

FOOTSTAR INC  
Form 10-K  
March 18, 2010

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended January 2, 2010

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 1-11681

FOOTSTAR, INC.

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

22-3439443  
(I.R.S. Employer Identification No.)

933 MacArthur Blvd.,  
Mahwah, New Jersey  
(Address of principal executive offices)

07430  
(Zip Code)

Registrant's telephone number, including area code: (201) 934-2000

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

None

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

Common Stock (par value \$.01 per share)  
(Title of Class)

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the  
Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was

required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. p Yes " No

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller Reporting Company

(do not check if a smaller reporting company)

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

For the purpose of reporting the following market value of the registrant's common stock held by non-affiliates, the common stock held by the directors and executive officers of the registrant have been excluded. The aggregate market value of common stock held by non-affiliates of the registrant as of July 4, 2009, was approximately \$19.8 million based on the closing price on July 2, 2009 of \$0.97 per share.

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.  Yes  No

Number of shares outstanding of common stock, par value \$.01 per share, as of March 12, 2010: 21,575,404.

Documents Incorporated by Reference

Information required by Part III that is not provided in this report will be in either Footstar, Inc.'s Proxy Statement for the 2010 Annual Meeting of Shareholders or an amendment to this report, one of which will be filed within 120 days after the end of the registrant's fiscal year, and is incorporated herein by reference.

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FOOTSTAR, INC.  
ANNUAL REPORT ON FORM 10-K

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PART I

INTRODUCTORY NOTE

Footstar, Inc., which may be referred to as “Footstar”, the “Company”, “we”, or “our” is filing this Annual Report on Form 10-K for its fiscal year ended January 2, 2010.

The Company is a holding company, incorporated under the laws of the State of Delaware in 1996 and operated its businesses through its subsidiaries primarily as a retailer selling family footwear through licensed footwear departments in discount chains and wholesale arrangements since 1961.

Until December 31, 2008, the Company had operated licensed footwear departments in discount chains since 1961, and was the only major operator of licensed footwear departments in the United States. The Company had operated licensed footwear departments in various Kmart Corporation (“Kmart”) stores. The Company also had supplied certain retail stores, including Rite Aid Corporation (“Rite Aid”), with family footwear on a wholesale basis.

As of January 3, 2009, the Company no longer operates licensed footwear departments in Kmart stores and in Rite Aid stores.

Substantially all of the Company’s business operations consisted of running licensed footwear departments in Kmart stores pursuant to that certain Amended and Restated Master Agreement dated as of August 24, 2005 by and between Kmart, Sears Holding Corporation (“Sears”) and the Company (the “Kmart Master Agreement”), as amended by that certain Master Agreement Amendment, dated as of April 3, 2008, by and among the Company, Kmart, certain affiliates of Kmart and Sears (the “Kmart Master Agreement Amendment” and, collectively with the Kmart Master Agreement, the “Kmart Agreement”). The Kmart Agreement expired by its terms on December 31, 2008.

In May 2008 the Board of Directors determined that it is in the best interests of the Company and its shareholders to liquidate and ultimately dissolve after the expiration of the Kmart Agreement in December 2008 (and other miscellaneous contracts through the end of such term) and to sell and/or dispose of any of the Company’s other remaining assets, including its property in Mahwah, New Jersey, which contains its corporate headquarters building, improvements and 21 acres of underlying land (“collectively, the “Mahwah Real Estate”). In May 2008, the Board of Directors approved the Plan of Complete Liquidation of Footstar, Inc. (the “Original Plan”), which provided for the complete liquidation and ultimate dissolution of the Company on expiration of the Kmart Agreement on December 31, 2008.

The Board amended the Original Plan on March 5, 2009. The Amended Plan of Complete Dissolution and Liquidation of Footstar, Inc. (the “Plan of Dissolution”) reflects technical and legal changes to the Original Plan consistent with Delaware corporate law and is intended to modify, supersede and replace the Original Plan in order to more efficiently facilitate the liquidation and dissolution of the Company in the best interests of shareholders. The Plan of Dissolution provides for the complete, voluntary liquidation of the Company by providing for the sale of its remaining assets and the wind-down of the Company’s business as described in the Plan of Dissolution and for distributions of available cash to shareholders as determined by the Board of Directors (the “Dissolution”).

