

Edgar Filing: BRITESMILE INC - Form S-8 POS

BRITESMILE INC  
Form S-8 POS  
August 22, 2002

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
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POST-EFFECTIVE AMENDMENT NO. 1 TO FORM S-8  
REGISTRATION STATEMENT  
Under  
THE SECURITIES ACT OF 1933

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

Utah  
-----  
(State or other jurisdiction  
of incorporation or organization)

87-0410364  
-----  
I.R.S. Employer  
Identification No.

490 North Wiget Lane  
Walnut Creek, CA 94598  
(925) 941-6260  
(Address, including zip code, and  
telephone number, including area code,  
of registrant's principal  
executive offices)

Revised 1997 Stock Option and Incentive Plan  
and  
Consultant Warrants  
(Full title of the plan)

Peter P. Hausback  
Chief Financial Officer  
BriteSmile, Inc.  
490 North Wiget Lane  
Walnut Creek, CA 94598  
(925) 941-6260  
(Name, address, including zip code, and  
telephone number, including area code,  
of agent for service)

Copy to:  
Jeffrey M. Jones, Esq.  
Wayne D. Swan, Esq.  
Durham Jones & Pinegar, P.C.  
Broadway Centre, Suite 900  
111 East Broadway  
Salt Lake City, Utah 84111  
(801) 415-3000

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## CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered -----	Number to be registered(1) -----	Proposed maximum offering price per unit -----	Proposed maximum aggregate offering price (3) -----	Am re -----
Common Shares, par value \$.001 per share, subject to stock options granted to employees and directors	85,000 shares	\$ 13.125	\$ 1,115,625	
	2,000 shares	\$ 12.375	\$ 24,750	
	100,000 shares	\$ 12.063	\$ 1,206,300	
	2,000 shares	\$ 12.00	\$ 24,000	
	20,000 shares	\$ 11.25	\$ 225,000	
	4,000 shares	\$ 10.80	\$ 43,200	
	32,000 shares	\$ 10.25	\$ 328,000	
	3,000 shares	\$ 10.00	\$ 30,000	
	50,000 shares	\$ 9.76	\$ 488,000	
	100,000 shares	\$ 9.68	\$ 968,000	
	2,000 shares	\$ 9.65	\$ 19,300	
	50,000 shares	\$ 9.50	\$ 475,000	
	40,000 shares	\$ 9.375	\$ 375,000	
	295,000 shares	\$ 9.25	\$ 2,728,750	
	2,000 shares	\$ 9.02	\$ 18,040	
	2,000 shares	\$ 9.00	\$ 18,000	
	2,000 shares	\$ 8.875	\$ 17,750	
	2,000 shares	\$ 8.62	\$ 17,240	
	22,000 shares	\$ 8.50	\$ 187,000	
	2,000 shares	\$ 8.375	\$ 16,750	
	100,000 shares	\$ 8.23	\$ 823,000	
	10,000 shares	\$ 8.20	\$ 82,000	
	22,000 shares	\$ 8.063	\$ 177,386	
	85,000 shares	\$ 8.00	\$ 680,000	
	5,000 shares	\$ 7.50	\$ 37,500	
	30,000 shares	\$ 7.48	\$ 224,400	
	75,000 shares	\$ 7.188	\$ 539,100	
	30,000 shares	\$ 7.125	\$ 213,750	
	22,000 shares	\$ 6.75	\$ 148,500	
	35,000 shares	\$ 6.25	\$ 218,750	
	115,000 shares	\$ 6.031	\$ 693,565	
	309,000 shares	\$ 5.875	\$ 1,815,375	
	75,000 shares	\$ 5.55	\$ 416,250	
	2,000 shares	\$ 5.063	\$ 10,126	
	20,000 shares	\$ 5.00	\$ 100,000	
	53,192 shares	\$ 4.938	\$ 262,662	
	6,000 shares	\$ 4.813	\$ 28,878	
	4,000 shares	\$ 4.75	\$ 19,000	
	228,000 shares	\$ 4.70	\$ 1,306,600	
	197,000 shares	\$ 4.44	\$ 874,680	
	2,000 shares	\$ 4.42	\$ 8,840	
	141,500 shares	\$ 4.375	\$ 619,062	
	7,500 shares	\$ 4.13	\$ 30,975	

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Title of each class of securities to be registered	Number to be registered(1)	Proposed maximum offering price per unit	Proposed maximum aggregate offering price (3)
	150,000 shares	\$ 3.50	\$ 525,000
Common Shares, par value \$.001 per share, subject to stock options or warrants granted or to be granted to consultants pursuant to written compensation agreements	70,000 shares 24,000 shares 100,000 shares 50,000 shares 150,000 shares 100,000 shares	\$ 11.25 \$ 10.00 \$ 4.688 \$ 1.50 \$ 1.41 (2) \$ 5.55	\$ 787,500 \$ 240,000 \$ 468,800 \$ 75,000 \$ 211,500 \$ 555,000
Common Shares, par value \$.001 per share, subject to stock awards, stock options or warrants to be granted to officers, directors or consultants pursuant to the Company's Revised 1997 Stock Option Plan	458,808 shares	\$ 1.41 (2)	\$ 646,919

Title of each class of securities to be	Number to be	Proposed maximum offering price	Proposed maximum aggregate offering price (3)
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registered	registered(1)	per unit	
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	3,494,000	Total	\$21,165,823

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(1) This Registration Statement Amendment also covers an indeterminate number of Common Shares that may be issuable by reason of stock splits, stock dividends, or similar transactions in accordance with Rule 416 under the Securities Act of 1933, as amended.

