu, Guangdong, Shandong, Zhejiang, and Guizhou. In addition, our direct selling license for Beijing will permit us to sell away from fixed retail locations once we have established service outlets in that province. These features are not common to the business model we employ elsewhere in the world, and based on the direct selling licenses we have received and the terms of those which we hope to receive in the future to conduct a direct selling enterprise in China, our business model in China will continue in some part to incorporate such features. The direct selling regulations require us to apply for various approvals to conduct a direct selling enterprise in China. The process for obtaining the necessary licenses to conduct a direct selling business is protracted and cumbersome and involves multiple layers of Chinese governmental authorities and numerous governmental employees at each layer. While direct selling licenses are centrally issued, such licenses are generally valid only in the jurisdictions within which related approvals have been obtained. Such approvals are generally awarded on local and provincial bases, and the approval process requires involvement with multiple ministries at each level. Our participation and conduct during the approval process is guided not only by distinct Chinese practices and customs, but is also subject to applicable laws of China and the other jurisdictions in which we operate our business, including the U.S., and our internal code of ethics. There is always a risk that in attempting to comply with local customs and practices in China during the application process or otherwise, we will fail to comply with requirements applicable to us in China itself or in other jurisdictions, and any such failure to comply with applicable requirements could prevent us from obtaining the direct selling licenses or related local or provincial approvals. Furthermore, we rely on certain key personnel in China to assist us during the approval process, and the loss of any such key personnel could delay or hinder our ability to obtain licenses or related approvals. For all of the above reasons, there can be no assurance that we will obtain additional direct-selling licenses, or obtain related approvals to expand into any or all of the localities or provinces in China that are important to our business. Our inability to obtain, retain, or renew any or all of the licenses or related approvals that are required for us to operate in China would negatively impact our business.

Additionally, although certain regulations have been published with respect to obtaining such approvals, operating under such approvals and otherwise conducting business in China, other regulations are pending, and there is uncertainty regarding the interpretation and enforcement of Chinese regulations. The regulatory environment in China is evolving, and officials in the Chinese government exercise broad discretion in deciding how to interpret and apply regulations. We cannot be certain that our business model will continue to be deemed by national or local Chinese regulatory authorities to be compliant with any such regulations. In the past, the Chinese government has rigorously monitored the direct selling market in China, and has taken serious action against companies that the government believed were engaging in activities they regarded to be in violation of applicable law, including shutting down their businesses and imposing substantial fines. As a result, there can be no guarantee that the Chinese government's current or future interpretation and application of the existing and new regulations will not negatively impact our business in China, result in regulatory investigations or lead to fines or penalties against us or our Chinese distributors.

Chinese regulations prevent persons who are not Chinese nationals from engaging in direct selling in China. We cannot guarantee that any of our distributors living outside of China or any of our independent sales representatives or employed sales management personnel in China have not engaged or will not engage in activities that violate our policies in this market, or that violate Chinese law or other applicable law, and therefore result in regulatory action and adverse publicity.

China enacted a labor contract law which took effect January 1, 2008 and on September 18, 2008 an implementation regulation took effect. We are reviewing the new law and implementation regulation to determine what changes, if any, will be required in our employment contracts and contractual relations with our employees, which include certain of our salespersons. In addition, we continue to monitor the situation to determine how this new law and regulation will be implemented in practice. There is no guarantee that the new law will not adversely impact us, force us to change our treatment of our distributor employees, or cause us to change our operating plan for China.

If our operations in China are successful, we may experience rapid growth in China, and there can be no assurances that we will be able to successfully manage rapid expansion of manufacturing operations and a rapidly growing and dynamic sales force. There also can be no assurances that we will not experience difficulties in dealing with or taking employment related actions (such as hiring, terminations and salary administration, including social benefit payments) with respect to our employed sales representatives, particularly given the highly regulated nature of the employment relationship in China. If we are unable to effectively manage such growth and expansion of our retail stores, manufacturing operations or our employees, our government relations may be compromised and our operations in China may be harmed.

Our China business model, particularly with regard to sales management responsibilities and remuneration, differs from our traditional business model. There is a risk that such changes and transitions may not be understood by our distributors or employees, may be viewed negatively by our distributors or employees, or may not be correctly utilized by our distributors or employees. If that is the case, our business could be negatively impacted.

***If we fail to further penetrate existing markets or successfully expand our business into new markets, then the growth in sales of our products, along with our operating results, could be negatively impacted.***

The success of our business is to a large extent contingent on our ability to continue to grow by entering new markets and further penetrating existing markets. Our ability to further penetrate existing markets or to successfully expand our business into additional countries in Eastern Europe, Southeast Asia, South America or elsewhere, to the extent we believe that we have identified attractive geographic expansion opportunities in the future, is subject to numerous factors, many of which are out of our control.

In addition, government regulations in both our domestic and international markets can delay or prevent the introduction, or require the reformulation or withdrawal, of some of our products, which could negatively impact our business, financial condition and results of operations. Also, our ability to increase market penetration in certain countries may be limited by the finite number of persons in a given country inclined to pursue a direct selling business opportunity or consumers willing to purchase Herbalife products. Moreover, our growth will depend upon improved training and other activities that enhance distributor retention in our markets. While we have recently

experienced significant growth in certain of our markets, we cannot assure you that such growth levels will continue in the immediate or long term future. Furthermore, our efforts to support growth in such international markets could be hampered to the extent that our infrastructure in such markets is deficient when compared to our more developed markets, such as the U.S. Therefore, we cannot assure you that our general efforts to increase our market penetration and distributor retention in existing markets will be successful. If we are unable to continue to expand into new markets or further penetrate existing markets, our operating results would suffer.

***Our contractual obligation to sell our products only through our Herbalife distributor network and to refrain from changing certain aspects of our marketing plan may limit our growth.***

We are a party to an agreement with our distributors that provides assurances that a change in ownership will not negatively affect certain aspects of their business. Through this agreement, we committed to our distributors that we will not sell Herbalife products through any distribution channel other than our network of independent Herbalife distributors. Thus, we are contractually prohibited from expanding our business by selling Herbalife products through other distribution channels that may be available to our competitors, such as over the internet, through wholesale sales, by establishing retail stores or through mail order systems. Since this is an open-ended commitment, there can be no assurance that we will be able to take advantage of innovative new distribution channels that are developed in the future.

In addition, our agreement with our distributors provides that we will not change certain aspects of our marketing plan without the consent of a specified percentage of our distributors. For example, our agreement with our distributors provides that we may increase, but not decrease, the discount percentages available to our distributors for the purchase of products or the applicable royalty override percentages, including roll-ups, and production and other bonus percentages available to our distributors at various qualification levels within our distributor hierarchy. We may not modify the eligibility or qualification criteria for these discounts, royalty overrides and production and other bonuses unless we do so in a manner to make eligibility and/or qualification easier than under the applicable criteria in effect as of the date of the agreement. Our agreement with our distributors further provides that we may not vary the criteria for qualification for each distributor tier within our distributor hierarchy, unless we do so in such a way so as to make qualification easier.

Although we reserved the right to make these changes to our marketing plan without the consent of our distributors in the event that changes are required by applicable law or are necessary in our reasonable business judgment to account for specific local market or currency conditions to achieve a reasonable profit on operations, there can be no assurance that our agreement with our distributors will not restrict our ability to adapt our marketing plan to the evolving requirements of the markets in which we operate. As a result, our growth may be limited.

