

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **1994-01-06**  
SEC Accession No. **0000950123-94-000089**

([HTML Version](#) on [secdatabase.com](#))

### FILER

#### **RUSS BERRIE & CO INC**

CIK: **739878** | IRS No.: **221815337** | State of Incorpor.: **NJ** | Fiscal Year End: **1231**  
Type: **S-8** | Act: **33** | File No.: **033-51823** | Film No.: **94500563**  
SIC: **3942** Dolls & stuffed toys

Business Address  
*111 BAUER DR  
OAKLAND NJ 07436  
2013379000*

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

RUSS BERRIE AND COMPANY, INC.  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

<TABLE>		<C>
<S>	NEW JERSEY	22-1815337
	(STATE OR OTHER JURISDICTION	(I.R.S. EMPLOYER
	OF INCORPORATION OR ORGANIZATION)	IDENTIFICATION NO.)
	111 BAUER DRIVE	
	OAKLAND, NEW JERSEY	07436
	(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	(ZIP CODE)
</TABLE>		

RUSS BERRIE AND COMPANY, INC. 1994 STOCK OPTION PLAN FOR OUTSIDE DIRECTORS  
RUSS BERRIE AND COMPANY, INC. 1994 STOCK OPTION AND RESTRICTED STOCK PLAN  
RUSS BERRIE AND COMPANY, INC. 1994 STOCK OPTION PLAN  
RUSS BERRIE AND COMPANY, INC. 1994 EMPLOYEE STOCK PURCHASE PLAN  
(FULL TITLES OF THE PLANS)

RUSSELL BERRIE  
CHAIRMAN OF THE BOARD AND  
CHIEF EXECUTIVE OFFICER  
RUSS BERRIE AND COMPANY, INC.

111 BAUER DRIVE  
OAKLAND, NEW JERSEY 07436  
(NAME AND ADDRESS OF AGENT FOR SERVICE)  
(201) 337-9000  
(TELEPHONE NUMBER, INCLUDING AREA CODE, OF AGENT FOR SERVICE)  
Copy to:

STEPHEN C. KOVAL, ESQ.  
KAYE, SCHOLER, FIERMAN,  
HAYS & HANDLER  
425 PARK AVENUE  
NEW YORK, NEW YORK 10022  
(212) 836-8000

CALCULATION OF REGISTRATION FEE

<TABLE>  
<CAPTION>

TITLE OF SECURITIES TO BE	AMOUNT TO BE	PROPOSED MAXIMUM OFFERING PRICE PER	PROPOSED MAXIMUM AGGREGATE OFFERING	AMOUNT OF REGISTRATION
---------------------------	--------------	--	--	---------------------------

	REGISTERED	REGISTERED	SHARE	PRICE	FEE
<S>		<C>	<C>	<C>	<C>
Common Stock, stated value \$.10 per share.....		3,800,000 shares	\$14.875 (1)	\$56,525,000 (1)	\$19,491.52 (1)

(1) The offering price has been computed pursuant to Rules 457(c) and 457(h) (1) promulgated under the Securities Act of 1933, as amended, upon the basis of the high and low prices of the Common Stock reported on the New York Stock Exchange on January 4, 1994.

PART II  
INFORMATION REQUIRED IN  
THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents, or portions thereof, filed with the Securities and Exchange Commission (the "Commission") are incorporated herein by reference:

1. Russ Berrie and Company, Inc.'s (the "Company") Annual Report on Form 10-K for the year ended December 31, 1992.
2. The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 1993.
3. The Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1993.
4. The Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 1993.
5. The description of the common stock, stated value \$.10 per share, of the Company (the "Common Stock") incorporated into the Registration Statement on Form 8-A No. 1-8681 (as filed on March 8, 1984) by reference from the Registration Statement on Form S-1 No. 2-88797 (as filed on February 2, 1984) under the heading "Description of Common Stock" on pages 21-22, as amended by Amendment No. 2 to Registration Statement on Form S-1 No. 2-88797 (as filed on March 29, 1984) under the heading "Description of Common Stock" on page 22.