The Plan of Dissolution was approved by shareholders at a special meeting on May 5, 2009. Also on May 5, 2009, the Company filed a certificate of dissolution with the Secretary of State of Delaware, which commenced a three-year statutory liquidation process. The Company began implementing the Plan of Dissolution immediately following its approval, and adopted the liquidation basis of accounting effective May 6, 2009.



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Since the Company's emergence from bankruptcy on February 7, 2006, the Board of Directors has declared special cash distributions totaling \$9.85 per common share. Specifically, the Board of Directors has declared cash distributions to shareholders in the following amounts and on the following dates: \$5.00 per common share on March 27, 2007; \$1.00 per common share on May 9, 2008; \$1.00 per common share on January 8, 2009; \$2.00 per common share on April 20, 2009; \$.40 per common share on August 18, 2009; \$.35 per common share on December 1, 2009 and \$.10 per common share on February 24, 2010.

On February 24, 2010, the Company announced it anticipates it will not make any further distributions until the monetization of the Mahwah Real Estate.

See Item 1A, "Risk Factors", beginning at page 6, concerning certain other matters in connection with future events, circumstances and uncertainties that may impact the Plan of Dissolution and the timing and amounts of any distributions made to shareholders under the Plan of Dissolution.

ITEM 1. BUSINESS

GENERAL

Not applicable.

EMPLOYEES

As of March 15, 2010, the Company had five employees, including one officer, to assist in the liquidation process.

EXECUTIVE OFFICERS OF THE REGISTRANT

The following information sets forth the name, age and business experience during the past five years of the current executive officer of the Company:

Jonathan M. Couchman, 40, was appointed Chief Financial Officer effective August 11, 2009. Mr. Couchman became President and Chief Executive Officer of Footstar effective January 1, 2009. Prior to that, on December 9, 2008 Mr. Couchman became Chief Wind-Down Officer of the Company. He was appointed Chairman of the Board of Footstar on February 7, 2006. He is the Managing Member of Couchman Capital LLC, which is the investment manager of Couchman Investments LP and Couchman International Ltd., private partnerships established in 2001. Couchman Capital LLC is also the general partner of Couchman Partners LP, a private investment partnership established in 2001. In addition, Mr. Couchman is the President of Couchman Advisors, Inc., a management advisory company. He is a member of the CFA Institute and the New York Society of Security Analysts and holds a Bachelor of Science in Finance from the California State University at Chico.

AVAILABLE INFORMATION

You may read any materials filed by us with the Securities and Exchange Commission (the "Commission" or the "SEC"), including our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports, filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549, and you may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an Internet web site, [www.sec.gov](http://www.sec.gov), which contains reports, proxy and information statements and other information which we file electronically with the SEC.





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A copy of Footstar's Corporate Governance Guidelines and its Code of Conduct and Compliance Program are posted on the Corporate Governance section of the Company's website, [www.footstar.com](http://www.footstar.com), and are available in print to any shareholder who requests copies by contacting Jonathan Couchman, President, Chief Executive Officer and Chief Financial Officer, at the Company's principal executive office set forth above.

ITEM 1A. RISK FACTORS

The matters discussed in this Annual Report on Form 10-K include forward-looking statements that involve significant risks and uncertainties and that are made in reliance upon the safe harbor provisions of Section 27A of the Securities Act and Section 21E of the Exchange Act. These statements may be identified by the use of words, such as: "anticipate," "estimates," "should," "expect," "project," "intend," "plan," "believe" and other words and terms of similar meaning in connection with any discussion of our financial statements, business, results of operations, liquidity, future operating or financial performance and other future events and circumstances. These statements are neither promises nor guarantees. A number of important risks and uncertainties, including those identified below and those factors included in this Annual Report on Form 10-K under Item 7, "Recent Events", beginning on page 12, each of which is a risk factor and is incorporated into this Item 1A by reference, as well as risks and uncertainties discussed elsewhere in this Form 10-K, could cause our actual results to differ materially from those expressed or implied in our forward-looking statements. In addition to the above-referenced statements and factors which are set forth elsewhere in our Annual Report on Form 10-K and incorporated herein by reference, we set forth the following risks and uncertainties related to our business.