***We depend on the integrity and reliability of our information technology infrastructure, and any related inadequacies may result in substantial interruptions to our business.***

Our ability to timely provide products to our distributors and their customers, and services to our distributors, depends on the integrity of our information technology system, which we are in the process of upgrading, including the reliability of software and services supplied by our vendors. We are implementing an Oracle enterprise-wide technology solution, a scalable and stable open architecture platform, to enhance our and our distributors' efficiency and productivity. In addition, we are upgrading our internet-based marketing and distributor services platform, *MyHerbalife.com*.

The most important aspect of our information technology infrastructure is the system through which we record and track distributor sales, volume points, royalty overrides, bonuses and other incentives. We have encountered, and may encounter in the future, errors in our software or our enterprise network, or inadequacies in the software and services supplied by our vendors, although to date none of these errors or inadequacies has had a meaningful adverse impact on our business. Any such errors or inadequacies that we may encounter in the future may result in substantial interruptions to our services and may damage our relationships with, or cause us to lose, our distributors if the errors or inadequacies impair our ability to track sales and pay royalty overrides, bonuses and other incentives, which would harm our financial condition and operating results. Such errors may be expensive or difficult to correct.



in a timely manner, and we may have little or no control over whether any inadequacies in software or services supplied to us by third parties are corrected, if at all.

***Since we rely on independent third parties for the manufacture and supply of our products, if these third parties fail to reliably supply products to us at required levels of quality, then our financial condition and operating results would be harmed.***

All of our products are manufactured by outside companies, except for a small amount of products manufactured in our own manufacturing facility in China. We cannot assure you that our outside manufacturers will continue to reliably supply products to us at the levels of quality, or the quantities, we require, especially under the FDA's recently adopted cGMP regulations.

Our supply contracts generally have a two-year term. Except for force majeure events such as natural disasters and other acts of God, and non-performance by Herbalife, our manufacturers generally cannot unilaterally terminate these contracts. These contracts can generally be extended by us at the end of the relevant time period and we have exercised this right in the past. Globally we have over 40 suppliers of our products. For our major products, we have both primary and secondary suppliers. Our major suppliers include Nature's Bounty for protein powders, Fine Foods (Italy) for protein powders and nutritional supplements, PharmaChem Labs for teas and *Niteworks*® and JB Labs for fiber. In the event any of our third-party manufacturers were to become unable or unwilling to continue to provide us with products in required volumes and at suitable quality levels, we would be required to identify and obtain acceptable replacement manufacturing sources. There is no assurance that we would be able to obtain alternative manufacturing sources on a timely basis. An extended interruption in the supply of products would result in the loss of sales. In addition, any actual or perceived degradation of product quality as a result of reliance on third party manufacturers may have an adverse effect on sales or result in increased product returns and buybacks. Also, as we experience ingredient and product price pressure in the areas of soy, dairy products, plastics, and transportation reflecting global economic trends, we believe that we have the ability to mitigate some of these cost increases through improved optimization of our supply chain coupled with select increases in the retail prices of our products.

***If we fail to protect our trademarks and tradenames, then our ability to compete could be negatively affected, which would harm our financial condition and operating results.***

The market for our products depends to a significant extent upon the goodwill associated with our trademark and tradenames. We own, or have licenses to use, the material trademark and trade name rights used in connection with the packaging, marketing and distribution of our products in the markets where those products are sold. Therefore, trademark and trade name protection is important to our business. Although most of our trademarks are registered in the United States and in certain foreign countries in which we operate, we may not be successful in asserting trademark or trade name protection. In addition, the laws of certain foreign countries may not protect our intellectual property rights to the same extent as the laws of the United States. The loss or infringement of our trademarks or tradenames could impair the goodwill associated with our brands and harm our reputation, which would harm our financial condition and operating results.

Unlike in most of the other markets in which we operate, limited protection of intellectual property is available under Chinese law. Accordingly, we face an increased risk in China that unauthorized parties may attempt to copy or otherwise obtain or use our trademarks, copyrights, product formulations or other intellectual property. Further, since Chinese commercial law is relatively undeveloped, we may have limited legal recourse in the event we encounter significant difficulties with intellectual property theft or infringement. As a result, we cannot assure you that we will be able to adequately protect our product formulations or other intellectual property.

We permit the limited use of our trademarks by our independent distributors to assist them in the marketing of our products. It is possible that doing so may increase the risk of unauthorized use or misuse of our trademarks in markets where their registration status differs from that asserted by our independent distributors, or they may be used in association with claims or products in a manner not permitted under applicable laws and regulations. Were this to occur it is possible that this could diminish the value of these marks or otherwise impair our further use of these marks.

***If our distributors fail to comply with labeling laws, then our financial condition and operating results would be harmed.***

Although the physical labeling of our products is not within the control of our independent distributors, our distributors must nevertheless advertise our products in compliance with the extensive regulations that exist in certain jurisdictions, such as the United States, which considers product advertising to be labeling for regulatory purposes.

Our products are sold principally as foods, dietary supplements and cosmetics and are subject to rigorous FDA and related legal regimens limiting the types of therapeutic claims that can be made for our products. The treatment or cure of disease, for example, is not a permitted claim for these products. While we train and attempt to monitor our distributors' marketing materials, we cannot ensure that all such materials comply with applicable regulations, including bans on therapeutic claims. If our distributors fail to comply with these restrictions, then we and our distributors could be subjected to claims, financial penalties, mandatory product recalls or relabeling requirements, which could harm our financial condition and operating results. Although we expect that our responsibility for the actions of our independent distributors in such an instance would be dependent on a determination that we either controlled or condoned a noncompliant advertising practice, there can be no assurance that we could not be held vicariously responsible for the actions of our independent distributors.

***If our intellectual property is not adequate to provide us with a competitive advantage or to prevent competitors from replicating our products, or if we infringe the intellectual property rights of others, then our financial condition and operating results would be harmed.***

Our future success and ability to compete depend upon our ability to timely produce innovative products and product enhancements that motivate our distributors and customers, which we attempt to protect under a combination of copyright, trademark and trade secret laws, confidentiality procedures and contractual provisions. However, our products are generally not patented domestically or abroad, and the legal protections afforded by common law and contractual proprietary rights in our products provide only limited protection and may be time-consuming and expensive to enforce and/or maintain. Further, despite our efforts, we may be unable to prevent third parties from infringing upon or misappropriating our proprietary rights or from independently developing non-infringing products that are competitive with, equivalent to and/or superior to our products.

Monitoring infringement and/or misappropriation of intellectual property can be difficult and expensive, and we may not be able to detect any infringement or misappropriation of our proprietary rights. Even if we do detect infringement or misappropriation of our proprietary rights, litigation to enforce these rights could cause us to divert financial and other resources away from our business operations. Further, the laws of some foreign countries do not protect our proprietary rights to the same extent as do the laws of the United States.

Additionally, third parties may claim that products we have independently developed infringe upon their intellectual property rights. For example, in a previously settled lawsuit Unither Pharma, Inc. and others had alleged that sales by Herbalife International of (1) its *Niteworks*<sup>®</sup> and Prelox Blue products and (2) its former products Woman's Advantage with DHEA and Optimum Performance infringed on patents that are licensed to or owned by those parties. Although we do not believe that we are infringing on any third party intellectual property rights, there can be no assurance that one or more of our products will not be found to infringe upon other third party intellectual property rights in the future.