All documents subsequently filed by the Company pursuant to Section 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (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, shall be deemed incorporated by reference herein and to be a part hereof from the date of filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 14A:3-5 of the Business Corporation Act of the State of New Jersey (the "Statute") permits a corporation to indemnify its present and former directors, officers, employees and certain agents (each, a "Corporate Agent") against expenses (including attorneys' fees), judgments, fines, penalties and settlements paid or incurred by them in connection with any action, suit or proceeding brought by third parties, if such Corporate Agent 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 proceeding, had no reasonable cause to believe his conduct was unlawful. In a derivative action, i.e., one by or in the right of the corporation, indemnification may be made only for expenses, and only with respect to a matter as to which the defendant Corporate Agent shall have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation. No indemnification shall be made if such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Superior Court of the State of New Jersey or the court in which such action, suit or proceeding was brought determines upon application that the defendant Corporate Agent is fairly and reasonably entitled to indemnity for such expenses as the Superior Court or such other court deems proper. In any case, a corporation must indemnify a Corporate Agent against expenses (including attorneys' fees) to the extent that he has been successful on the merits or otherwise or in defense of any claim or issue. Expenses incurred by a Corporate Agent in connection with a proceeding may be paid by the Company in advance of the final disposition of the proceeding as authorized by the board of directors upon receipt of an undertaking by or on behalf of the Corporate Agent to repay such amounts if it shall ultimately be determined that he is not entitled to be indemnified as provided in the Statute. The Company's certificate

II-1

3

of incorporation provides for indemnification of directors and officers to the full extent permitted by these provisions. The Company maintains an insurance policy insuring its directors and officers against certain liabilities incurred in those capacities, including liabilities which may be incurred under the Securities Act of 1933, as amended (the "Securities Act").

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

The following are filed as exhibits to this registration statement:

<TABLE>  
<CAPTION>  
EXHIBITS

DESCRIPTION

<S>	<C>
4.1	Russ Berrie and Company, Inc. 1994 Stock Option Plan for Outside Directors. Incorporated by reference herein from Exhibit 10.105 to the Company's Annual Report on Form 10-K for the year ended December 31, 1992 ("1992 Form 10-K").
4.2	Russ Berrie and Company, Inc. 1994 Stock Option and Restricted Stock Plan. Incorporated by reference herein from Exhibit 10.106 to the 1992 Form 10-K.
4.3	Russ Berrie and Company, Inc. 1994 Stock Option Plan. Incorporated by reference herein from Exhibit 10.104 to the 1992 Form 10-K.
4.4	Russ Berrie and Company, Inc. 1994 Employee Stock Purchase Plan. Incorporated by reference herein from Exhibit 10.107 to the 1992 Form 10-K.
4.5(a)	Restated Certificate of Incorporation of the Company and amendment thereto. Incorporated by reference herein from Exhibit 3.1 to Registration Statement No. 33-10077 on Form S-1, as filed on December 16, 1986 ("S-1 Registration Statement").
(b)	Certificate of Amendment to the Restated Certificate of Incorporation of the

Company filed April 30, 1987.

4.6(a) Revised By-Laws of the Company. Incorporated by reference herein from Exhibit 3.2 to S-1 Registration Statement.

(b) Amendment to Revised By-Laws of the Company adopted April 30, 1987

(c) Amendment to Revised By-Laws of the Company adopted February 18, 1988

5.1 Opinion of Messrs. Kaye, Scholer, Fierman, Hays & Handler.

23.1 Consent of Independent Accountants.

23.2 Consent of Messrs. Kaye, Scholer, Fierman, Hays & Handler. Contained in such firm's opinion filed as Exhibit 5.1 hereto.

24.1 Power of Attorney of Directors included on the signature page at page II-5.

</TABLE>

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 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.

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 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.

II-2

4

B. 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 Sections 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this 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.

C. 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 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.

II-3

5

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 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 Oakland, State of New Jersey, on January 6, 1994.

RUSS BERRIE AND COMPANY, INC.

