

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 OR 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): April 9, 2020

Overstock.com, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State of incorporation)

000-49799
(Commission File Number)

87-0634302
(IRS Employer
Identification No.)

**799 W. Coliseum Way
Midvale, Utah 84047**
(Address of principal executive offices, including zip code)

(Registrant's telephone number, including area code): **(801) 947-3100**

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value	OSTK	NASDAQ Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01 Other Events.

On April 9, 2020, Overstock.com, Inc. (the “Company” or “we”), in connection with an equity offering program under which the Company may offer and sell, from time to time, shares of the Company’s common stock, \$.0001 per share (“Common Stock”), having an aggregate offering price of up to \$80 million (the “Offering”), the Company filed a prospectus supplement (the “Prospectus Supplement”) with the Securities and Exchange Commission (the “SEC”). In connection with the Offering, the Company entered into an amendment (the “Amendment”) to its Capital on Demand™ Sales Agreement (as amended, the “Sales Agreement”) with JonesTrading Institutional Services LLC, as agent (“JonesTrading”).

Under the Sales Agreement, JonesTrading may sell the Common Stock by any method permitted by law and deemed to be an “at the market offering” as defined in Rule 415 under the Securities Act of 1933, as amended. We are not obligated to sell any shares of Common Stock under the Sales Agreement, and there can be no assurance of the price or prices at which we may sell any shares under the Sales Agreement. The Offering will terminate upon the sale of all shares subject to the Sales Agreement or termination of the Sales Agreement. We will pay JonesTrading a commission of up to 3.0% of the aggregate gross sales price of shares sold pursuant to the Sales Agreement. We have agreed to reimburse JonesTrading for certain specified expenses as provided in the Sales Agreement, and we have also agreed to provide JonesTrading with customary indemnification and contribution rights.

The shares of Common Stock will be issued pursuant to the Prospectus Supplement and the Company’s Registration Statement on Form S-3 (File No. 333-233913) filed with the SEC and effective as of April 1, 2020 (the “Registration Statement”). This Current Report shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

The foregoing description of the Amendment and the Sales Agreement is not complete and is qualified in its entirety by reference to the full text of (i) the Amendment, a copy of which is filed herewith as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference, and (ii) the Sales Agreement, previously incorporated by referenced into the Company’s Annual Report on Form 10-K filed on March 13, 2020.

This Current Report on Form 8-K is being filed to file certain documents in connection with the Offering as exhibits to the Registration Statement.

Item 9.01 Exhibits.

(d) Exhibits.

Exhibit No.	Description of Exhibit
1.1	Amendment No. 3 to Capital on Demand™ Sales Agreement between Overstock.com, Inc. and JonesTrading Institutional Services LLC, as agent, dated April 9, 2020
5.1	Opinion of Bryan Cave Leighton Paisner LLP
23.1	Consent of Bryan Cave Leighton Paisner LLP (included in Exhibit 5.1)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

OVERSTOCK.COM, INC.

Date: April 10, 2020

By: /s/ E. Glen Nickle

Name: E. Glen Nickle

Title: Vice President, Legal and General Counsel

AMENDMENT NO. 3 TO CAPITAL ON DEMAND™ SALES AGREEMENT

April 9, 2020

JonesTrading Institutional Services LLC
757 Third Avenue, 23rd Floor
New York, NY 10017

Ladies and Gentlemen:

Overstock.com, Inc. (the “Company”) and JonesTrading Institutional Services LLC (the “Agent”) are parties to that certain Capital on Demand™ Sales Agreement dated August 9, 2018, as amended on March 15, 2019 and November 12, 2019 (together, the “Original Agreement”). All capitalized terms not defined herein shall have the meanings ascribed to them in the Original Agreement. The parties, intending to be legally bound, hereby amend the Original Agreement pursuant to the terms of this amendment No. 3 to the Original Agreement (this “Amendment No. 3”) as follows:

1. The first paragraph of Section 1 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“Issuance and Sale of Shares. The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through the Agent, shares (the “Placement Shares”) of common stock of the Company, \$0.0001 par value per share (the “Common Stock”) having an aggregate offering price of up to \$265,040,000 (the “Maximum Amount”). Pursuant to this Agreement, shares of our common stock were previously sold for \$185,038,335.66 in aggregate gross proceeds under separate prospectuses and related prospectus supplements. Under this Agreement, as amended by Amendment No. 1 to Capital on Demand™ Sales Agreement, dated March 15, 2019, Amendment No. 2 to Capital on Demand™ Sales Agreement, dated November 12, 2019 and Amendment No. 3 to Capital on Demand™ Sales Agreement, dated April 9, 2020, the Company, through the Agent, may offer and sell further shares of common stock having an aggregate offering price of up to \$80,000,000 pursuant to the Prospectus (as defined below). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitations set forth in this Section 1 on the amount of Placement Shares issued and sold under this Agreement shall be the sole responsibility of the Company and that Agent shall have no obligation in connection with such compliance. The issuance and sale of further Placement Shares through Agent will be effected pursuant to the Registration Statement (as defined below) that was initially filed by the Company on September 24, 2019 (File No. 333-233913) and which was an “automatic shelf registration statement” (as defined in Rule 405 under the Securities Act) that became automatically effective under Rule 462(e) under the Securities Act (as defined below) upon such filing with the Securities and Exchange Commission (the “Commission”), although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement to issue any further Placement Shares. The Registration Statement was subsequently amended by Post-Effective Amendment No. 1 and Post-Effective Amendment 2 thereto, each filed on March 13, 2020, and Post-Effective Amendment No. 2 was subsequently declared effective by the Commission on April 1, 2020.”

2. The Company hereby agrees, notwithstanding anything in the Original Agreement to the contrary, to reimburse the Agent for the reasonable fees and expenses of Agent's counsel in an amount not to exceed \$25,000 in connection with this Amendment No. 3.

3. All references to "August 9, 2018" set forth in Schedule 1 and Exhibit 7(l) of the Original Agreement are revised to read "August 9, 2018 (as amended by Amendment No. 1 to Capital on Demand™ Sales Agreement, dated March 15, 2019, Amendment No. 2 to Capital on Demand™ Sales Agreement, dated November 12, 2019 and Amendment No. 3 to Capital on Demand™ Sales Agreement, dated April 9, 2020)".

4. Except as specifically set forth herein, all other provisions of the Original Agreement shall remain in full force and effect.

5. Entire Agreement; Amendment; Severability. This Amendment No. 3 to the Original Agreement together with the Original Agreement (including all schedules and exhibits attached hereto and thereto and Placement Notices issued pursuant hereto and thereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. All references in the Original Agreement to the "Agreement" shall mean the Original Agreement as amended by this Amendment No. 3; *provided, however*, that all references to "date of this Agreement" in the Original Agreement shall continue to refer to the date of the Original Agreement.

6. Applicable Law; Consent to Jurisdiction. This amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under this amendment and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

7. Waiver of Jury Trial. The Company and the Agent each hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this amendment or any transaction contemplated hereby.

8. Counterparts. This amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed amendment by one party to the other may be made by facsimile transmission.

[Remainder of Page Intentionally Blank]

If the foregoing correctly sets forth the understanding among the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding amendment to the Original Agreement between the Company and the Agent.

Very truly yours,

OVERSTOCK.COM, INC.

By: /s/ E. Glen Nickle

Name: E. Glen Nickle

Title: VP, Legal & General Counsel

JONESTRADING INSTITUTIONAL SERVICES LLC

By: /s/ Burke Cook

Name: Burke Cook

Title: General Counsel

[Signature page to Amendment No. 3 to Capital on Demand Sales Agreement]



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April 9, 2020

Overstock.com, Inc.
799 W. Coliseum Way
Midvale, Utah 84047

Ladies and Gentlemen:

We have acted as counsel to Overstock.com, Inc., a Delaware corporation (the “Company”), in connection with the filing by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Act”), of a prospectus supplement, dated April 9, 2020 (the “Prospectus Supplement”), to the base prospectus, dated April 1, 2020 (the “Base Prospectus”), that forms a part of the registration statement on Form S-3 (Registration No. 333-233913) filed with the Commission and effective as of April 1, 2020 (the “Registration Statement”) relating to the offer, issuance and sale of shares of the Company’s common stock, par value \$0.0001 per share, having an aggregate gross sales price of up to \$80,000,000 (the “Common Stock”). Shares of the Common Stock are to be sold from time to time pursuant to a Capital on DemandTM Sales Agreement originally dated August 9, 2018 (as subsequently amended on March 15, 2019, November 12, 2019, and April 9, 2020) (the “Agreement”) between the Company and JonesTrading Institutional Services LLC, in its capacity as agent for the Company in connection with the offering and sale of shares of the Company’s Common Stock (the “Agent”).

