

Bergio International, Inc.
Form S-8 POS
August 26, 2011

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

FORM S-8/A
(Amendment No. 1)

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Bergio International, Inc.
(Exact name of registrant as specified in its
charter)

Delaware
(State or other jurisdiction of incorporation or
organization)

27-1338257
(IRS Employer Identification Number)

12 Daniel Road E.
Fairfield, NJ
(Address of Principal Executive Offices)

07007
(Zip Code)

2011 Incentive Stock and Award Plan
(Full title of the plan)

Berge Abajian, Chief Executive Officer
Bergio International, Inc.
12 Daniel Road E.
Fairfield, NJ 07007, Tel: (973) 227-3230
(Name, address and telephone number, including area
code, of agent for service)

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 definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

| | | | |
|---|--------------------------|---------------------------|-------------------------------------|
| Large accelerated filer | <input type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-Accelerated filer (Do not check if a smaller reporting company) | <input type="checkbox"/> | Smaller reporting company | <input checked="" type="checkbox"/> |

CALCULATION OF REGISTRATION FEE

| Title of securities to be Registered | Amount to be registered (1) | Proposed maximum offering price per share (2) | Proposed maximum aggregate offering Price | Amount of Registration Fee |
|---|--------------------------------------|---|---|----------------------------------|
| Common Stock, par value \$0.001 per share | 5,000,000 | \$.065 | \$ 325,000 | \$ 37.73 |

(1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933 as amended (the "Securities Act"), this Registration Statement also covers such number of additional shares of our common stock that may become issuable under the 2011 Incentive Stock and Award Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction affected without the receipt of consideration that increases the number of outstanding shares of our common stock.

(2) Estimated solely for the purpose of calculating the registration fee. Pursuant to Rules 457(c) and 457(h)(1) of the Securities Act, the proposed maximum offering price per share, the proposed maximum aggregate offering price and the amount of registration fee have been computed based on the last sale price for our common stock as reported on the Over-the-Counter Bulletin Board on August 24, 2011.

Part I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants as specified by Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"). Such document(s) need not be filed with the Commission either as part of this registration statement (this "Registration Statement") or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference in the Registration Statement pursuant to Item 3 of Part II of this Form S-8/A, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information

The documents containing the information specified in this Part I (plan information and registration information and employee plan annual information) will be sent or given to participants as specified by the Commission pursuant to Rule 428(b)(1) of the Securities Act. Such documents are not required to be and are not filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. The Registrant will provide a written statement to participants advising them of the availability without charge, upon written or oral request, of the documents incorporated by reference in Item 3 of Part II hereof and including the statement in the preceding sentence. The written statement to all participants will indicate the availability, without charge, upon written or oral request, of other documents required to be delivered pursuant to Rule 428(b) of the Securities Act, and will include the address and telephone number to which the request is to be directed.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Commission allows us to "incorporate by reference" the information we file with the Commission, which means we can disclose important information to investors by referring investors to those documents. The information incorporated by reference is an important part of this Registration Statement, and information we file later pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, will be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing such documents.

The following documents are incorporated by reference:

- (a) Our annual report on Form 10-K, filed with the Commission on March 31, 2011.
- (b) Our quarterly reports on Form 10-Q, filed with the Commission on (i) May 13, 2011 for the period ending March 31, 2011 and (ii) on August 8, 2011 for the period ending June 31,

2011. Our current reports on Form 8-K, filed with the Commission on (i) May 11, 2011 and (ii) July 11, 2011.

- (c) Not applicable. The class of securities to be offered is not registered under Section 12 of the Exchange Act.

Any statement contained in this Registration Statement, or in a document incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for 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 such 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.

Common Stock

We have 200,000,000 shares of common stock, par value of \$0.001 per share ("Common Stock"), authorized, of which 24,323,860 shares were outstanding as of August 25, 2011.

Voting Rights

Holders of Common Stock have the right to cast one vote for each share of Common Stock held in such holder's name on our books and records, whether represented in person or by proxy, on all matters submitted to a vote of holders of Common Stock, including, without limitation, the election of directors; provided, however, that, except as otherwise required by law, holders of our Common Stock shall not be entitled to vote on any amendment to our Certificate of Incorporation (as amended on October 21, 2009, the "Certificate") (including any certificate of designation filed with respect to any series of our preferred stock) that relates solely to the terms of one or more outstanding series of preferred stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to our Certificate (including any certificate of designation filed with respect to any series of our preferred stock).

There is no right to cumulative voting in the election of directors. Except where a greater requirement is provided by statute or by our Certificate or Bylaws, the presence, in person or by proxy duly authorized, of the holder or holders of a majority of the outstanding shares of the our voting Common Stock shall constitute a quorum for the transaction of business, and the votes of the holder or holders of a majority of the outstanding shares of our voting Common Stock constituting a quorum shall constitute an action by our stockholders.

Notwithstanding any other provisions of the Certificate or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Company required by law or by the Certificate or any certificate of designation filed with respect to a series of preferred stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V (Board of Directors), VI (Indemnification), VIII (Amendment to Certificate of Incorporation), IX (Amendment of Bylaws), X (Shareholder Action) or XI (Shareholder Meetings) of the Certificate.

