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VALUECLICK INC/CA

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 11/02/01

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As filed with the Securities and Exchange Commission on November 2, 2001.

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
Under
The Securities Act of 1933

VALUECLICK, INC.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**77-0495335** (I.R.S. Employer Identification Number)

4360 Park Terrace Drive, Suite 100
Westlake Village, California 91361
(Address of principal executive offices) (Zip Code)

Mediaplex, Inc. Amended and Restated 1999 Stock Plan
(as assumed by ValueClick, Inc.)
(Full title of the Plans)

James R. Zarley
Chief Executive Officer
ValueClick, Inc.
4360 Park Terrace Drive, Suite 100
Westlake Village, California 91361
(Name and address of agent for service)
(818) 575-4500
(Telephone Number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, $0.001 par value, of				

ValueClick, Inc. to be issued pursuant to the Mediaplex, Inc. Amended and Restated 1999 Stock Plan	3,564,279 shares	$12.60	(2)	$44,892,996(2)	$11,223.25

(1) This registration statement shall also cover any additional shares of our common stock which become issuable under the Mediaplex, Inc. Amended and Restated 1999 Stock Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without our receipt of consideration which results in an increase in the number of the outstanding shares of our common stock.

(2) Calculated solely for purposes of this offering under Rule 457(h) of the Securities Act of 1933, as amended (the "Securities Act"), on the basis of the weighted average exercise price per share.

PART II
Information Required in the Registration Statement

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

We hereby incorporate by reference into this registration statement the following documents we previously filed with the Securities and Exchange Commission:

(a) Our Amendment No. 4 to our Form S-4 filed with the Securities and Exchange Commission on September 27, 2001 in which there is set forth the audited financials for our fiscal year ended December 31, 2000;

(b) Our Quarterly Report on Form 10-Q for period ended March 31, 2001 filed with the Securities and Exchange Commission on May 15, 2001;

(c) Our Quarterly Report on Form 10-Q for period ended June 30, 2001 filed with the Securities and Exchange Commission on August 14, 2001;

(d) Our Current Reports on Form 8-K/A filed with the Securities and Exchange Commission on February 5, 2001 and February 22, 2001;

(e) Our Current Report on Form 8-K filed with the Securities and Exchange Commission on July 3, 2001 and October 24, 2001; and

(f) Our Registration Statement on Form 8-A filed with the Securities and Exchange Commission on March 28, 2000, in which there is described the terms, rights and provisions applicable to our common stock.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), after the date of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which de-registers all securities then remaining unsold shall be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of 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 purposes of this registration statement to the extent that a statement contained herein or in any subsequently filed document which also 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***

Not applicable.

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

Not applicable.

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

Section 145 of the Delaware General Corporation Law permits indemnification of a corporation's officers and directors under certain conditions and subject to certain limitations. Section 145 of the Delaware General Corporation Law also provides that a corporation has the power to purchase and maintain insurance on behalf of its officers and directors against any liability asserted against such person and incurred by him or her in such capacity, or arising out of his or her status as such, whether

or not the corporation would have the power to indemnify him or her against such liability under the provisions of Section 145 of the Delaware General Corporation Law.

Article VII, Section I of our Bylaws provides that we will indemnify our directors and executive officers to the fullest extent permitted by the Delaware General Corporation Law. The rights to indemnity thereunder continue as to a person who has ceased to be a director, officer, employee or agent and inure to the benefit of the heirs, executors and administrators of the person. In addition, expenses incurred by a director or executive officer in defending any civil, criminal, administrative or investigative action, suit or proceeding by reason of the fact that he or she is or was our director or officer (or was serving at our request as a director or officer of another corporation) shall be paid by us in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by us as authorized by the relevant section of the Delaware General Corporation Law.

As permitted by Section 102(b)(7) of the Delaware General Corporation Law, Article VIII of our Amended and Restated Certificate of Incorporation provides that our directors shall not be personally liable for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to us or our stockholders, (b) for acts or omissions not in good faith or acts or omissions that involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware General Corporation Law or (d) for any transaction from which the director derived any improper personal benefit.

We have entered into indemnification agreements with each of our directors and executive officers. Generally, the indemnification agreements attempt to provide the maximum protection permitted by Delaware law as it may be amended from time to time. Moreover, the indemnification agreements provide for certain additional indemnification. Under such additional indemnification provisions, however, an individual will not receive indemnification for judgments, settlements or expenses if he or she is found liable to us (except to the extent the court determines he or she is fairly and reasonably entitled to indemnity for expenses). The indemnification agreements provide for us to advance to the individual any and all reasonable expenses (including legal fees and expenses) incurred in investigating or defending any such action, suit or proceeding. In order to receive an advance of expenses, the individual must submit to us a statement or statements that reasonably evidences such expenses. Also, the individual must repay such advances upon a final judicial decision that he or she is not entitled to indemnification.

We have purchased directors' and officers' liability insurance.

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

Not applicable.

Item 8. ***Exhibits***

Exhibit Number	Exhibit

4	Instruments Defining the Rights of Stockholders. Reference is made to our Registration Statement on Form 8-A, together with any exhibits thereto, which are incorporated herein by reference pursuant to Item 3(f) to this registration statement.
5	Opinion and consent of Brobeck, Phleger & Harrison LLP.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Public Accountants.
23.2	Consent of Brobeck, Phleger & Harrison LLP is contained in Exhibit 5.
24	Power of Attorney. Reference is made to page II-4 of this registration statement.

