

BIRKS & MAYORS INC.  
Form S-8  
April 26, 2006

As filed with the Securities and Exchange Commission on April 26, 2006

Registration No. \_\_\_\_\_

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

Washington, D.C. 20549

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**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER THE*  
*SECURITIES ACT OF 1933*

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**Birks & Mayors Inc.**

(Exact Name of Registrant as Specified in Its Charter)

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**Canada**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**Not Applicable**  
(I.R.S. Employer  
Identification No.)

1240 Square Phillips

Montreal, Canada H3B 3H4

(Address, Including Zip Code, of Registrant's Principal Executive Offices)

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**Mayors Jewelers, Inc. Employee Stock Purchase Plan**

**Mayors Jewelers, Inc. (f/k/a Jan Bell Marketing, Inc.) 1991 Amended Stock Option Plan**

**Mayors Jewelers, Inc. 2004 Long-Term Incentive Plan**

(Full Title of Plan)

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**Thomas A. Andruskevich**

**President and Chief Executive Officer**

**Birks & Mayors Inc.**

**1240 Square Phillips, Montreal, Canada, H3B 3H4, (514) 397-2511**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

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**Copy to:**

**Rodney H. Bell, Esq.**

**Holland & Knight LLP**

**701 Brickell Avenue, Suite 3000**

**Miami, Florida 33131**

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## CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered  | Amount to be       | Proposed Maximum             | Proposed Maximum             | Amount of            |
|-----------------------------------------------------|--------------------|------------------------------|------------------------------|----------------------|
|                                                     | Registered (1) (2) | Offering Price Per Share (3) | Aggregate Offering Price (3) | Registration Fee (3) |
| Class A Voting Shares, without nominal or par value | 490,790            | \$6.15                       | \$3,018,359                  | \$322.96             |

- (1) 375,433 Class A Voting Shares are registered underlying option awards granted under the Mayor s Jewelers, Inc. (f/k/a Jan Bell Marketing, Inc.) 1991 Amended Stock Option Plan, 113,034 Class A Voting Shares are registered underlying stock appreciation rights exercisable under the Mayor s Jewelers, Inc. 2004 Long-Term Incentive Plan and 2,323 Class A Voting Shares are registered which were issued or may be issued under the Mayor s Jewelers, Inc. Employee Stock Purchase Plan calculated based on the formula set forth in that certain Agreement and Plan of Merger and Reorganization among Henry Birks & Sons Inc. (now Birks & Mayors Inc.), a Canadian corporation (the Company ), Mayor s Jewelers, Inc., a Delaware corporation ( Mayor s ), and Birks Merger Corporation, a Delaware corporation and wholly-owned subsidiary of the Company, dated April 18, 2005, as amended on July 27, 2005 (the Merger Agreement ).
- (2) This Registration Statement shall also cover any additional Class A Voting Shares of the Company, which become issuable under the Mayor s Jewelers, Inc. (f/k/a Jan Bell Marketing, Inc.) 1991 Amended Stock Option Plan, the Mayor s Jewelers, Inc. 2004 Long-Term Incentive Plan and the Mayor s Jewelers, Inc. Employee Stock Purchase Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of outstanding Class A Voting Shares of the Company. In addition, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act ), this registration statement covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan(s) described herein.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) of the Securities Act on the basis of the average of the high and low asking prices reported for the Company on the American Stock Exchange on April 24, 2006.

**EXPLANATORY NOTE**

The purpose of this Form S-8 registration statement is to register 490,790 Class A Voting Shares of the Company (a) underlying option awards granted pursuant to the Mayor's Jewelers, Inc. (f/k/a Jan Bell Marketing, Inc.) 1991 Amended Stock Option Plan, (b) underlying stock appreciation rights exercisable pursuant to the Mayor's Jewelers, Inc. 2004 Long-Term Incentive Plan and (c) which were issued or may be issued pursuant to the Mayor's Jewelers, Inc. Employee Stock Purchase Plan (collectively, the Plans).