By: /s/ A. CURTS COOKE  
 Name: A. Curts Cooke  
 Title: President, Chief  
 Operating Officer and Director

II-4

6

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 indicated. Each person whose signature appears below hereby authorizes each of Russell Berrie, A. Curts Cooke and James A. Madonna, Jr., as attorney-in-fact, to sign and file on his behalf, individually and in each capacity stated below, any pre-effective or post-effective amendment hereto.

<TABLE>  
 <CAPTION>

SIGNATURE	TITLE	DATE
----- <C> /s/ RUSSELL BERRIE ----- Russell Berrie	<S> Chairman of the Board, Chief Executive Officer and Director (principal executive officer)	<C> December 31, 1993
----- /s/ A. CURTS COOKE ----- A. Curts Cooke	President, Chief Operating Officer and Director	December 31, 1993
----- /s/ PAUL CARGOTCH ----- Paul Cargotch	Vice President -- Finance and Chief Financial Officer (principal financial and accounting officer)	December 31, 1993
----- Raphael Benaroya	Director	December , 1993
----- /s/ ARTHUR D. CHARPENTIER ----- Arthur D. Charpentier	Director	December 31, 1993
----- /s/ JIMMY HSU ----- Jimmy Hsu	Director	December 31, 1993
----- Charles Klatskin	Director	December , 1993
----- /s/ JOSEPH KLING ----- Joseph Kling	Director	December 31, 1993

James A. Madonna, Jr.	Director	December , 1993
Sidney Slauson	Director	December , 1993
/s/ BERNARD H. TENENBAUM	Director	December 31, 1993
Bernard H. Tenenbaum		

</TABLE>

II-5

7

EXHIBIT INDEX

EXHIBIT	DESCRIPTION	PAGE
<C>	<S>	<C>
4.5(b)	Certificate of Amendment to Restated Certificate of Incorporation of the Company filed April 30, 1987.	
4.6(b)	Amendment to Revised By-Laws of the Company adopted April 30, 1987.	
4.6(c)	Amendment to Revised By-Laws of the Company adopted February 18, 1988.	
5.1	Opinion of Messrs. Kaye, Scholer, Fierman, Hays & Handler.....	
23.1	Consent of Independent Accountants.....	

</TABLE>

CERTIFICATE OF AMENDMENT  
TO THE  
RESTATED CERTIFICATE OF INCORPORATION  
OF  
RUSS BERRIE AND COMPANY, INC.

&lt;TABLE&gt;

&lt;S&gt;

&lt;C&gt;

SECRETARY OF STATE  
STATE OF NEW JERSEY

FEDERAL EMPLOYER IDENTIFICATION NUMBER  
22-1815337

&lt;/TABLE&gt;

Pursuant to the provisions of Section 14A:9-2(4) and Section 14A:9-4(3). Corporations, General, of the New Jersey Statutes, the undersigned corporation executes the following Certificate of Amendment to its Restated Certificate of Incorporation.

1. The name of the corporation is Russ Berrie and Company, Inc.

2. The following Amendment to the Restated Certificate of Incorporation was approved by the directors, and thereafter duly adopted by the shareholders of the Corporation on the 30th day of April 1987.

RESOLVED, that Article Tenth of the Restated Certificate of Incorporation be amended to read as follows:

TENTH. To the full extent from time to time permitted by law, no director or officer of the Corporation shall be personally liable to the Corporation or its shareholders for damages for breach of any duty owed to the Corporation or its shareholders. Neither the amendment or repeal of this Article, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the protection afforded by this Article to a director or officer of the Corporation with respect to any matter which occurred, or any cause of action, suit or claim which but for this Article would have accrued or arisen, prior to such amendment, repeal or adoption.

3. The number of shares outstanding at the time of the adoption of the Amendment was 14,964,315. The total number of shares entitled to vote thereon was 14,964,315.

4. The number of shares voting for and against such Amendment is as follows:

&lt;TABLE&gt;

&lt;CAPTION&gt;

NUMBER OF SHARES VOTING  
FOR AMENDMENT

NUMBER OF SHARES VOTING  
AGAINST AMENDMENT

&lt;S&gt;

&lt;C&gt;



&lt;/TABLE&gt;

5. The effective date of this Amendment of the Restated Certificate of Incorporation shall be April 30, 1987.

RUSS BERRIE AND COMPANY, INC.