***Since one of our products constitutes a significant portion of our retail sales, significant decreases in consumer demand for this product or our failure to produce a suitable replacement should we cease offering it would harm our financial condition and operating results.***

Our Formula 1 meal replacement product constitutes a significant portion of our sales, accounting for approximately 27.0%, 28.4% and 30% of retail sales for the fiscal years ended December 31, 2005, 2006 and 2007, respectively. If consumer demand for this product decreases significantly or we cease offering this product without a suitable replacement, then our financial condition and operating results would be harmed.

***If we lose the services of members of our senior management team, then our financial condition and operating results could be harmed.***

We depend on the continued services of our Chairman and Chief Executive Officer, Michael O. Johnson, and our current senior management team as they work closely with the senior distributor leadership to create an environment of inspiration, motivation and entrepreneurial business success. Although we have entered into employment agreements with certain members of our senior management team, and do not believe that any of them are planning to leave or retire in the near term, we cannot assure you that our senior managers will remain with us. The loss or departure of any member of our senior management team could adversely impact our distributor relations and operating results. If any of these executives do not remain with us, our business could suffer. Also, the loss of key personnel, including our regional and country managers, could negatively impact our ability to implement our business strategy, and our continued success will also be dependent on our ability to retain existing, and attract additional, qualified personnel to meet our needs. We currently do not maintain “key person” life insurance with respect to our senior management team.

***The covenants in our existing indebtedness limit our discretion with respect to certain business matters, which could limit our ability to pursue certain strategic objectives and in turn harm our financial condition and operating results.***

Our credit facility contains numerous financial and operating covenants that restrict our and our subsidiaries’ ability to, among other things:

- pay dividends, redeem share capital or capital stock and make other restricted payments and investments;
- incur additional debt or issue preferred shares;
- impose dividend or other distribution restrictions on our subsidiaries;
- create liens on our and our subsidiaries’ assets;
- engage in transactions with affiliates;
- guarantee other indebtedness; and
- merge, consolidate or sell all or substantially all of our assets and the assets of our subsidiaries.

In addition, our credit facility requires us to meet certain financial ratios and financial conditions. Our ability to comply with these covenants may be affected by events beyond our control, including prevailing economic, financial and industry conditions. Failure to comply with these covenants could result in a default causing all amounts to become due and payable under our credit facility, which is secured by substantially all of our assets, which the lenders thereunder could proceed to foreclose against.

***If we do not comply with transfer pricing, customs duties, and similar regulations, then we may be subjected to additional taxes, duties, interest and penalties in material amounts, which could harm our financial condition and operating results.***

As a multinational corporation, in many countries including the United States we are subject to transfer pricing and other tax regulations designed to ensure that our intercompany transactions are consummated at prices that have not been manipulated to produce a desired tax result, that appropriate levels of income are reported as earned by our United States or local entities, and that we are taxed appropriately on such transactions. In addition, our operations are subject to regulations designed to ensure that appropriate levels of customs duties are assessed on the importation of our products. We are currently subject to pending or proposed audits that are at various levels of review, assessment or appeal in a number of jurisdictions involving transfer pricing issues, income taxes, customs duties, value added taxes, withholding taxes, sales and use and other taxes and related interest and penalties in material amounts. In one such case we are currently appealing a tax assessment in Spain. In another matter, in Mexico, we are awaiting a formal administrative assessment to start the judicial appeals process. The likelihood and timing of any such potential assessment is unknown as of the date hereof. The Company believes that it has meritorious defenses. In some circumstances, additional taxes, interest and penalties have been assessed and we will

be required to pay the assessments or post surety, in order to challenge the assessments. The imposition of new taxes, even pass-through taxes such as VAT, could have an impact on our perceived product pricing and therefore a potential negative impact on our business. We have reserved in the consolidated financial statements an amount that we believe represents the most likely outcome of the resolution of these disputes, but if we are incorrect in our assessment we may have to pay the full amount asserted. Ultimate resolution of these matters may take several years, and the outcome is uncertain. If the United States Internal Revenue Service or the taxing authorities of any other jurisdiction were to successfully challenge our transfer pricing practices or our positions regarding the payment of income taxes, customs duties, value added taxes, withholding taxes, sales and use, and other taxes, we could become subject to higher taxes and our earnings would be adversely affected.

***We may be held responsible for certain taxes or assessments relating to the activities of our distributors, which could harm our financial condition and operating results.***

Our distributors are subject to taxation, and in some instances, legislation or governmental agencies impose an obligation on us to collect taxes, such as value added taxes, and to maintain appropriate records. In addition, we are subject to the risk in some jurisdictions of being responsible for social security and similar taxes with respect to our distributors. In the event that local laws and regulations or the interpretation of local laws and regulations change to require us to treat our independent distributors as employees, or that our distributors are deemed by local regulatory authorities in one or more of the jurisdictions in which we operate to be our employees rather than independent contractors under existing laws and interpretations, we may be held responsible for social security and related taxes in those jurisdictions, plus any related assessments and penalties, which could harm our financial condition and operating results.

***We may incur material product liability claims, which could increase our costs and harm our financial condition and operating results.***

Our products consist of herbs, vitamins and minerals and other ingredients that are classified as foods or dietary supplements and are not subject to pre-market regulatory approval in the United States. Our products could contain contaminated substances, and some of our products contain some ingredients that do not have long histories of human consumption. We conduct limited clinical studies on some key products but not all products. Previously unknown adverse reactions resulting from human consumption of these ingredients could occur. As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, we have been, and may again be, subjected to various product liability claims, including that the products contain contaminants, the products include inadequate instructions as to their uses, or the products include inadequate warnings concerning side effects and interactions with other substances. It is possible that widespread product liability claims could increase our costs, and adversely affect our revenues and operating income. Moreover, liability claims arising from a serious adverse event may increase our costs through higher insurance premiums and deductibles, and may make it more difficult to secure adequate insurance coverage in the future. In addition, our product liability insurance may fail to cover future product liability claims, thereby requiring us to pay substantial monetary damages and adversely affecting our business. Finally, given the higher level of self-insured retentions that we have accepted under our current product liability insurance policies, which are as high as approximately \$10 million, in certain cases we may be subject to the full amount of liability associated with any injuries, which could be substantial.

Several years ago, a number of states restricted the sale of dietary supplements containing botanical sources of ephedrine alkaloids and on February 6, 2004, the FDA banned the use of such ephedrine alkaloids. Until late 2002, we had sold *Thermojetics*® original green herbal tablets, *Thermojetics*® green herbal tablets and *Thermojetics*® gold herbal tablets, all of which contained ephedrine alkaloids. Accordingly, we run the risk of product liability claims related to the ingestion of ephedrine alkaloids contained in those products. Currently, we have been named as a defendant in product liability lawsuits seeking to link the ingestion of certain of the aforementioned products to subsequent alleged medical problems suffered by plaintiffs. Although we believe that we have meritorious defenses to the allegations contained in these lawsuits, and are vigorously defending these claims, there can be no assurance that we will prevail in our defense of any or all of these matters.

***We are subject to, among other things, requirements regarding the effectiveness of internal controls over financial reporting. In connection with these requirements, we conduct regular audits of our business and operations. Our failure to identify or correct deficiencies and areas of weakness in the course of these audits could adversely affect our financial condition and operating results.***

We are required to comply with various corporate governance and financial reporting requirements under the Sarbanes-Oxley Act of 2002, as well as new rules and regulations adopted by the SEC, the Public Company Accounting Oversight Board and the New York Stock Exchange. In particular, we are required to include management and auditor reports on the effectiveness of internal controls over financial reporting as part of our annual reports on Form 10-K, pursuant to Section 404 of the Sarbanes-Oxley Act. We expect to continue to spend significant amounts of time and money on compliance with these rules. Our failure to correct any noted weaknesses in internal controls over financial reporting could result in the disclosure of material weaknesses which could have a material adverse effect upon the market value of our stock.