On November 14, 2005, a merger was consummated (the Effective Time) among the Company, Birks Merger Corporation, and Mayor's pursuant to the Merger Agreement. At the Effective Time, among other things, the Company assumed the options issued under the Plans, which the Company is registering hereunder. The assumed options, whether or not exercisable and whether or not vested, remain subject to the same terms and conditions set forth in the Plans and related agreements except that the options set forth in the Plans are exercisable based on the formula set forth in the Merger Agreement.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The documents containing the information specified in Part I of Form S-8 will be sent or given to participants in the Plans as specified by Rule 428(b)(1) of the Securities Act. Such documents are not required to be filed with the Securities and Exchange Commission (SEC) either as part of this registration statement or as prospectuses or prospectus supplements, pursuant to Rule 424 of the Securities Act. Those documents and the documents incorporated by reference in this registration statement, pursuant to Item 3 of Part II of this registration statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

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

The following documents filed with the SEC by the Company are incorporated herein by reference as of their respective dates of filing and shall be deemed to be a part hereof:

The Company's latest prospectus filed, on October 14, 2005, pursuant to Rule 424(b) under the Exchange Act of 1934 (the Exchange Act), which contains audited financial statements for the Company's latest fiscal year ended March 26, 2005;

All other reports filed by the Company pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the prospectus referred to in the immediately preceding paragraph;

The description of the Class A Voting Shares of the Company contained in Part I on the Form F-4 registration statement, under the heading Description of Birks Capital Stock, originally filed with the SEC on July 27, 2005 and as subsequently amended on September 8, 2005, September 21, 2005 and September 29, 2005; and

All documents filed by the Company pursuant to Section 13(a), 13(c), 14, and 15(d) of the Exchange Act subsequent to the date of this registration statement and 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 to be incorporated by reference in the registration statement and to be part thereof from the date of filing of such document.

For purposes of this registration statement, any statement in a document incorporated or deemed incorporated by reference is modified or superseded to the extent that a statement in this registration statement, or in any subsequently filed document which is or is deemed to be incorporated by reference, modifies or supersedes it. Any statement so modified or superseded is not, 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**

Under the *Canada Business Corporations Act*, R.S.C., 1985, chapter C-44, a corporation may indemnify a present or former director or officer of such corporation or another individual who acts or acted at the corporation's request as a director or officer, or an individual acting in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the corporation or other entity. The corporation may advance moneys to the director, officer or other individual for the costs, charges and expenses of any such proceeding. The corporation may not indemnify an individual unless the individual acted honestly and in good faith with a view to the best interests of the corporation, or, as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the corporation's request and, in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful. The individual shall repay any moneys advanced to him or her if he or she does not fulfill the above conditions. Such indemnification and advances may be made in connection with a derivative action only with court approval. Such individual is entitled to indemnification or advances from the corporation as a matter of right in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which he is subject by reason of being or having been a director or officer of the corporation or another entity as described above if the individual was not judged by the court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done and if the individual fulfils the conditions set forth above.

The By-laws of the Company (referred to as the Corporation in the By-laws) state as follows:

34. **Liability.** No director or officer shall be liable for the acts, receipts, neglects or defaults of any other director, officer or employee of the Corporation, or for joining any receipt or other act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortuous acts of any person with whom any of the moneys, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune which shall happen in the execution of the duties of his office or in relation thereto, provided that nothing herein shall relieve any director or officer from the duty to act in accordance with the *Canada Business Corporations Act*, R.S.C., 1985, chapter C-44, any statute that may be substituted therefore and any regulations thereunder, as from time to time amended (the Act) or from liability for any breach thereof.
35. **Indemnification.** Subject to the Act, the Corporation shall indemnify a director or officer of the Corporation, a former director or officer of the Corporation, or another individual who acts or acted at the Corporation's request as a director or officer, or an individual acting in a similar capacity, of another entity against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the Corporation or other entity if:
- (a) he acted honestly and in good faith with a view to the best interests of the Corporation, or, as the case may be, to the best interests of the other entity for which the individual acted as a director or officer or in a similar capacity at the Corporation's request; and
  - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful.

