

Summer Infant, Inc.  
Form S-8  
January 15, 2009

As filed with the Securities and Exchange Commission on January 15, 2009

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8**

**REGISTRATION STATEMENT**

**UNDER**

**THE SECURITIES ACT OF 1933**

**SUMMER INFANT, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**1275 Park East Drive**  
**Woonsocket, Rhode Island**  
(Address of Principal Executive Offices)

**20-1994619**  
(I.R.S. Employer  
Identification No.)

**02895**  
(Zip Code)

**SUMMER INFANT, INC.**

**2006 PERFORMANCE EQUITY PLAN**

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(Full title of the plan)

**Chief Financial Officer**

**Summer Infant, Inc.  
1275 Park East Drive**

**Woonsocket, Rhode Island 02895**

(Name and address of agent for service)

**(401) 671-6550**

(Telephone number, including area code,  
of agent for service)

**With a copy to:**

**Greenberg Traurig, LLP  
One International Place**

**Boston, MA 02110**

**(617) 310-6000**

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

Smaller reporting company

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**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
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Common Stock, \$0.0001 par value per share	466,800	\$	5.20(2)	\$	2,427,360(2)	\$	95.40
Common Stock, \$0.0001 par value per share	73,200	\$	5.21(2)	\$	381,372(2)	\$	14.99
Common Stock, \$0.0001 par value per share	500,000	\$	5.25(2)	\$	2,625,000(2)	\$	103.16
Common Stock, \$0.0001 par value per share	1,960,000	\$	2.145(3)	\$	4,204,200(3)	\$	165.23
Totals	3,000,000		n/a	\$	9,637,932	\$	378.78

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions. The securities covered by this registration statement consist of (i) 1,040,000 shares reserved for issuance upon the exercise of outstanding options granted under the Summer Infant, Inc. 2006 Performance Equity Plan (the Plan ) and (ii) 1,960,000 shares available for future grants under the Plan. These shares have previously been approved for issuance under the Plan by the Registrant's board of directors and stockholders.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) of the Securities Act of 1933, as amended. The price per share and aggregate offering price are based upon the specified exercise price per share with respect to such securities and have been calculated in accordance with Rule 457(c) under the Securities Act of 1933, as amended.
- (3) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) of the Securities Act of 1933, as amended. The price per share and aggregate offering price are calculated on the basis of the average of the high and low sale prices of the Registrant's Common Stock on the Nasdaq Capital Market on January 12, 2009 (\$2.145), in accordance with Rule 457(c) and Rule 457(h) under the Securities Act of 1933, as amended.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The Registrant is subject to the informational and reporting requirements of Sections 13(a), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission. The following documents, which are on file with the SEC, are incorporated in this Registration Statement by reference:

(a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2007.

(b) The Registrant's Quarterly Reports on Form 10-Q (as amended from time to time) for the quarterly periods ended June 30, 2008 and September 30, 2008.

(c) The Registrant's Current Reports on Form 8-K filed on August 12, 2008, October 23, 2008 and November 6, 2008.

(d) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A filed with the SEC on March 6, 2007, including any amendment or report filed for the purpose of updating such description.

In addition, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of the filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The Delaware General Corporation law provides:

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(a) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(c) To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. 8 Del.C. Sec. 145 Delaware's Corporation law also provides that a corporation's certificate of incorporation may contain:

(7) A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director: (i) for any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under section 174 of this title; or (iv) for any transaction from which the director for any act or omission occurring prior to the date when such provision becomes effective. All references in this paragraph to a director shall also be deemed to refer to a member of the governing body of a corporation which is not authorized to issue capital stock. 8 Del.C. Sec.102(7).

The Registrant's Amended and Restated Certificate of Incorporation provides that a director shall not be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty except for: (a) any breach of the director's duty of loyalty to the

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Registrant or its stockholders, (b) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware General Corporation Act provisions imposing joint and several liability for improper distributions to stockholders or loans to officers or directors, or (d) transactions from which a director derived an improper personal benefit.

The Registrant's By-Laws require the Registrant to indemnify all officers, directors, employees and agents of the Registrant against all liabilities and expenses they may incur on account of all actions threatened or brought against them by reason of their services to the Registrant or to another entity at the request of the Registrant if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Registrant, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or controlling persons, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by a registrant of expenses incurred or paid by a director, officer or controlling person of the registrant) is asserted by such directors, officers or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court or appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

### **Item 7. Exemption from Registration Claimed.**

Not applicable.

### **Item 8. Exhibits.**

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

### **Item 9. Undertakings.**

1. *Item 512(a) of Regulation S-K.* The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

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(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material



change to such information in the Registration Statement;

*provided, however*, that paragraphs (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

2. *Item 512(b) of Regulation S-K.* The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

3. *Item 512(h) of Regulation S-K.* Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Woonsocket, Rhode Island, on January 15, 2009.

SUMMER INFANT, INC.  
Registrant

By:

/s/ Jason Macari  
**Jason Macari**  
Chief Executive Officer

**POWER OF ATTORNEY**

KNOWN ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Jason Macari and Joseph Driscoll his/her true and lawful attorney-in-fact and agent with full power of substitution and re-substitution, for him/her and in his/her name, place and stead, in any and all capacities to sign any or all amendments (including, without limitation, post-effective amendments) to this Registration Statement, any related Registration Statement filed pursuant to Rule 462(b) under the Securities Act of 1933 and any or all pre- or post-effective amendments thereto, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming that said attorney-in-fact and agent, or any substitute or substitutes for him, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates stated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Jason Macari <b>Jason Macari</b>	President, Chief Executive Officer, Chairman of the Board and Director (Principal Executive Officer)	January 15, 2009
/s/ Joseph Driscoll <b>Joseph Driscoll</b>	Chief Financial Officer (Principal Financial and Accounting Officer)	January 15, 2009
/s/ Martin Fogelman <b>Martin Fogelman</b>	Director	January 15, 2009



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<b>Signature</b>		<b>Title</b>	<b>Date</b>
/s/ Steven Gibree <b>Steven Gibree</b>		Director	January 15, 2009
/s/ Myra Hart <b>Myra Hart</b>		Director	January 15, 2009
/s/ Robert Stebenne <b>Robert Stebenne</b>		Director	January 15, 2009
/s/ Richard Wenz <b>Richard Wenz</b>		Director	January 15, 2009

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Document</b>
4.1	Summer Infant, Inc. 2006 Performance Equity Plan incorporated by reference to Appendix A to the Company's Definitive Proxy Statement (File No. 1-33346) filed on April 29, 2008
5	Opinion of Greenberg Traurig, LLP (including the consent of such firm) regarding the legality of the securities being offered
23.1	Consent of Greenberg Traurig, LLP (included as part of Exhibit 5 hereto)
23.2	Consent of McGladrey & Pullen, LLP, an independent registered public accounting firm
23.3	Consent of Goldstein Golub Kessler LLP, an independent registered public accounting firm
24	Power of Attorney (included on signature page)

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