On a regular and on-going basis, we conduct audits through our internal audit department of various aspects of our business and operations. These internal audits are conducted to insure compliance with our policies and to strengthen our operations and related internal controls. The Audit Committee of our Board of Directors regularly reviews the results of these internal audits and, when appropriate, suggests remedial measures and actions to correct noted deficiencies or strengthen areas of weakness. There can be no assurance that these internal audits will uncover all material deficiencies or areas of weakness in our operations or internal controls. If left undetected and uncorrected, such deficiencies and weaknesses could have a material adverse effect on our financial condition and results of operations.

From time to time, the results of these internal audits may necessitate that we conduct further investigations into aspects of our business or operations. In addition, our business practices and operations may periodically be investigated by one or more of the many governmental authorities with jurisdiction over our worldwide operations. In the event that these investigations produce unfavorable results, we may be subjected to fines, penalties or loss of licenses or permits needed to operate in certain jurisdictions, any one of which could have a material adverse effect on our financial condition or operating results.

***Holders of our common shares may face difficulties in protecting their interests because we are incorporated under Cayman Islands law.***

Our corporate affairs are governed by our amended and restated memorandum and articles of association, and by the Companies Law (2007 Revision) and the common law of the Cayman Islands. The rights of our shareholders and the fiduciary responsibilities of our directors under Cayman Islands law are not as clearly established as under statutes or judicial precedent in existence in jurisdictions in the United States. Therefore, shareholders may have more difficulty in protecting their interests in the face of actions by our management or board of directors than would shareholders of a corporation incorporated in a jurisdiction in the United States, due to the comparatively less developed nature of Cayman Islands law in this area.

Unlike many jurisdictions in the United States, Cayman Islands law does not specifically provide for shareholder appraisal rights on a merger or consolidation of a company. This may make it more difficult for shareholders to assess the value of any consideration they may receive in a merger or consolidation or to require that the offer give shareholders additional consideration if they believe the consideration offered is insufficient.

Shareholders of Cayman Islands exempted companies such as Herbalife have no general rights under Cayman Islands law to inspect corporate records and accounts or to obtain copies of lists of our shareholders. Our directors have discretion under our articles of association to determine whether or not, and under what conditions, our corporate records may be inspected by our shareholders, but are not obliged to make them available to our shareholders. This may make it more difficult for you to obtain the information needed to establish any facts necessary for a shareholder motion or to solicit proxies from other shareholders in connection with a proxy contest.

Subject to limited exceptions, under Cayman Islands law, a minority shareholder may not bring a derivative action against the board of directors. Maples and Calder, our Cayman Islands counsel, has informed us that they are not aware of any reported class action or derivative action having been brought in a Cayman Islands court.

***Provisions of our articles of association and Cayman Islands corporate law may impede a takeover or make it more difficult for shareholders to change the direction or management of the Company, which could reduce shareholders' opportunity to influence management of the Company.***

Our articles of association permit our board of directors to issue preference shares from time to time, with such rights and preferences as they consider appropriate. Our board of directors could authorize the issuance of preference shares with terms and conditions and under circumstances that could have an effect of discouraging a takeover or other transaction.

In addition, our articles of association contain certain other provisions which could have an effect of discouraging a takeover or other transaction or preventing or making it more difficult for shareholders to change the direction or management of our Company, including a classified board, the inability of shareholders to act by written consent, a limitation on the ability of shareholders to call special meetings of shareholders and advance notice provisions. As a result, our shareholders may have less input into the management of our Company than they might otherwise have if these provisions were not included in our articles of association.

Unlike many jurisdictions in the United States, Cayman Islands law does not provide for mergers as that term is understood under corporate law in the United States. However, Cayman Islands law does have statutory provisions that provide for the reconstruction and amalgamation of companies, which are commonly referred to in the Cayman Islands as "schemes of arrangement." The procedural and legal requirements necessary to consummate these transactions are more rigorous and take longer to complete than the procedures typically required to consummate a merger in the United States. Under Cayman Islands law and practice, a scheme of arrangement in relation to a solvent Cayman Islands company must be approved at a shareholders' meeting by each class of shareholders, in each case, by a majority of the number of holders of each class of a company's shares that are present and voting (either in person or by proxy) at such a meeting, which holders must also represent 75% in value of such class issued that are present and voting (either in person or by proxy) at such meeting (excluding the shares owned by the parties to the scheme of arrangement).

The convening of these meetings and the terms of the amalgamation must also be sanctioned by the Grand Court of the Cayman Islands. Although there is no requirement to seek the consent of the creditors of the parties involved in the scheme of arrangement, the Grand Court typically seeks to ensure that the creditors have consented to the transfer of their liabilities to the surviving entity or that the scheme of arrangement does not otherwise have a material adverse effect on the creditors' interests. Furthermore, the Grand Court will only approve a scheme of arrangement if it is satisfied that:

- the statutory provisions as to majority vote have been complied with;
- the shareholders have been fairly represented at the meeting in question;
- the scheme of arrangement is such as a businessman would reasonably approve; and
- the scheme or arrangement is not one that would more properly be sanctioned under some other provision of the Companies Law.

***There is uncertainty as to shareholders' ability to enforce certain foreign civil liabilities in the Cayman Islands.***

We are incorporated as an exempted company with limited liability under the laws of the Cayman Islands. A material portion of our assets are located outside of the United States. As a result, it may be difficult for our shareholders to enforce judgments against us or judgments obtained in U.S. courts predicated upon the civil liability provisions of the federal securities laws of the United States or any state of the United States.

We have been advised by our Cayman Islands counsel, Maples and Calder, that although there is no statutory enforcement in the Cayman Islands of judgments obtained in the United States, the courts of the Cayman Islands will - based on the principle that a judgment by a competent foreign court imposes upon the judgment debtor an obligation to pay the sum for which judgment has been given — recognize and enforce a foreign judgment of a court of competent jurisdiction if such judgment is final, for a liquidated sum, not in respect of taxes or a fine or penalty, is not inconsistent with a Cayman Islands judgment in respect of the same matters, and was not obtained in

a manner, and is not of a kind, the enforcement of which is contrary to the public policy of the Cayman Islands. There is doubt, however, as to whether the Grand Court of the Cayman Islands will (1) recognize or enforce judgments of U.S. courts predicated upon the civil liability provisions of the federal securities laws of the United States or any state of the United States, or (2) in original actions brought in the Cayman Islands, impose liabilities predicated upon the civil liability provisions of the federal securities laws of the United States or any state of the United States, on the grounds that such provisions are penal in nature.

The Grand Court of the Cayman Islands may stay proceedings if concurrent proceedings are being brought elsewhere.

**Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

(a) None.

(b) None.

(c) On April 18, 2007, we announced that our board of directors authorized the repurchase of up to \$300 million of our common shares during the next two years, at such times and prices as determined by management, as market conditions warrant. On August 23, 2007, our board of directors approved an increase of \$150 million to this share repurchase program raising the total value of common shares authorized to be repurchased to \$450 million. On May 20, 2008, we announced that our board of directors had approved an additional increase of \$150 million to the share repurchase program raising the total value of our common shares authorized to be repurchased to \$600 million. Since the inception of the share repurchase program, we have repurchased approximately 11.3 million of our common shares at an aggregate cost of \$460.0 million or an average cost of \$40.82 per share.