Adverse U.S. economic conditions and the current turmoil in the U.S. capital and credit markets could limit demand for the Company's corporate headquarters building, improvements and, thus, we may not be able to timely sell our corporate headquarters or on acceptable terms.

The economy in the United States is currently experiencing unprecedented disruptions, including increased levels of unemployment, the failure and near failure of a number of large financial institutions, reduced liquidity and increased credit risk premiums for a number of market participants. Economic conditions may be affected by numerous factors, including inflation and employment levels, energy prices, recessionary concerns, changes in currency exchange rates, the availability of debt and interest rate fluctuations. At this time, it is unclear whether, and to what extent, the actions taken by the U.S. government, including the passage of the Emergency Stabilization Act of 2008, the Troubled Assets Relief Program, the American Recovery and Reinvestment Act of 2009 and other measures currently being implemented or contemplated will mitigate the effects of the crisis. The current turmoil in the capital and credit markets could limit demand for our owned Mahwah Real Estate, which contains our corporate headquarters building, improvements and 21 acres of underlying land which we have been marketing since March 2007. At this time we cannot predict the extent or duration of any negative impact that the current disruptions in the U.S. economy will have on our ability to sell the Mahwah Real Estate or on acceptable terms.

We may not be able to settle all of our obligations to creditors.

We have current obligations to creditors. Our estimate of ultimate distributions to our shareholders takes into account all of our known obligations and our best estimate of the amount reasonably required to satisfy such obligations. As part of our dissolution process, we will attempt to settle those obligations with our creditors. We cannot assure you that we will be able to settle all of these obligations or that they can be settled for the amounts we have estimated for purposes of calculating the likely distribution to shareholders. If we are unable to reach agreement with a creditor relating to an obligation, that creditor may bring a lawsuit against us. Amounts required to settle obligations or defend lawsuits in excess of the estimated amounts will result in distributions to shareholders that are smaller than those that we presently estimate or may eliminate distributions entirely.



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We will continue to incur claims, liabilities and expenses, which will reduce the amount available for distribution to shareholders.

We continue to incur claims, liabilities and expenses (such as salaries and benefits, directors' and officers' insurance, payroll and local taxes, facilities costs, legal, accounting and consulting fees and miscellaneous office expenses) as we wind up. These expenses will reduce the amount ultimately available for distribution to our shareholders.

Each shareholder may be liable to our creditors for an amount up to the amount distributed to such shareholder by us if our reserves for payments to creditors are inadequate.

Even though we are a dissolved corporation, as required by Delaware law, we will continue to exist as a non-operating entity for at least three years after the Dissolution became effective, which was on May 5, 2009, or for such longer period as the Delaware Court of Chancery directs, for the purpose of prosecuting and defending lawsuits, settling and closing our business, disposing of our property, discharging our liabilities and distributing to our shareholders any remaining assets. Under applicable Delaware law, in the event we do not resolve all claims against the Company, each of our shareholders could be held liable for payment to our creditors up to the amount distributed to such shareholder in the liquidation. In such event, a shareholder could be required to return up to all amounts received as distributions pursuant to the Plan of Dissolution and ultimately could receive nothing under the Plan of Dissolution. Moreover, even though a shareholder has paid taxes on amounts previously received, a repayment of all or a portion of such amount will not result in a recalculation of the gain or loss on the liquidation. Instead, a shareholder's repayment will generally be deductible as a capital loss in the year in which the contingent liability is paid, and such capital loss cannot be carried back to offset any liquidation gain recognized earlier. We cannot assure you that any contingency reserve that we plan to establish will be adequate to cover all expenses and liabilities.

Although we intend to seek relief from the SEC of certain of our public company reporting requirements, we cannot assure you that we will be successful in obtaining such relief.

We intend to seek relief from the SEC of certain of our public company reporting requirements. If we are able to obtain such relief from the SEC, we will continue to file current reports on Form 8-K to disclose material events relating to our liquidation, along with any other reports that the SEC may require, though we will no longer file annual and quarterly reports with the SEC. If we are unable to obtain relief, we will continue to file annual and quarterly reports with the SEC which will require us to continue to incur significant accounting, legal and other administrative costs in connection with preparing, reviewing and filing with the SEC.

Shareholders may not be able to recognize a loss for federal income tax purposes until they receive a final distribution from us, which may be three years or more after our Dissolution.