/s/ A. CURTS COOKE  
A. Curts Cooke  
Executive Vice President

## RUSS BERRIE AND COMPANY, INC.

## RESOLUTION 87-11

## AMENDMENT TO BYLAWS: NUMBER OF DIRECTORS

At the regular meeting of the Board of Directors held on April 30, 1987, at the Woodcliff Lake Hilton, Woodcliff Lake, New Jersey, it was unanimously:

RESOLVED, that the Revised Bylaws of Russ Berrie and Company, Inc. be amended as follows:

"Para. 2.1 Number , Qualification, Election and Term of Directors. The business of the corporation shall be managed by the Board, which shall consist of no more than twelve directors who shall be at least 18 years old. The number of directors may be changed by resolution of a majority of the entire Board or by the shareholders, but no decrease may shorten the term of any incumbent director. Directors shall be elected at each annual meeting of shareholders by a plurality of the votes cast and shall hold office until the next annual meeting of shareholders and until the election and qualification of their respective successors, subject to the provisions of Section 2.7. As used in these Bylaws, the term "entire Board" means the total number of directors which the corporation would have if there were no vacancies on the Board."

## RUSS BERRIE AND COMPANY, INC.

## RESOLUTION 88-

## BY-LAWS AMENDMENT

At the regular meeting of the Board of Directors held on February 18, 1988, at the Boca Raton Hotel, 501 East Camino Real, Boca Raton, Florida, it was unanimously:

RESOLVED, that the Revised By-Laws of Russ Berrie and Company, Inc. be amended as follows:

"Para 1.1 Annual Meeting -- The annual meeting of shareholders shall be held on the third Thursday of April in each year, or as soon thereafter as practicable as determined by the Board. The annual meeting shall be held at a place and time determined by the Board."

[KAYE, SCHOLER, FIERMAN, HAYS & HANDLER LETTERHEAD]

January 6, 1994

Russ Berrie and Company, Inc.  
111 Bauer Drive  
Oakland, New Jersey 07436

Ladies and Gentlemen:

We have acted as counsel to Russ Berrie and Company, Inc., a New Jersey corporation (the "Company"), in connection with its Registration Statement on Form S-8 (the "Registration Statement"), filed pursuant to the Securities Act of 1933, as amended (the "Act"), relating to the proposed offering by the Company of up to an aggregate of 3,800,000 shares of the Company's common stock, stated value \$.10 per share (the "Common Stock"), pursuant to its 1994 Stock Option Plan for Outside Directors, 1994 Stock Option and Restricted Stock Plan, 1994 Stock Option Plan and 1994 Employee Stock Purchase Plan (collectively, the "Plans").

In that connection, we have reviewed the Company's Restated Certificate of Incorporation and any amendments thereto, its Revised By-Laws and any amendments thereto, resolutions of its Board of Directors and other such documents and records as we have deemed appropriate.

On the basis of such review and having regard to legal considerations which we deem to be relevant, it is our opinion that the Common Stock to be issued by the Company pursuant to the Plans, upon issuance in accordance with the terms of the Plans, will be duly and validly authorized and issued, fully paid and non-assessable.

We hereby consent to the use of this opinion as an Exhibit to the Registration Statement. In giving this opinion, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission.

Very truly yours,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

## CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in this registration statement on Form S-8 of our report dated February 11, 1993, except for Note 16, as to which the date is March 3, 1993, on our audit of the consolidated financial statements and financial statement schedules of Russ Berrie and Company, Inc. and subsidiaries as of December 31, 1992 and 1991 and for each of the three years in the period ended December 31, 1992, which report is incorporated by reference in the Annual Report on Form 10-K of Russ Berrie and Company, Inc. and subsidiaries for the year ended December 31, 1992.

COOPERS &amp; LYBRAND

Parsippany, New Jersey  
January 5, 1994