We did not repurchase any common shares during the three months ended September 30, 2008. As of September 30, 2008 the approximate dollar value of shares that may yet be purchased under the program was \$140,024,126.

**Item 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

**Item 5. OTHER INFORMATION**

(a) None.

(b) None.

**Item 6. EXHIBITS**

(a) Exhibit Index:

## EXHIBIT INDEX

Exhibit Number	Description	Reference
2.1	Agreement and Plan of Merger, dated April 10, 2002, by and among Herbalife International, Inc., WH Holdings (Cayman Islands) Ltd. and WH Acquisition Corp.	(a)
3.1	Form of Amended and Restated Memorandum and Articles of Association of Herbalife Ltd.	(d)
4.1	Form of Share Certificate	(d)
10.1	Form of Indemnity Agreement between Herbalife International Inc. and certain officers and directors of Herbalife International Inc.	(a)
10.2	Office lease agreement between Herbalife International of America Inc. and State Teacher's Retirement System, dated July 11, 1995	(a)
10.3#	Herbalife International of America, Inc.'s Senior Executive Deferred Compensation Plan, effective January 1, 1996, as amended	(a)
10.4#	Herbalife International of America, Inc.'s Management Deferred Compensation Plan, effective January 1, 1996, as amended	(a)
10.5	Master Trust Agreement between Herbalife International of America, Inc. and Imperial Trust Company, Inc., effective January 1, 1996	(a)
10.6#	Herbalife International Inc. 401K Profit Sharing Plan and Trust, as amended	(a)
10.7	Trust Agreement for Herbalife 2001 Executive Retention Plan, effective March 15, 2001	(a)
10.8#	Herbalife 2001 Executive Retention Plan, effective March 15, 2001	(a)
10.9	Notice to Distributors regarding Amendment to Agreements of Distributorship, dated as of July 18, 2002 between Herbalife International, Inc. and each Herbalife Distributor	(a)
10.10	Indemnity Agreement dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd., WH Acquisition Corp., Whitney & Co., LLC, Whitney V, L.P., Whitney Strategic Partners V, L.P., GGC Administration, L.L.C., Golden Gate Private Equity, Inc., CCG Investments (BVI), L.P., CCG Associates-AI, LLC, CCG Investment Fund-AI, LP, CCG AV, LLC-Series C, CCG AV, LLC-Series C, CCG AV, LLC-Series E, CCG Associates-QP, LLC and WH Investments Ltd.	(a)
10.11#	Independent Director's Stock Option Plan of WH Holdings (Cayman Islands) Ltd.	(a)
10.12#	WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan, as restated, dated as of November 5, 2003	(a)
10.13#	Non-Statutory Stock Option Agreement, dated as of April 3, 2003 between WH Holdings (Cayman Islands) Ltd. and Michael O. Johnson	(a)
10.14#	Side Letter Agreement dated as of April 3, 2003 by and among WH Holdings (Cayman Islands) Ltd., Michael O. Johnson and the Shareholders listed therein	(a)
10.15#	Form of Non-Statutory Stock Option Agreement (Non-Executive Agreement)	(a)
10.16#	Form of Non-Statutory Stock Option Agreement (Executive Agreement)	(a)
10.17	Indemnity Agreement, dated as of February 9, 2004, among WH Capital Corporation and Gregory Probert	(a)
10.18	Indemnity Agreement, dated as of February 9, 2004, among WH Capital Corporation and Brett R. Chapman	(a)
10.19	Stock Subscription Agreement of WH Capital Corporation, dated as of February 9, 2004, between WH Capital Corporation and WH Holdings (Cayman Islands) Ltd.	(a)
10.20	First Amendment to Amended and Restated WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan, dated November 5, 2003	(a)
10.21	Registration Rights Agreement, dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd., Whitney V, L.P., Whitney Strategic Partners V, L.P., WH Investments Ltd., CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG Investment Fund-AI, L.P., CCG AV, LLC-Series C and CCG AV, LLC-Series E.	(b)



[Table of Contents](#)

Exhibit Number	Description	Reference
10.22	Share Purchase Agreement, dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd., Whitney Strategic Partners V, L.P., WH Investments Ltd., Whitney V, L.P., CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG Investment Fund-AI, LP, CCG AV, LLC-Series C and CCG AV, LLC-Series E.	(b)
10.23	Form of Indemnification Agreement between Herbalife Ltd. and the directors and certain officers of Herbalife Ltd.	(c)
10.24#	Herbalife Ltd. 2004 Stock Incentive Plan, effective December 1, 2004	(c)
10.25	Termination Agreement, dated as of December 1, 2004, between Herbalife Ltd., Herbalife International, Inc. and Whitney & Co., LLC.	(d)
10.26	Termination Agreement, dated as of December 1, 2004, between Herbalife Ltd., Herbalife International Inc. and GGC Administration, L.L.C.	(d)
10.27	Indemnification Agreement, dated as of December 13, 2004, by and among Herbalife Ltd., Herbalife International, Inc., Whitney V, L.P., Whitney Strategic Partners V, L.P., CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG Investment Fund-AI, LP, CCG AV, LLC-Series C, CCG AV, LLC-Series E, CCG CI, LLC and GGC Administration, LLC.	(d)
10.28#	Amendment No. 1 to Herbalife Ltd. 2004 Stock Incentive Plan	(e)
10.29#	Form of Stock Bonus Award Agreement	(e)
10.30#	Employment Agreement Effective as of January 1, 2005 between Herbalife Ltd. and Henry Burdick	(f)
10.31#	Form of 2004 Herbalife Ltd. 2004 Stock Incentive Plan Stock Option Agreement	(g)
10.32#	Form of 2004 Herbalife Ltd. 2004 Stock Incentive Plan Non-Employee Director Stock Option Agreement	(g)
10.33	Service Agreement by and between Herbalife Europe Limited and Wynne Roberts ESQ, dated as of September 6, 2005	(h)
10.34#	Independent Directors Deferred Compensation and Stock Unit Plan	(i)
10.35#	Independent Directors Stock Unit Award Agreement	(i)
10.36#	Herbalife Ltd. 2005 Stock Incentive Plan	(j)
10.37#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Unit Award Agreement	(k)
10.38#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement	(k)
10.39#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Unit Award Agreement applicable to Mr. Michael O. Johnson	(l)
10.40#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement applicable to Mr. Michael O. Johnson	(l)
10.41#	Amendment to Herbalife Ltd. Independent Directors Deferred Compensation and Stock Unit Plan	(m)
10.42#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Unit Award Agreement applicable to Messrs. Brett R. Chapman and Richard Goudis	(n)
10.43#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement applicable to Messrs. Brett R. Chapman and Richard Goudis	(n)
10.44#	Employment agreement dated December 18, 2007 between Herbalife International of America, Inc. and Paul Noack	(o)
10.45	Form of Credit Agreement, dated as of July 21, 2006, by and among Herbalife International Inc., Herbalife Ltd., WH Intermediate Holdings Ltd., HBL Ltd., WH Luxembourg Holdings S.á.R.L., Herbalife International Luxembourg S.á.R.L., HLF Luxembourg Holdings, S.á.R.L., WH Capital Corporation, WH Luxembourg Intermediate Holdings S.á.R.L., HV Holdings Ltd., Herbalife Distribution Ltd., Herbalife Luxembourg Distribution S.á.R.L., and the Subsidiary Guarantors party thereto in favor of Merrill Lynch Capital Corporation, as Collateral Agent	(p)

[Table of Contents](#)