As a result of our liquidation, for federal income tax purposes, shareholders will recognize gain or loss equal to the difference between (1) the sum of the amount of cash and the aggregate fair market value of any property distributed to them (reduced by any liability assumed or subject to which it is taken), and (2) their tax basis in their shares of our common stock. A shareholder's tax basis in our shares will depend upon various factors, including the shareholder's cost and the amount and nature of any distributions received with respect thereto. A shareholder generally may recognize a loss only when he, she or it has received a final distribution from us, which may be as much as three years (or up to ten years if the Company elects to comply with Section 281(b) of the Delaware General Corporation Law) after our Dissolution. However, if we are unable to sell the Mahwah Real Estate prior to the third anniversary of the filing of the certificate of dissolution, we may transfer such property into a liquidating trust, in which event we may make a final distribution after the third anniversary of the filing of the certificate of dissolution.



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We do not currently expect to generate any material revenues or operating income as an independent company.

Following the termination of the Kmart Agreement on December 31, 2008, we have not generated any meaningful revenues. We will endeavor to operate the Company on a scaled back basis. However, we will continue to incur costs to maintain our ongoing administrative operations and continued corporate existence as well as costs to wind-down our business, without corresponding revenues.

We likely will be unable to realize the benefits of our net operating loss carryforwards.

As discussed above under “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Estimates – Deferred Tax Assets,” we currently have significant deferred tax assets resulting from net operating loss carryforwards. Our ability to use these tax benefits in future years depends upon the amount of our otherwise taxable income, among many other factors and conditions. We will lose the benefit of these net operating loss carryforwards upon completion of the plan of liquidation and dissolution and could lose them under many other circumstances.

Also, if we underwent an ownership change, we or a successor might be unable to use all or a significant portion of our net operating loss to offset taxable income. In order to avoid an adverse impact on our ability to utilize our net operating losses for federal income tax purposes, we had earlier amended our certificate of incorporation in February 2006 to include certain restrictions on the transfer of our stock when we emerged from bankruptcy. These restrictions were intended to prevent an ownership change within the meaning of Section 382 of the Internal Revenue Code from occurring. These restrictions expired on December 31, 2008. On February 4, 2009, we amended our Rights Agreement to continue to prevent a possible ownership change but we can provide no assurances that an ownership change will not occur, which may eliminate our ability to utilize our net operating losses.

For accounting purposes, we cannot currently conclude that it is more likely than not that certain deferred tax assets, including our net operating losses, will be realized and, as a result, we have recorded a non-cash valuation allowance equal to our net deferred tax asset.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

As of January 3, 2009, we no longer operated licensed footwear departments.

Our corporate headquarters is located in 129,000 square feet of office space in Mahwah, New Jersey.

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In connection with the wind-down of our business, we are actively pursuing the sale of our Mahwah Real Estate.

In connection with the Company's discontinued operations in 1995, the Company entered into a sub-lease formerly occupied by its Thom McAn stores. The lease expires effective February 1, 2014. The obligation under the sublease is \$3.1 million, although the Company believes that there has been a novation of its obligations under such lease and may in the future bring litigation to have a court finally determine such issue. If we are unable to resolve this matter prior to the conclusion of our statutory dissolution period on May 6, 2012, we may be required to fund a Liquidating Trust with \$1.5 million (the obligation amount from May 2012 through February 2014) until such time as the matter is concluded.

## ITEM 3. LEGAL PROCEEDINGS

The Company is involved in various and routine litigation matters, which arise through the normal course of business. Management believes that the resolution of these matters will not have a material adverse effect on the final liquidation of the Company. While it firmly maintains that all pending claims are meritless, the Company will continue to expend costs as it vigorously defends against these claims.

## ITEM 4. (REMOVED AND RESERVED)

None.

## PART II

## ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED SHAREHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock, FTAR.OB, is quoted on the OTCBB and on the Pink Sheets LLC. Prices shown below reflect the quarterly high and low bid quotations for the common stock as reported on the OTCBB System. The over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission may not necessarily reflect actual transactions and have not been adjusted for dividends. As of March 9, 2010, there were 1,986 shareholders of record (not including the number of persons or entities holding stock in nominee or street name through various banks and brokerage firms).