The Board is expressly empowered to adopt, amend or repeal the Bylaws. The stockholders shall also have power to adopt, amend or repeal the Bylaws; provided, however, that, in addition to any vote of the holders of any of our class or series of stock required by law or by the Certificate, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of our capital stock entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws.

Special meetings of the stockholders shall be called only by the President, the Chief Executive Officer, the Chairman of the Board, or a majority of the Board.

Dividends

There are no restrictions in our Certificate or Bylaws that restrict us from declaring dividends. The Delaware General Corporation Law ("DGCL") provides that a corporation may pay dividends out of our surplus or net profits legally available therefor.

We have not declared any dividends, and we do not plan to declare any dividends in the foreseeable future.

Pre-emptive Rights; Liquidation

No holder of shares of our stock shall have any preemptive or other right, except as such rights are expressly provided by contract, to purchase or subscribe for or receive any shares of any class, or series thereof, of our stock, whether now or hereafter authorized, or any warrants, options, bonds, debentures or other securities convertible into, exchangeable for or carrying any right to purchase any share of any class, or series thereof, of stock; but such additional shares of stock and such warrants, options, bonds, debentures or other securities convertible into, exchangeable for or carrying any right to purchase any shares of any class, or series thereof, of stock may be issued or disposed of by our Board of Directors (the "Board") to such persons, and on such terms and for such lawful consideration as in its discretion it shall deem advisable or as we shall have by contract agreed.

Holders of our Common Stock are not entitled to subscription rights, conversion rights or liquidation rights. There are no redemption or sinking fund provisions applicable to our Common Stock. All outstanding shares of Common Stock are, and the shares of Common Stock offered hereby will be, when issued, fully paid and non-assessable.

Preferred Stock

We have 10,000,000 shares of preferred stock, par value of \$0.001 per share ("Preferred Stock"), authorized, of which none are issued and outstanding as of August 25, 2011. Our shares of Preferred Stock may be issued from time to time in one or more series. Our Board is authorized to provide for the issue of all or any of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board providing for the issuance of such shares and as may be permitted by the DGCL.

Item 5. Interests of Named Experts and Counsel.

Lucosky Brookman LLP has provided legal advice to the Company in connection with the Company's preparation of this Registration Statement and has rendered a legal opinion attached hereto as Exhibit 23.2 as to the validity and due issuance of the shares of the Company's Common Stock to be issued and registered hereby. Lucosky Brookman LLP will be issued shares of the Company's Common Stock as payment for past services rendered and future services to be rendered pursuant to the terms of a written engagement letter by and between the Company and Lucosky Brookman LLP. Lucosky Brookman LLP has not been employed on a contingent basis. Lucosky Brookman LLP shall not receive a substantial interest, direct or indirect, in the Company nor is Lucosky Brookman LLP connected with the Company other than in its role as outside legal counsel for the Company.

Item 6. Indemnification of Directors and Officers.

Paragraph A of Article VI of our Certificate of Incorporation provides for the elimination of liability of directors as permitted by Section 102(b)(7) of the Delaware General Corporation Law (the "DGCL"). Section 102(b)(7) allows a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (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 the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions), or (iv) for any transaction from which the director derived an improper personal benefit.

Paragraph B of Article VI of our Certificate of Incorporation provide for indemnification of directors, officers, employees and agents as permitted by Section 145 of the DGCL. Section 145 provides that a corporation may indemnify any persons, including officers and directors, who are, or are threatened to be made, parties to any threatened, pending or completed legal 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 such person 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 or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the person acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the corporation, and had no reasonable cause to believe his/her conduct was unlawful.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have 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. If a claim for indemnification against such liabilities (other than the payment by us of expenses incurred or paid by a director, officer or controlling person of our Company 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) we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by us is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following is a complete list of exhibits filed as part of this Registration Statement:

Exhibit

Number Description

10.1 2011 Incentive Stock and Reward Plan**

10.2 Form of Non-Qualified Stock Option Agreement for Employees pursuant to the 2011 Incentive Stock and Reward Plan**

10.3 Form of Non-Qualified Stock Option Agreement for Non-employees pursuant to the 2011 Incentive Stock and Reward Plan**

23.1 Consent of Silberstein Ungar, PLLC**

23.2 Legal Opinion of Lucosky Brookman LLP*

* Filed herewith

** Filed with the Commission on Form S-8 on May 10, 2011 (SEC File Number 333-174100)

ITEM 9. UNDERTAKINGS.

(a) 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 of 1933;

(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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement.

(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 (A) Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8 (§239.16b of this chapter), and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) 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.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 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 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 Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for 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 the City of Fairfield, State of New Jersey, on the 26th day of August, 2011.

Bergio International, Inc.

By: /s/ Berge Abajian
Berge Abajian
Chief Executive Officer

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

| Signature | Title | Date |
|-------------------|---|-----------------|
| /s/ Berge Abajian | Chief Executive Officer and Chairman | August 26, 2011 |
| Berge Abajian | (principal executive officer) | |

EXHIBIT INDEX

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