Exhibit Number	Description	Reference
10.46	Form of Security Agreement, dated as of July 21, 2006, by and among Herbalife International, Inc., Herbalife Ltd., WH Intermediate Holdings Ltd., HBL Ltd., WH Luxembourg Holdings S.á.R.L., Herbalife International Luxembourg S.á.R.L., HLF Luxembourg Holdings, S.á.R.L., WH Capital Corporation, WH Luxembourg Intermediate Holdings S.á.R.L., HV Holdings Ltd., Herbalife Distribution Ltd., Herbalife Luxembourg Distribution S.á.R.L., and the Subsidiary Guarantors party thereto in favor of Merrill Lynch Capital Corporation, as Collateral Agent	(p)
10.47#	Amended and Restated Independent Directors Deferred Compensation and Stock Unit Plan	(p)
10.48#	Employment Agreement by and between Herbalife Ltd. and Gregory L. Probert dated October 10, 2006	(q)
10.49#	Employment Agreement by and between Herbalife Ltd. and Brett R. Chapman dated October 10, 2006	(q)
10.50#	Stock Unit Agreement by and between Herbalife Ltd. and Brett R. Chapman dated October 10, 2006	(q)
10.51#	Amendment dated October 10, 2006, to Stock Option Agreement by and between Herbalife Ltd. and Brett R. Chapman dated September 1, 2004	(q)
10.52#	Amendment dated October 10, 2006, to Stock Option Agreement by and between Herbalife Ltd. and Brett R. Chapman dated December 1, 2004	(q)
10.53#	Amendment dated October 10, 2006, to Stock Option Agreement by and between Herbalife Ltd. and Brett R. Chapman dated April 27, 2005	(q)
10.54#	Employment Agreement by and between Herbalife Ltd. and Richard P. Goudis dated October 24, 2006	(r)
10.55#	Stock Unit Agreement by and between Herbalife Ltd. and Richard P. Goudis dated October 24, 2006	(r)
10.56#	Amendment dated October 24, 2006, to Stock Option Agreement by and between Herbalife Ltd. and Richard P. Goudis dated June 14, 2004	(r)
10.57#	Amendment dated October 24, 2006, to Stock Option Agreement by and between Herbalife Ltd. and Richard P. Goudis dated September 1, 2004	(r)
10.58#	Amendment dated October 24, 2006, to Stock Option Agreement by and between Herbalife Ltd. and Richard P. Goudis dated December 1, 2004	(r)
10.59#	Amendment dated October 24, 2006, to Stock Option Agreement by and between Herbalife Ltd. and Richard P. Goudis dated April 27, 2005	(r)
10.60#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Unit Award Agreement applicable to Michael O. Johnson	(s)
10.61#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement applicable to Michael O. Johnson	(s)
10.62#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Unit Award Agreement applicable to Messrs. Richard P. Goudis and Brett R. Chapman	(s)
10.63#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement applicable to Messrs. Richard P. Goudis and Brett R. Chapman	(s)
10.64#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Unit Award Agreement	(s)
10.65#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement	(s)
10.66	First Amendment dated June 21, 2007, to Form of Credit Agreement, dated as of July 21, 2006, by and among Herbalife International Inc., Herbalife Ltd., WH Intermediate Holdings Ltd., HBL Ltd., WH Luxembourg Holdings S.á.R.L., Herbalife International Luxembourg S.á.R.L., HLF Luxembourg Holdings, S.á.R.L., WH Capital Corporation, WH Luxembourg Intermediate Holdings S.á.R.L., HV Holdings Ltd., Herbalife Distribution Ltd., Herbalife Luxembourg Distribution S.á.R.L., and the Subsidiary Guarantors party thereto in favor of Merrill Lynch Capital Corporation, as Collateral Agent	(t)

[Table of Contents](#)

Exhibit Number	Description	Reference
10.67	Second Amendment dated September 17, 2007, to Form of Credit Agreement, dated as of July 21, 2006, by and among Herbalife International Inc., Herbalife Ltd., WH Intermediate Holdings Ltd., HBL Ltd., WH Luxembourg Holdings S.à.R.L., Herbalife International Luxembourg S.à.R.L., HLF Luxembourg Holdings, S.à.R.L., WH Capital Corporation, WH Luxembourg Intermediate Holdings S.à.R.L., HV Holdings Ltd., Herbalife Distribution Ltd., Herbalife Luxembourg Distribution S.à.R.L., and the Subsidiary Guarantors party thereto in favor of Merrill Lynch Capital Corporation, as Collateral Agent	(t)
10.68	Third Amendment dated November 30, 2007, to Form of Credit Agreement, dated as of July 21, 2006, by and among Herbalife International Inc., Herbalife Ltd., WH Intermediate Holdings Ltd., HBL Ltd., WH Luxembourg Holdings S.à.R.L., Herbalife International Luxembourg S.à.R.L., HLF Luxembourg Holdings, S.à.R.L., WH Capital Corporation, WH Luxembourg Intermediate Holdings S.à.R.L., HV Holdings Ltd., Herbalife Distribution Ltd., Herbalife Luxembourg Distribution S.à.R.L., and the Subsidiary Guarantors party thereto in favor of Merrill Lynch Capital Corporation, as Collateral Agent	(u)
10.69#	Herbalife Ltd. Employee Stock Purchase Plan	(u)
10.70	Fourth Amendment dated February 21, 2008, to Form of Credit Agreement, dated as of July 21, 2006, by and among Herbalife International Inc., Herbalife Ltd., WH Intermediate Holdings Ltd., HBL Ltd., WH Luxembourg Holdings S.à.R.L., Herbalife International Luxembourg S.à.R.L., HLF Luxembourg Holdings, S.à.R.L., WH Capital Corporation, WH Luxembourg Intermediate Holdings S.à.R.L., HV Holdings Ltd., Herbalife Distribution Ltd., Herbalife Luxembourg Distribution S.à.R.L., and the Subsidiary Guarantors party thereto in favor of Merrill Lynch Capital Corporation, as Collateral Agent	(u)
10.71#	Employment Agreement dated as of March 27, 2008 between Michael O. Johnson and Herbalife International of America, Inc.	(v)
10.72#	Stock Unit Award Agreement by and between Herbalife Ltd. and Michael O. Johnson, dated March 27, 2008.	(v)
10.73#	Stock Appreciation Right Award Agreement by and between Herbalife Ltd. and Michael O. Johnson, dated March 27, 2008.	(v)
10.74#	Stock Appreciation Right Award Agreement by and between Herbalife Ltd. and Michael O. Johnson, dated March 27, 2008.	(v)
10.75#	Amendment No. 1 to Employment Agreement dated as of April 4, 2008 between Gregory L. Probert and Herbalife International of America, Inc.	(w)
10.76	Fifth Amendment dated September 25, 2008, to Form of Credit Agreement, dated as of July 21, 2006, by and among Herbalife International Inc., Herbalife Ltd., WH Intermediate Holdings Ltd., HBL Ltd., WH Luxembourg Holdings S.à.R.L., Herbalife International Luxembourg S.à.R.L., HLF Luxembourg Holdings, S.à.R.L., WH Capital Corporation, WH Luxembourg Intermediate Holdings S.à.R.L., HV Holdings Ltd., Herbalife Distribution Ltd., Herbalife Luxembourg Distribution S.à.R.L., and the Subsidiary Guarantors party thereto in favor of Merrill Lynch Capital Corporation, as Collateral Agent	*
31.1	Rule 13a-14(a) Certification of Chief Executive Officer	*
31.2	Rule 13a-14(a) Certification of Chief Financial Officer	*
32.1	Section 1350 Certification of Chief Executive Officer and Chief Financial Officer	*

\* Filed herewith.