The Corporation shall advance the necessary moneys to a director, officer or other individual for the costs, charges and expenses of a proceeding referred to previously. The individual shall repay the moneys if the individual does not fulfill the previously named conditions.

The Corporation shall also indemnify such person in such other circumstances as the Act permits or requires. Nothing in this by-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this by-law.

36. **Insurance.** Subject to the Act, the Corporation may purchase and maintain insurance for the benefit of an individual referred to in section 35 against any liability incurred by the individual in his capacity as a director or officer of the Corporation or in the individual's capacity as a director or officer, or similar capacity, of another entity (as such term is defined in the Act), if the individual acts or acted in that capacity at the Corporation's request.

The Company's Indemnity Agreement with each director and officer states as follows:

1. Indemnification. The Company will indemnify and save harmless each director and officer as follows:

1.1 except in respect to actions by or on behalf of the Company to procure a judgment in its favor, the Company will indemnify the individual against any and all costs, charges, expenses, fines, and penalties, including any amounts paid to settle an action or investigative proceeding or satisfy a judgment or investigative determination, which are reasonably incurred by the individual in respect of any civil, criminal, or administrative action or proceeding to which the individual is made a party by reason of being or having been a director or officer of the Company provided that:

(I) The individual acted honestly and in good faith with a view to the best interest of the Company or, as the case may be, to the best interests of the other entity for which (he/she) acted as a director or officer or in a similar capacity at the Company's request; and

(II) in the case of criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that her/his conduct was lawful.

1.2 in respect to actions by or on behalf of the Company to procure a judgment in its favor to which the individual is made a party by reason of being or having been a director or officer of the Company, the Company will (to the extent required by law) apply to a court of competent jurisdiction for an order approving the indemnity of the individual and subject to such approval when required by law, the Company will indemnify the individual respecting any and all costs, charges and expenses reasonably incurred by the individual in connection with such action provided the individual acted in accordance with paragraphs 1.1(I) and 1.1(II) hereof.

1.3 The Company will indemnify the individual against all costs, charges and expenses reasonably incurred by the individual in connection with the defense of any civil, criminal, or administrative action or proceeding to which the individual is made a party by reason of being or having been a director or officer of the Company provided that:

The individual acted in accordance with paragraphs 1.1(I) and 1.1(II) hereof with respect to the behavior which is the subject of the action or proceeding and with respect to the conduct of its defense or her/his participation in the proceeding.

2. Expenses. The Company will advance or pay to the individual from time to time, but no more frequently than monthly, the amount required by the individual, and claimed by the individual in order to pay the cost of participation in any action or investigation or like proceeding, including derivative actions. Such amounts shall include sums sufficient to cover all legal fees and expenses incurred or to be incurred by the individual, on a solicitor to client basis.

When advances are made to cover cost or expenses such shall be reasonable and shall not exceed the foreseeable costs, fees/expenses to cover amounts due during the following month. The individual shall repay the moneys if (he/she) did not act in accordance with paragraphs 1.1(I) and 1.1(II) hereof.

3. Liability Insurance.

3.1 The Company covenants and agrees that, so long as the individual shall continue to serve as a director or officer of the Company and thereafter so long as the individual shall be subject to any possible proceeding by reason of the fact that the individual was a director or officer of the Company, the Company, subject to Section 3.3 of this Agreement, shall promptly obtain and maintain in full force and effect directors' and officers' liability insurance ( D&O Insurance ) in reasonable amounts from established and reputable insurers.



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- 3.2 In all policies of D&O Insurance, the individual shall be named as an insured in such a manner as to provide the individual the same rights and benefits as are accorded to the most favorably insured of the Company's directors and officers, if the individual is a director or officer.
  
