

OVERSTOCK.COM, INC  
Form S-8  
July 10, 2009

As filed with the Securities and Exchange Commission on July 10, 2009

Registration No. 333-

## 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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## OVERSTOCK.COM, INC.

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**6350 South 3000 East**  
**Salt Lake City, Utah 84121**  
**(801) 947-3100**  
(Address, including zip code, of Registrant's  
principal executive offices)

**87-0634302**  
(I.R.S. Employer  
Identification Number)

**Overstock.com 401(k) Plan**

(Full title of the plan)

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**Jonathan E. Johnson III**  
**President**  
**6350 South 3000 East**  
**Salt Lake City, Utah 84121**  
**(801) 947-3100**

(Name, address, and telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
 Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Offering Price Per Share(2)</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common Stock, \$0.0001 par value to be issued under the Overstock.com 401(k) Plan	150,000 shares	\$11.91	\$1,786,500	\$100

In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan(s) described herein.

(1) This Registration Statement shall also cover any additional shares of Common Stock which become issuable under the Overstock.com 401(k) Plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration that results in an increase in the number of the Registrant's outstanding shares of Common Stock.

(2) The proposed maximum offering price per share has been estimated in accordance with Rule 457(c) under the Securities Act of 1933, as amended (the Securities Act) as to the 150,000 shares of Common Stock authorized for issuance pursuant to the Overstock.com 401(k) Plan, solely for the purpose of calculating the registration fee. The computation is based upon the average of the high and low price of the Common Stock as reported on the Nasdaq Global Market on July 6, 2009.

**PART I: INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

Item 1. Plan Information.\*

Item 2. Registrant Information and Employee Plan Information.\*

\* The documents containing the information specified in Part I will be sent or given to participants in the Overstock.com 401(k) Plan (the Plan ) as specified by Rule 428(b). In accordance with the instructions to Part I of Form S-8, these documents are not being filed and will not be filed with the Securities and Exchange Commission (the Commission ), either as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424.

**PART II: INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

Explanatory Note

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional 150,000 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 401(k) Plan, as amended (the "Plan"). In accordance with General Instruction E to Form S-8, the contents of the Registrant's Form S-8 Registration Statement filed with the Securities and Exchange Commission on March 24, 2005 (Commission File No. 333-123540) relating to the Plan are incorporated herein by reference.

**Item 8. Exhibits.**

4.1 Overstock.com 401(k) Plan.

4.2 Adoption Agreement

5.1 Internal Revenue Service determination letter

5.2 Internal Revenue Service determination letter regarding Amendment

5.3 Opinion of Bracewell & Giuliani LLP

23.1 Consent of PricewaterhouseCoopers LLP

23.2 Consent of Bracewell & Giuliani LLP (included in the opinion filed as Exhibit 5.3 hereto).

24.1 Power of Attorney (see signature page).



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 Salt Lake City, State of Utah, on this 10th day of July 2009.

**OVERSTOCK.COM, INC**

By: /s/ Stephen J. Chesnut  
 Stephen J. Chesnut  
 Senior Vice President, Finance

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Patrick M. Byrne, Stephen J. Chesnut and Jonathan E. Johnson III, and each of them, as his or her attorney-in-fact, with full power of substitution in each, for him or her in any and all capacities, to sign any amendments to this Registration Statement on Form S-8 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 each of said attorneys-in-fact, or his/her substitute or substitutes, may do or cause to be done by virtue hereof.

**Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.**

Signature	Title	Date
/s/ Patrick M. Byrne Patrick M. Byrne	Chief Executive Officer (Principal Executive Officer), Chairman of the Board	July 10, 2009
/s/ Stephen J. Chesnut Stephen J. Chesnut	Senior Vice President, Finance (Principal Financial Officer and Principal Accounting Officer)	July 10, 2009
/s/ Allison H. Abraham Allison H. Abraham	Director	July 10, 2009
/s/ Barclay F. Corbus Barclay F. Corbus	Director	July 10, 2009
/s/ Joseph J. Tabacco, Jr. Joseph J. Tabacco, Jr.	Director	July 10, 2009

Pursuant to the requirements of the Securities Act of 1933, the persons who administer the Plan have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Salt Lake City, State of Utah, on July 10, 2009.

**OVERSTOCK.COM 401(k) PLAN**

By: */s/ Stephen J. Chesnut*  
Stephen J. Chesnut  
Plan Administrator

**OVERSTOCK.COM, INC.**

**REGISTRATION STATEMENT ON FORM S-8**

**INDEX TO EXHIBITS**

<b>Exhibit Number</b>	<b>Documents</b>
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