# Management contract or compensatory plan or arrangement.

(a) Previously filed on October 1, 2004 as an Exhibit to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.

(b) Previously filed on November 9, 2004 as an Exhibit to Amendment No. 2 to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.

[Table of Contents](#)

- (c) Previously filed on December 2, 2004 as an Exhibit to Amendment No. 4 to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.
- (d) Previously filed on December 14, 2004 as an Exhibit to Amendment No. 5 to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.
- (e) Previously filed on February 17, 2005 as an Exhibit to the Company's registration statement on Form S-8 (File No. 333-122871) and is incorporated herein by reference.
- (f) Previously filed on May 13, 2005 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (g) Previously filed on June 14, 2005 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (h) Previously filed on September 23, 2005 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (i) Previously filed on February 28, 2006 as an Exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2005 and is incorporated herein by reference.
- (j) Previously filed on November 22, 2005 as an Exhibit to the Company's registration statement on Form S-8 (File No. 129885).
- (k) Previously filed on March 29, 2006 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (l) Previously filed on March 29, 2006 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (m) Previously filed on March 30, 2006 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (n) Previously filed on March 31, 2006 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (o) Previously filed on December 20, 2007 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (p) Previously filed on November 13, 2006 as an Exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2006 and is incorporated by reference.
- (q) Previously filed on October 12, 2006 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (r) Previously filed on October 26, 2006 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (s) Previously filed on May 29, 2007 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (t) Previously filed on November 6, 2007 as an Exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2007 and is incorporated by reference.
- (u) Previously filed on February 26, 2008 as an Exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2007 and is incorporated herein by reference.
- (v) Previously filed on April 7, 2008 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.
- (w) Previously filed on April 9, 2008 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.

**SIGNATURES**

Pursuant to the requirements 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.

**HERBALIFE LTD.**

By: /s/ Richard Goudis  
Richard Goudis  
Chief Financial Officer

Dated: November 3, 2008

**FIFTH AMENDMENT TO CREDIT AGREEMENT**

FIFTH AMENDMENT TO CREDIT AGREEMENT, dated as of September 25, 2008 (this "**Amendment**"), among Herbalife International, Inc., a Nevada corporation ("**Borrower**"), Herbalife Ltd., a Cayman Islands exempted company with limited liability ("**Holdings**"), and the other guarantors identified as such on the signature pages hereto (together with Borrower and Holdings, the "**Loan Parties**"), the Lenders signatory hereto and Merrill Lynch Capital Corporation ("**MLCC**"), as administrative agent for the Lenders (in such capacity, the "**Administrative Agent**"), in connection with that certain Credit Agreement, dated as of July 21, 2006, as amended by that certain First Amendment to Credit Agreement, dated as of June 21, 2007, that certain Second Amendment to Credit Agreement, dated as of September 17, 2007, that certain Third Amendment to Credit Agreement, dated as of November 30, 2007 and that certain Fourth Amendment to Credit Agreement, dated as of February 21, 2008 (as further amended, restated, supplemented, or otherwise modified from time to time, the "**Credit Agreement**"), among the Loan Parties, the lenders party thereto from time to time (the "**Lenders**"), the Administrative Agent, and MLCC, as collateral agent for the Secured Parties (as defined in the Credit Agreement). Capitalized terms used herein but not otherwise defined herein shall have the meanings given such terms in the Credit Agreement.

**WITNESSETH:**

WHEREAS, the Loan Parties, the Lenders named therein, the Administrative Agent and the other parties thereto have entered into the Credit Agreement;

WHEREAS, the Borrower has asked the Lenders to amend a certain provision of the Credit Agreement; and

WHEREAS, the Lenders signatory hereto are willing to consent to such amendment on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements herein contained, the Loan Parties, the Lenders signatory hereto and the Administrative Agent hereby agree as follows:

**ARTICLE I**

**AMENDMENT TO CREDIT AGREEMENT**

Immediately upon the Effective Date (as defined in Article III below), the following amendment to the Credit Agreement shall become operative:

Section 1.1 *Section 6.07(c)*. Section 6.07(c) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

(c) **Limitation on Capital Expenditures** (i) Make any Capital Expenditures, other than Capital Expenditures made by Holdings and its Consolidated Subsidiaries (A) which in the aggregate do not exceed \$62.5 million in any fiscal year, (B) for purposes of (i) acquiring the office buildings designated by Borrower to the Administrative Agent for an aggregate purchase

price for all such acquisitions not to exceed \$50.0 million and (ii) the build out and tenant improvements for the new leasehold interests contemplated by Section 6.01(e) which in the aggregate do not exceed \$25.0 million, (C) for purposes of acquiring a corporate jet designated by Borrower to the Administrative Agent for an aggregate purchase price (including (i) fees and expenses related to such purchase and (ii) costs associated with retrofitting, refurbishing or otherwise modifying such airplane) not to exceed \$20.0 million, (D) for purposes of costs associated with the implementation of a management information system designated by Borrower to the Administrative Agent for an aggregate purchase price (including fees and expenses related to such purchase) not to exceed \$60.0 million, and (E) for purposes of acquiring a manufacturing facility designated by Borrower to the Administrative Agent for an aggregate purchase price (including (i) fees and expenses related to such purchase and (ii) costs associated with the build out of such manufacturing facility) not to exceed \$40.0 million. (ii) Notwithstanding anything to the contrary contained in subclause (i)(A) above, to the extent that the Capital Expenditures made by Holdings and its Consolidated Subsidiaries pursuant to subclause (i)(A) above in any fiscal year are less than the amount permitted to be made in such fiscal year pursuant to subclause (i)(A) above (without giving effect to any additional amount available as a result of this clause (ii)), the amount of such difference may be carried forward and used to make Capital Expenditures pursuant to subclause (i)(A) above in the next succeeding fiscal year of Holdings.

## ARTICLE II

### CONDITIONS TO EFFECTIVENESS

Immediately upon the satisfaction of all of the following conditions, the amendment contained in Article I of this Amendment shall become effective (the date on which the applicable conditions are satisfied being the “*Effective Date*”):

- (a) Amendment. The Administrative Agent shall have received a duly executed counterpart of this Amendment from each of the Loan Parties, the Administrative Agent and the Required Lenders.
- (b) Representations and Warranties. Each of the representations and warranties set forth in Article III of the Credit Agreement (as amended by this Amendment) or in any other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects) on and as of the Effective Date with the same effect as though made on and as of such Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case shall have been true and correct in all material respects (except that those that are qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects) on and as of such earlier date).
- (c) Default. No Default or Event of Default shall have occurred and be continuing and no Default or Event of Default shall result from entering into this Amendment.

(d) Officer's Certificate. The Administrative Agent shall have received a certificate, dated the Effective Date and signed by a Financial Officer of Borrower, confirming compliance with the conditions precedent set forth in (b) and (c) of this Article III.

(e) Requirements of Law. The Administrative Agent shall be satisfied that the Amendment shall be in full compliance with all material Requirements of Law, including Regulations T, U and X of the Board.

(f) Patriot Act. The Administrative Agent shall have received all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the U.S.A. Patriot Act.

(g) Fees and Expenses. The Borrower shall have paid all fees and expenses (including, without limitation, legal fees and expenses) payable pursuant to the Loan Documents that have been invoiced on or prior to the date hereof.