Information concerning the high and low closing bid quotations of our common stock is set forth below:

	HIGH	LOW
2008		
First Quarter	\$ 4.70	\$ 4.25
Second Quarter	\$ 5.35	\$ 4.10
Third Quarter	\$ 4.09	\$ 3.40
Fourth Quarter	\$ 3.64	\$ 2.80
	HIGH	LOW
2009		
First Quarter	\$ 3.55	\$ 1.81
Second Quarter	\$ 2.94	\$ 0.06

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Third Quarter	\$ 1.10	\$ 0.70
Fourth Quarter	\$ 0.99	\$ 0.41

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From 2007 through January 2, 2010, the Company's Board of Directors declared and paid cash distributions to shareholders in the amount of \$9.75 per common share or \$207.1 million.

On February 24, 2010, the Company announced that its Board of Directors declared a liquidating cash distribution to stockholders in the amount of \$.10 per common share. The Company recorded the distribution effective the date the declaration was made by the Board of Directors. The liquidating cash distribution totaling \$2.2 million was paid on March 12, 2010 to the holders of record at the close of business on March 8, 2010.

On February 24, 2010, the Company announced it anticipates it will not make any further distributions until the monetization of the Mahwah Real Estate.

On February 4, 2009, the Company entered into Amendment No. 2 ("Amendment No. 2") to its Rights Agreement, dated as of March 8, 1999, as amended as of May 31, 2002 (as amended, the "Rights Agreement"), between it and Mellon Investor Services LLC, a New Jersey limited liability company (formerly ChaseMellon Shareholder Services, L.L.C.), as Rights Agent, pursuant to which the terms of the outstanding preferred share purchase rights were amended.

The Rights Agreement was amended by Amendment No. 2 in order to protect shareholder value by attempting to prevent a possible limitation on the Company's ability to use its U.S. net operating loss carryovers. The Company has experienced significant losses in the United States, and under the Internal Revenue Code of 1986, as amended (the "Code"), and rules and regulations promulgated by the Internal Revenue Service, the Company may "carry forward" these losses in certain circumstances to offset any current and future taxable income and thus reduce federal income tax liability, subject to certain requirements and restrictions. To the extent that the net operating losses do not otherwise become limited, the Company believes that it may be able to utilize a portion of such losses and, therefore, these net operating losses could be a substantial asset to the Company. The use of such losses, however, is not assured and under many circumstances may be unlikely. For example, if the Company experiences an "ownership change" as defined in Section 382 of the Code, the Company's ability to use the net operating losses could be severely limited. See "Item 7. Management's Discussion and Analysis of Financial Conditions – Factors to Consider – We likely will be unable to realize the benefits of our net operating loss carryforwards."

We plan to sell or liquidate any remaining assets and pay all of our known and undisputed liabilities and obligations. We intend to establish a contingency reserve to cover any unknown, disputed or contingent liabilities and intend to distribute remaining amounts to shareholders as and when our Board of Directors deems appropriate. We also intend to distribute remaining liquidation proceeds as promptly as practicable following the sale or liquidation of our remaining assets, subject to payment or provisions for the payment of known obligations and, if necessary or appropriate, establishing a contingency reserve. It is possible that unanticipated lawsuits or other claims will be asserted against us, which could result in certain distributions to our shareholders being delayed until the resolution of any such lawsuit or other claim and such period could extend over multiple years.

Because of the uncertainties as to the ultimate settlement amount of our remaining liabilities and expenditures we will face during liquidation, we are not able to predict with precision or certainty specific amounts, or timing, of future liquidation distributions. At the present time, we are not able to predict with certainty whether sales proceeds from our remaining assets will differ materially from amounts recorded for those assets on our statement of net assets at January 2, 2010. To the extent that the value of our assets is less than we anticipate, or the amount of our liabilities or the amounts that we expend during liquidation are greater than we anticipate, our shareholders could receive less than we currently estimate.



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Please refer to “Introductory Note”, above, and Item 7, “Management’s Discussion and Analysis of Financial Conditions and Results of Operations,” below, in connection with the wind-down of the Company’s businesses in connection with the termination of the Kmart Agreement.

EQUITY COMPENSATION PLAN INFORMATION

Plan category	(a)	(b)	(c)
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