In connection herewith, we have examined:

- (1) the Registration Statement, together with the exhibits thereto;
 - (2) the Base Prospectus as supplemented by the Prospectus Supplement (collectively, the “Prospectus”) and the exhibits thereto;
 - (3) the Amended and Restated Certificate of Incorporation of the Company;
 - (4) the Amended and Restated Bylaws of the Company;
 - (5) certain resolutions duly adopted by the Company’s Board of Directors on September 22, 2019 and October 30, 2019 (collectively, the “Resolutions”); and
 - (6) the Agreement.
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We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such other corporate records, agreements and instruments of the Company, certificates of public officials and officers of the Company, and such other documents, records and instruments, and we have made such legal and factual inquiries, as we have deemed necessary or appropriate as a basis for us to render the opinions hereinafter expressed. In our examination of the foregoing, we have assumed the genuineness of all signatures, the legal competence and capacity of natural persons, the authenticity of documents submitted to us as originals and the conformity with authentic original documents of all documents submitted to us as copies or by facsimile or other means of electronic transmission, or which we obtained from the Commission's Electronic Data Gathering, Analysis and Retrieval system ("Edgar") or other sites maintained by a court or governmental authority or regulatory body and the authenticity of the originals of such latter documents. If any documents we examined in printed, word processed or similar form has been filed with the Commission on Edgar or such court or governmental authority or regulatory body, we have assumed that the document so filed is identical to the document we examined except for formatting changes. When relevant facts were not independently established, we have relied without independent investigation as to matters of fact upon statements of governmental officials and upon representations made in or pursuant to certificates and statements of appropriate representatives of the Company.

Based upon the foregoing and in reliance thereon, and subject to the assumptions, comments, qualifications, limitations and exceptions set forth herein, we are of the opinion that the Common Stock to be issued pursuant to the Prospectus and the Agreement have been duly authorized for issuance, and upon the issuance and delivery of shares of Common Stock and the receipt by the Company of all consideration therefor in accordance in each case with the terms of the Prospectus, the Agreement and the Resolutions, the Common Stock will be validly issued, fully paid and non-assessable.

In addition to the assumptions, comments, qualifications, limitations and exceptions set forth above, the opinions set forth herein are further limited by, subject to and based upon the following assumptions, comments, qualifications, limitations and exceptions:

(a) For the purposes of this opinion, we have assumed that, at the time of the issuance, sale and delivery of the Common Stock in accordance in each case with the Agreement, the Prospectus and the Resolutions: (i) any Common Stock being offered will be issued and sold as contemplated in the Prospectus Supplement (as amended or supplemented); (ii) the authorization thereof by the Company will not have been modified or rescinded; and (iii) the Company's amended and restated certificate of incorporation and amended and restated bylaws, in each case as currently in effect and as applicable, will not have been modified or amended and will be in full force and effect.

(b) Our opinions herein reflect only the application of (i) the General Corporation Law of the State of Delaware (including the statutory provisions and all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting such laws) and (ii) the federal laws of the United States (excluding the federal securities laws, as to which we express no opinion). The opinions set forth herein are made as of the date hereof and are subject to, and may be limited by, future changes in factual matters, and we undertake no duty to advise you of the same. The opinions expressed herein are based upon the law in effect (and published or otherwise generally available) on the date hereof, and we assume no obligation to revise or supplement these opinions should such law be changed by legislative action, judicial decision or otherwise. In rendering our opinions, we have not considered, and hereby disclaim any opinion as to, the application or impact of any laws, cases, decisions, rules or regulations of any other jurisdiction, court or administrative agency.

We do not render any opinions except as set forth above. We hereby consent to the filing of this opinion letter as Exhibit 5 to the Company's Current Report on Form 8-K filed on the date hereof, which will be incorporated by reference into the Registration Statement, and to the use of our name under the caption "Validity of the Securities" in the Prospectus Supplement filed as a part thereof. We also consent to your filing copies of this opinion letter as an exhibit to the Registration Statement with agencies of such jurisdictions as you deem necessary in the course of complying with the laws of such jurisdictions regarding the offering and sale of the shares of the Common Stock. In giving such consent, we do not thereby concede 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 Commission thereunder.

Very truly yours,

/s/ Bryan Cave Leighton Paisner LLP