### ARTICLE III MISCELLANEOUS

Section 3.1 Effect of Amendment. Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of any Agent or any Lender under the Loan Documents, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Loan Documents, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Nothing herein shall be deemed to entitle any Loan Party to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Loan Documents in similar or different circumstances. This Amendment is a Loan Document executed pursuant to the Credit Agreement and shall be construed, administered and applied in accordance with the terms and provisions thereof.

Section 3.2 No Representations by Lenders or Agents. The Loan Parties hereby acknowledge that they have not relied on any representation, written or oral, express or implied, by any Lender or any Agent, in entering into this Amendment.

Section 3.3 Representations of the Loan Parties. Each Loan Party represents and warrants to the Agents and the Lenders that (a) the execution, delivery and performance by it of this Amendment are within such entity's powers and have been duly authorized by all necessary corporate, limited liability company or limited partnership action, (b) it has received all necessary governmental, regulatory or other approvals for the execution and delivery of this Amendment and the execution, delivery and performance by it of this Amendment do not and will not contravene or conflict with any provision of (i) any law, (ii) any judgment, decree or order or (iii) its articles of incorporation, bylaws, articles or certificate of formation, operating agreement or partnership agreement, (c) the execution, delivery and performance by it of this Amendment do not and will not contravene or conflict with or constitute a default under, or cause any lien to arise under, any provision of any material agreement or instrument binding upon any Loan Party or upon any of the respective property of a Loan Party and (d) this Amendment and the Credit Agreement, as amended by this Amendment, are legal, valid and binding obligations of



such entity, enforceable against it in accordance with their respective terms. Each Loan Party further represents and warrants to the Agents and the Lenders that (a) each of the representations and warranties set forth in Article III of the Credit Agreement (as amended by this Amendment) or in any other Loan Document are true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" are true and correct in all respects) on and as of the Effective Date with the same effect as though made on and as of such Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case shall have been true and correct in all material respects (except that those that are qualified as to "materiality" or "Material Adverse Effect" are true and correct in all respects) on and as of such earlier date), (b) no Default or Event of Default has occurred and is continuing before or after giving effect to this Amendment, and (c) no Material Adverse Change has occurred since December 31, 2005.

Section 3.4 Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby and by the Credit Agreement.

Section 3.5 Headings. Article and section headings used herein are for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

Section 3.6 Severability. Any provision of this Amendment held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 3.7 Counterparts. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Amendment by signing any such counterpart. Delivery of an executed counterpart of a signature page to this Amendment by facsimile shall be effective as delivery of a manually executed counterpart of this Amendment.

Section 3.8 Costs and Expenses. Borrower agrees to pay all reasonable out-of-pocket expenses incurred by any Agent and in connection with the preparation, execution and delivery, administration of this Amendment and the other Loan Documents (whether or not the transactions hereby or thereby contemplated shall be consummated).

Section 3.9 Governing Law. THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

Section 3.10 Waiver. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR TO ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH

OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.9.

Section 3.11 Ratification of Guarantees. Each Loan Party hereby consents to this Amendment and hereby confirms and agrees that (a) notwithstanding the effectiveness of this Amendment, each of the Guarantees to which it is a party is, and shall continue to be, in full force and effect and each such Guarantee is hereby ratified and confirmed in all respects, except that, on and after the effectiveness of this Amendment, each reference in such Guarantees to the "Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement as amended by this Amendment, and (b) the Security Documents to which it is a party and all of the Security Agreement Collateral described therein do, and shall continue to, secure the payment of all of the "Secured Obligations" (as defined in the Security Agreement).

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be duly executed and delivered as of the date first above written.

**HERBALIFE INTERNATIONAL, INC.,**  
a Nevada corporation, as Borrower

By: \_\_\_\_\_  
Name:  
Title:

**WH CAPITAL CORPORATION,**  
a Nevada corporation, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**HERBALIFE INTERNATIONAL OF AMERICA, INC.,**  
a Nevada corporation, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**HERBALIFE INTERNATIONAL OF EUROPE, INC.,**  
a California corporation, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**HERBALIFE INTERNATIONAL COMMUNICATIONS, INC.,**  
a California corporation, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**[Signature Page to Fifth Amendment to Credit Agreement]**

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**HERBALIFE INTERNATIONAL DISTRIBUTION, INC.,**  
a California corporation, as a Guarantor

By:

\_\_\_\_\_  
Name:  
Title:

**HERBALIFE TAIWAN, INC.,**  
a California corporation, as a Guarantor

By:

\_\_\_\_\_  
Name:  
Title:

**HERBALIFE INTERNATIONAL (THAILAND), LTD.,**  
a California corporation, as a Guarantor

By:

\_\_\_\_\_  
Name:  
Title:

**HERBALIFE INTERNATIONAL DO BRASIL LTDA,**  
a corporation dually organized in Brazil and Delaware, as a Guarantor

By:

\_\_\_\_\_  
Name:  
Title:

**HERBALIFE LTD.,**  
a Cayman Islands exempted company with limited liability, as a Guarantor

By:

\_\_\_\_\_  
Name:  
Title:

**[Signature Page to Fifth Amendment to Credit Agreement]**

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**WH INTERMEDIATE HOLDINGS LTD.,**

a Cayman Islands exempted company with limited liability, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**HBL LTD.,**

a Cayman Islands exempted company with limited liability, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**HV HOLDINGS LTD.,**

a Cayman Islands exempted company with limited liability, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**HERBALIFE DISTRIBUTION LTD.,**

a Cayman Islands exempted company with limited liability, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**WH LUXEMBOURG HOLDINGS S.à.R.L.,**

a Luxembourg corporation, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Fifth Amendment to Credit Agreement]

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**HLF LUXEMBOURG HOLDINGS S.à R.L.,**  
a Luxembourg corporation, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**WH LUXEMBOURG INTERMEDIATE HOLDINGS S.à.R.L.,**  
a Luxembourg corporation, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**HERBALIFE INTERNATIONAL LUXEMBOURG S.à.R.L.,**  
a Luxembourg corporation, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**HERBALIFE LUXEMBOURG DISTRIBUTION S.à.R.L.,**  
a Luxembourg corporation, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

**HERBALIFE OF JAPAN K.K.**  
a corporation dually organized in Delaware and Japan, as a Guarantor

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Fifth Amendment to Credit Agreement]

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**MERRILL LYNCH CAPITAL CORPORATION,**  
as a Lender and Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

**[Signature Page to Fifth Amendment to Credit Agreement]**

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\_\_\_\_\_  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

**[Signature Page to Fifth Amendment to Credit Agreement]**



Section 302 Certification

I, Michael O. Johnson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Herbalife Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ MICHAEL O. JOHNSON  
Michael O. Johnson  
Chief Executive Officer

Dated: November 3, 2008

Section 302 Certification

I, Richard Goudis, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Herbalife Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ RICHARD GOUDIS  
Richard Goudis  
*Chief Financial Officer*

Dated: November 3, 2008

**CERTIFICATION**  
**Pursuant to 18 U.S.C. Section 1350**  
**Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of Herbalife Ltd., or Company, on Form 10-Q for the fiscal quarter ended September 30, 2008 as filed with the U.S. Securities and Exchange Commission on the date hereof, or Report, and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of the undersigned officers of the Company certifies that:

- the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ MICHAEL O. JOHNSON  
Michael O. Johnson  
*Chief Executive Officer*

Dated: November 3, 2008

By: /s/ RICHARD GOUDIS  
Richard Goudis  
*Chief Financial Officer*

Dated: November 3, 2008

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.