(2) Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(c) and (h) under the Securities Act of 1933, based upon the average of the high and low prices of the Common Shares as reported on NASDAQ on August 21, 2002 (within 5 business days prior to the date of filing the registration statement amendment)

(3) Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(h) under the Securities Act of 1933, based upon the price at which the options may be exercised.

(4) \$92.00 per \$1,000,000 of aggregate offering price, pursuant to Section 6(b) of the Securities Act of 1933.

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EXPLANATORY NOTE

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BriteSmile, Inc., a Utah corporation (the "Company") hereby amends its Registration Statement on Form S-8, filed on July 2, 1999 (the "Initial Registration"), by filing this Post-Effective Amendment No. 1 on Form S-8 relating up to 3,000,000 additional shares of Common Stock, par value \$.001 per share, to be issued under the BriteSmile, Inc. Revised 1997 Stock Option and Incentive Plan (the "Plan"), and an additional 494,000 shares of Common Stock, par value \$.001 per shares, to be issued under various separate consulting agreements. This amendment is being filed by the Company due to amendments to the Plan which have been made effective after the effective date of the Initial Registration.

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INCORPORATION BY REFERENCE  
OF REGISTRATION STATEMENT ON FORM S-8 (FILE NO. 333-82283)

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We incorporate by reference into this Amendment No. 1 to Registration Statement on Form S-8 our previously filed registration statement on Form S-8 (File No. 333-82283).

PART II  
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT  
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Item 8. EXHIBITS

Exhibit	Document
4(a)	Revised 1997 Stock Option and Incentive Plan of BriteSmile, Inc. (the "1997 Plan"), as amended as of June 20, 2001 (incorporated by reference to Exhibit 10.10 of the Annual Report on Form 10-K of the Company for the 52 weeks ended December 29, 2001).
4(b)	Form of Option Agreement ("Director Option Agreement") between the Company and certain directors of the Company, pursuant to which directors receive options to purchase Common Stock of the Company (incorporated by reference to Exhibit 10.11 of the Annual Report on Form 10-K of the Company for the 52 weeks ended December 29, 2001).
4(c)	Form of Option Agreement ("Employee Option Agreement") between the Company and certain employees of the Company, pursuant to which employees receive options to purchase Common Stock of the Company (incorporated by reference to Exhibit 10.12 of the Annual Report on Form 10-K of the Company for the 52 weeks ended December 29, 2001).
4(d)	Form of Consultant Warrant between the Company and certain consultants to the Company (filed herewith).
5	Opinion of Durham, Jones & Pinegar, P.C. regarding validity of Common Stock issuable pursuant to the Revised 1997 Stock Option and Incentive Plan (filed herewith).
23(a)	Consent of Ernst & Young LLP (filed herewith).
23(b)	Consent of Durham, Jones & Pinegar, P.C. (included in Exhibit 5).
*	Power of Attorney (included on signature page).

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Pursuant to the requirements of the Securities Act of 1933, the registrant hereby 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 amendment to be signed on its behalf by the undersigned, thereunto duly authorized in the city of Walnut Creek, state of California, on August 22, 2002.

BRITESMILE, INC.

By: /s/ Peter P. Hausback

-----  
Peter P. Hausback  
Chief Financial Officer

POWER OF ATTORNEY  
-----

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Peter P. Hausback, his attorney-in-fact, with the power of substitution, for him and in any and all capacities, to sign any and all amendments to this Registration Statement (including post effective amendments), and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact or his substitute or substitutes may do or cause to be done by virtue hereof.

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

Signature	Title	Date
/s/ Anthony M. Pilaro ----- Anthony M. Pilaro	Director; Chairman of the Board	June 3, 2002
/s/ John L. Reed ----- John L. Reed	CEO and Director	August 22, 2002
/s/ Linda S. Oubre ----- Linda S. Oubre	Director; President, Center Division	June 4, 2002

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/s/	Bradford Peters	Director	June 4, 2002
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	Bradford Peters		
/s/	Peter Schechter	Director	June 4, 2002
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	Peter Schechter		
/s/	Dennis F. Hightower	Director	June 4, 2002
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	Dennis F. Hightower		
/s/	Peter P. Hausback	Chief Financial Officer	August 22, 2002
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	Peter P. Hausback		

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### Exhibit Index

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23(b)

Consent of Durham, Jones & Pinegar, P.C. (included in Exhibit 5).

\*

Power of Attorney (included on signature page).