
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

OVERSTOCK.COM, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

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

6322 South 3000 East, Suite 100
Salt Lake City, Utah 84121
(801) 947-3100

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Jonathan E. Johnson III
Vice President, Corporate Affairs and Legal
Overstock.com, Inc.
6322 South 3000 East, Suite 100
Salt Lake City, Utah 84121
(801) 947-3100

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

Copies to:
Thomas W. Adkins
Bracewell & Patterson, L.L.P.
111 Congress, Suite 2300
Austin, Texas 78701
(512) 472-7800

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. 333-113104

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit (1)	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$0.0001 par value	180,000 shares	\$57.53	\$10,355,400	\$1,313

(1) Based on the offering price.

**INCORPORATION BY REFERENCE
TO REGISTRATION STATEMENT ON FORM S-3 (REGISTRATION NO. 333-113104)**

Overstock.com, Inc. hereby incorporates by reference into this Registration Statement on Form S-3 in its entirety the Registration Statement on Form S-3 (Registration No. 333-113104), as amended (including the exhibits thereto), declared effective at 3:00 p.m., EST, on March 8, 2004 by the Securities and Exchange Commission.

PART II
INFORMATION NOT REQUIRED IN THE PROSPECTUS

ITEM 16. EXHIBITS

The following exhibits are filed herewith:

Exhibit Number	Exhibit Title
5.1	Opinion of Bracewell & Patterson, L.L.P.
23.1	Consent of Pricewaterhouse Coopers LLP.
23.2	Consent of Bracewell & Patterson, L.L.P. (included in Exhibit 5.1).

Rule 111(b) Certification

In accordance with Rule 111(b) under the Securities Act of 1933, the undersigned registrant hereby certifies that:

- (i) the registrant or its agent has instructed the registrant's bank or a wire transfer service to transmit to the Commission the applicable filing fee by a wire transfer of such amount from the account of the registrant or its agent to the Commission's account at Mellon Bank as soon as practicable but no later than the close of the next business day following the filing of the Rule 462(b) registration statement to which such filing fee relates;
- (ii) the registrant or its agent will not revoke such instructions; and
- (iii) the registrant or its agent has sufficient funds in such account to cover the amount of such filing fee.

The registrant further undertakes that, if such instructions have been sent after the close of business of such bank or wire transfer service, it will confirm receipt of such instructions by such bank or wire transfer service during regular business hours on the following business day.

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-3 and has duly caused this Registration Statement on Form S-3 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Salt Lake City, State of Utah, on November 17, 2004.

OVERSTOCK.COM, INC.

By: /s/ PATRICK M. BYRNE

Patrick M. Byrne
President

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-3 has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<hr/> <p>/s/ PATRICK M. BYRNE</p> <hr/> <p>Patrick M. Byrne</p>	President and Director (Principal Executive Officer)	November 17, 2004
<hr/> <p>/s/ DAVID K. CHIDESTER</p> <hr/> <p>David K. Chidester</p>	Vice President, Finance (Principal Financial and Accounting Officer)	November 17, 2004
<hr/> <p>/s/ JOHN J. BYRNE, JR.</p> <hr/> <p>John J. Byrne, Jr.</p>	Director	November 17, 2004
<hr/> <p>/s/ GORDON S. MACKLIN</p> <hr/> <p>Gordon S. Macklin</p>	Director	November 17, 2004
<hr/> <p>/s/ ALLISON H. ABRAHAM</p> <hr/> <p>Allison H. Abraham</p>	Director	November 17, 2004
<hr/> <p>/s/ JOHN A. FISHER</p> <hr/> <p>John A. Fisher</p>	Director	November 17, 2004

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QuickLinks

[PART II INFORMATION NOT REQUIRED IN THE PROSPECTUS](#)

[ITEM 16. EXHIBITS](#)

[SIGNATURES](#)

[EXHIBIT INDEX](#)

November 17, 2004

Overstock.com, Inc.
6322 South 3000 East, Suite 100
Salt Lake City, Utah 84121

Ladies and Gentlemen:

We have acted as counsel to Overstock.com, Inc., a Delaware corporation (the "Company"), in connection with the proposed offering by the Company of up to 180,000 shares of the Company's common stock (the "Stock"). The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (the "Registration Statement"), under the Securities Act of 1933, as amended (the "Securities Act"), relating to the offering of the Stock, pursuant to Rule 462(b) under the Securities Act.

We have examined originals or copies certified by officers of the Company of (a) the Amended and Restated Certificate of Incorporation and By-laws of the Company, each as amended to date, (b) certain resolutions adopted by the Board of Directors of the Company, and (c) such other documents and records as we have deemed necessary and relevant for the purposes hereof. In addition, we have relied on certificates of officers of the Company and of public officials and others as to certain matters of fact relating to this opinion and have made such investigations of law as we have deemed necessary and relevant as a basis hereof. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents and records submitted to us as originals, the conformity to authentic original documents and records of all documents and records submitted to us as copies, and the truthfulness of all statements of fact contained therein.

Based on the foregoing, subject to the limitations, assumptions and qualifications set forth herein, and having due regard for such legal considerations as we deem relevant, we are of the opinion that:

- (1) the Company is validly existing and in good standing as a corporation under the laws of the State of Delaware; and
- (2) the issuance of the Stock has been duly authorized, and when the terms of its issue and sale have been duly established, and the Registration Statement, as finally amended (including all necessary post-effective amendments thereto) has become effective under the Securities Act, and an appropriate prospectus supplement has been prepared, delivered and filed in compliance with the Securities Act and the rules and regulations thereunder, upon the issuance and delivery of the Stock as set forth in the Registration Statement, and upon receipt by the Company of the purchase price therefor in cash or other lawful consideration in an amount per share not less than the par value thereof, the Stock will have been validly issued, fully paid and nonassessable.

The foregoing opinion is based on and limited to the General Corporation Law of the State of Delaware, including the reported judicial decisions interpreting such laws, and the relevant law of the United States of America, and we render no opinion with respect to the law of any other jurisdiction.

We hereby consent to the filing of this opinion with the Commission as Exhibit 5 to the Registration Statement and to the references to our firm under the heading "Legal Matters" in the Prospectus included in the Registration Statement. By giving such consent, we do not admit that we are experts with respect to any part of the Registration Statement, including this Exhibit, within the meaning of the term "expert" as used in the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ BRACEWELL & PATTERSON, L.L.P.

Bracewell & Patterson, L.L.P.

QuickLinks

[Exhibit 5.1](#)

[QuickLinks](#) -- Click here to rapidly navigate through this document

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTANTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated February 20, 2004 relating to the financial statements and financial statement schedule, which is incorporated by reference in Registration Statement (No. 333-113104) on Form S-3, which appears in Overstock.com, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2003. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/PricewaterhouseCoopers LLP
Salt Lake City, Utah
November 17, 2004

QuickLinks

[CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTANTING FIRM](#)