Item 9. ***Undertakings***

A. We hereby undertake: (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, (ii) to reflect in the prospectus any facts or events arising after the effective date of this 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 this registration statement and (iii) to include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement; *provided, however* , that clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those clauses is contained in periodic reports filed by us pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference into this 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; and (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 Mediaplex, Inc. Amended and Restated 1999 Stock Plan.

B. We hereby undertake that, for purposes of determining any liability under the Securities Act, each filing of our annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference into 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 our directors, officers or controlling persons pursuant to the indemnification provisions summarized in Item 6 or otherwise, we have been advised that, in the opinion of the Securities and Exchange 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 us of expenses incurred or paid by one of our directors, officers, or controlling persons 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 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, ValueClick, Inc. 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 Westlake Village, State of California on this 1st day of November, 2001.

ValueClick, Inc.

By: /s/ JAMES R. ZARLEY

James R. Zarley
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned officers and directors of ValueClick, Inc. do hereby constitute and appoint James R. Zarley and Kurt A. Johnson, and each of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and any one of them, determine may be necessary or advisable or required to enable ValueClick, Inc. to comply with the Securities Act, and any rules, regulations or requirements of the Securities and Exchange Commission in connection with this registration statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this registration statement, to any and all amendments, both pre-effective and post-effective, and supplements to this registration statement, and to any and all instruments or documents filed as part of or in conjunction with this registration statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms that all said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF , each of the undersigned has executed this Power of Attorney as of the date indicated.

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

Name	Title	Date
/s/ JAMES R. ZARLEY James R. Zarley	Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)	November 1, 2001
/s/ KURT A. JOHNSON Kurt A. Johnson	Chief Financial Officer (Principal Financial and Accounting Officer)	November 1, 2001

/s/ DAVID S. BUZBY David S. Buzby	Director	November 1, 2001
/s/ IRA CARLIN Ira Carlin	Director	November 1, 2001
Jeffrey E. Epstein	Director	
Martin Hart	Director	
Robert D. Leppo	Director	
/s/ GREGORY R. RAIFMAN Gregory R. Raifman	Director	November 1, 2001
/s/ THOMAS VADNAIS Thomas Vadnais	Director	November 1, 2001
Steven J. Umberger	Director	

EXHIBIT INDEX

Exhibit Number	Exhibit
4	Instruments Defining the Rights of Stockholders. Reference is made to our Registration Statement on Form 8-A, together with any exhibits thereto, which are incorporated herein by reference pursuant to Item 3(f) to this registration statement.
5	Opinion and consent of Brobeck, Phleger & Harrison LLP.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Public Accountants.
23.2	Consent of Brobeck, Phleger & Harrison LLP is contained in Exhibit 5.
24	Power of Attorney. Reference is made to page II-4 of this registration statement.

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EXHIBIT 5

Opinion and Consent of Brobeck, Phleger & Harrison LLP

October 31, 2001

ValueClick, Inc.
4360 Park Terrace Drive, Suite 100
Westlake Village, California 91361

Re: ValueClick, Inc.—Registration Statement for Offering of an Aggregate of 3,564,279 Shares of Common Stock

Dear Ladies and Gentlemen:

We have acted as counsel to ValueClick, Inc., a Delaware corporation (the "Company"), in connection with the registration on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), of 3,564,279 shares of the Company's common stock (the "Shares") for issuance under the Mediaplex, Inc. Amended and Restated 1999 Stock Plan, as assumed by the Company (the "Option Plan").

This opinion is being furnished in accordance with the requirements of Item 8 of Form S-8 and Item 601(b)(5)(i) of Regulation S-K.

We have reviewed the Company's charter documents and the corporate proceedings taken by the Company in connection with the assumption of the Option Plan and the outstanding options granted pursuant to the Option Plan. Based on such review, we are of the opinion that, if, as and when the Shares have been issued and sold (and the consideration therefor received) pursuant to (a) the provisions of stock option agreements duly authorized under the Option Plan and in accordance with the Registration Statement and (b) duly authorized direct stock issuances under the Option Plan effected in accordance with the Registration Statement, such Shares will be duly authorized, legally issued, fully paid and nonassessable.

We consent to the filing of this opinion letter as Exhibit 5 to the Registration Statement. In giving this consent, we do not hereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act, the rules and regulations of the Securities and Exchange Commission promulgated thereunder, or Item 509 of Regulation S-K.

This opinion letter is rendered as of the date first written above and we disclaim any obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and which may alter, affect or modify the opinion expressed herein. Our opinion is expressly limited to the matters set forth above and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company, the Option Plan or the Shares.

Very truly yours,

/s/ Brobeck, Phleger & Harrison LLP

BROBECK, PHLEGER & HARRISON LLP

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EXHIBIT 5

Opinion and Consent of Brobeck, Phleger & Harrison LLP

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EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated July 12, 2001 relating to the consolidated financial statements and financial statement schedule of ValueClick, Inc. as of December 31, 1999 and 2000 and for the period from May 1, 1998 through December 31, 1998 and for each of the two years in the period ended December 31, 2000, which appear in the ValueClick, Inc. Amendment No. 4 to the Registration Statement on Form S-4 dated September 27, 2001.

/s/ PricewaterhouseCoopers LLP

Century City, California
October 31, 2001

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EXHIBIT 23.1

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