- 3.3 Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain D&O Insurance if the Company determines in good faith that such insurance is not reasonably available, the premium costs for such insurance are disproportionate to the amount of coverage provided or the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit. If the Company determines to discontinue D&O Insurance coverage, the Company shall give prompt written notice to the individual.

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**Item 7. Exemption from Registration Claimed**

Not applicable.

**Item 8. Exhibits**

The following exhibits are filed as part of this registration statement:

| <u>Exhibit No.</u> | <u>Description</u>                                                              |
|--------------------|---------------------------------------------------------------------------------|
| 4.1                | Mayor s Jewelers, Inc., (f/k/a Jan Bell Marketing, Inc.) 1991 Stock Option Plan |
| 4.2                | Mayor s Jewelers, Inc., 2004 Long-Term Incentive Plan                           |
| 4.3                | Mayor s Jewelers, Inc., Employee Stock Purchase Plan                            |
| 5.1                | Opinion of Stikeman Elliott LLP                                                 |
| 23.1               | Consent of Stikeman Elliott LLP (contained in Exhibit 5.1)                      |
| 23.2               | Consent of KPMG                                                                 |

**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 the 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 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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent 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 disclosed previously 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

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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, each filing of the registrant's annual report pursuant to section 13(a) or section 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 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.
- 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 SEC 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 for filing on a Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Montreal, Quebec, on April 26, 2006.

BIRKS & MAYORS INC.

/s/ Thomas A. Andruskevich

Thomas A. Andruskevich  
President and Chief Executive Officer

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.

| <u>Signature</u>                                                      | <u>Capacity</u>                                   | <u>Date</u>    |
|-----------------------------------------------------------------------|---------------------------------------------------|----------------|
| <u>/s/ THOMAS ANDRUSKEVICH</u><br>Thomas Andruskevich                 | President, Chief Executive Officer and Director   | April 26, 2006 |
| <u>/s/ MICHAEL RABINOVITCH</u><br>Michael Rabinovitch                 | Senior Vice President and Chief Financial Officer | April 26, 2006 |
| <u>/s/ LORENZO ROSSI DI MONTELERA</u><br>Lorenzo Rossi Di Montelera** | Director                                          | April 26, 2006 |
| <u>/s/ FILIPPO RECAMI</u><br>Filippo Recami*                          | Director                                          | April 26, 2006 |
| <u>/s/ EMILY BERLIN</u><br>Emily Berlin                               | Director                                          | April 26, 2006 |
| <u>/s/ ELIZABETH EVEILLARD</u><br>Elizabeth Eveillard                 | Director                                          | April 26, 2006 |
| <u>/s/ MASSIMO FERRAGAMO</u><br>Massimo Ferragamo                     | Director                                          | April 26, 2006 |
| <u>/s/ ANN SPECTOR LIEFF</u><br>Ann Spector Lieff                     | Director                                          | April 26, 2006 |

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|                              |          |                |
|------------------------------|----------|----------------|
| <u>/s/ MARGHERITA OBERTI</u> | Director | April 26, 2006 |
| Margherita Oberti*           |          |                |
| <u>/s/ PETER R. O BRIEN</u>  | Director | April 26, 2006 |
| Peter R. O Brien*            |          |                |
| <u>/s/ SHIRLEY DAWE</u>      | Director | April 26, 2006 |
| Shirley Dawe*                |          |                |
| <u>/s/ ALAIN BENEDETTI</u>   | Director | April 26, 2006 |
| Alain Benedetti*             |          |                |

**SIGNATURE OF AUTHORIZED REPRESENTATIVES**

Pursuant to the Securities Act, the undersigned, the duly authorized representative in the United States of the Registrant and other foreign persons\* has signed this Registration Statement on April 26, 2006.

/s/ THOMAS A. ANDRUSKEVICH  
Thomas A. Andruskevich

Pursuant to the Securities Act, the undersigned, the duly authorized representative in the United States of a foreign person\*\* has signed this Registration Statement on April 26, 2006.

/s/ CARLO CODA-NUNZIANTE  
Carlo Coda-Nunziante

**EXHIBIT INDEX**

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