

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Outbrain Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

20-5391629
(I.R.S. Employer Identification No.)

111 West 19th Street
New York, NY 10011
(Address of principal executive offices)

Outbrain Inc. 2021 Long-Term Incentive Plan
Outbrain Inc. Employee Stock Purchase Plan
(Full title of the plans)

Yaron Galai
David Kostman
Co-Chief Executive Officers
Outbrain Inc.
111 West 19th Street
New York, NY 10011
(646) 867-0149

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

Copies of all correspondence to:

Ellen S. Knarr, Esq.
Day Pitney LLP
One Jefferson Road
Parsippany, NJ 07960
Tel: (973) 966-6300

Veronica Gonzalez, Esq.
Outbrain Inc.
111 West 19th Street
New York, NY 10011
Tel: (646) 867-0149

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

Large Accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

Registration of Additional Securities

Pursuant to General Instruction E to Form S-8, Outbrain Inc. (the “Registrant”) is filing this Registration Statement on Form S-8 (this “Registration Statement”) with the U.S. Securities and Exchange Commission (the “Commission”) to register additional shares of common stock, \$0.001 par value per share, of the Registrant (“Common Stock”) for issuance under the 2021 Long-Term Incentive Plan (the “LTIP”) and the Employee Stock Purchase Plan (the “ESPP”). The number of shares of Common Stock available for issuance under the LTIP is subject to an annual increase on the first day of each fiscal year by an amount equal to the least of (i) five percent (5%) of the total number of shares of Common Stock outstanding on the last day of the immediately preceding fiscal year or (ii) such smaller amount as the Compensation Committee of the Registrant’s Board of Directors, in its discretion, determines (the “LTIP Evergreen Provision”). The number of shares of Common Stock available for issuance under the ESPP is subject to an annual increase on the first day of each fiscal year by an amount equal to the least of (i) one percent (1%) of the number of shares of Common Stock outstanding on the last day of the immediately preceding fiscal year, or (ii) such smaller amount as the Registrant’s Board of Directors, in its discretion, determines (the “ESPP Evergreen Provision”). On January 1, 2024, the number of shares of Common Stock available for issuance under the LTIP and the ESPP increased by 2,486,325 and 497,265 shares, respectively, pursuant to the LTIP Evergreen Provision and the ESPP Evergreen Provision. This Registration Statement registers such additional shares of Common Stock. This Registration Statement hereby incorporates by reference the contents of the Registrant’s Registration Statement on [Form S-8](#) filed with the Commission on August 6, 2021 (File No. 333-258535) (the “Original Registration Statement”), which registered 5,050,000 shares of Common Stock under the LTIP and 1,263,000 shares of Common Stock under the ESPP, and the Registration Statement on [Form S-8](#) filed on March 15, 2023 (File No. 333-270568) (the “Second Registration Statement,” and together with the Original Registration Statement, the “Prior Registration Statements”), which registered 5,446,406 shares of Common Stock under the LTIP and 1,089,280 shares of Common Stock under the ESPP, except to the extent supplemented, amended or superseded by the information set forth herein. Any items in the Prior Registration Statements not expressly changed hereby shall be as set forth in the Prior Registration Statements.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Commission by the Registrant pursuant to the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are hereby incorporated by reference in this Registration Statement:

- a. the Registrant’s [Annual Report on Form 10-K](#) for the fiscal year ended December 31, 2023, filed with the Commission on March 8, 2024;
- b. the Registrant’s Current Report on Form 8-K filed with the Commission [February 29, 2024](#); and
- c. The description of the Registrant’s Common Stock contained in the Registrant’s registration statement on [Form 8-A](#) (File No. 001-40643) filed with the Commission on July 20, 2021, as updated by the description of the Registrant’s Common Stock contained in [Exhibit 4.7](#) to the Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2021, filed with the Commission on March 18, 2022, including any amendment or report filed for the purpose of updating such description.

All documents that the Registrant subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered have been sold or which deregisters 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; provided, however, that any such documents or portions thereof that are furnished, including under Item 2.02 or Item 7.01 of a Current Report on Form 8-K and any exhibits included with such items, shall not be deemed incorporated by reference in this Registration Statement.

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 other subsequently filed document which also is or 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 8. Exhibits.

EXHIBIT INDEX

Exhibit No.	Description	Form	File No.	Exhibit	Filing Date
3.1	<u>Twelfth Amended and Restated Certificate of Incorporation of the Company, as currently in effect.</u>	S-1/A	333-257525	3.5	July 20, 2021
3.2	<u>Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.4 to the Company's Form S-1/A filed with the SEC on July 20, 2021). (These bylaws have been superseded by the Amended and Restated Bylaws adopted effective March 7, 2024 with the exception of Article I, Section 2 which remains in effect through April 1, 2024.)</u>	S-1/A	333-257525	3.4	July 20, 2021
3.3	<u>Amended and Restated Bylaws of the Company, adopted effective March 7, 2024 (with the exception of Article I, Section 2 which will become effective on April 2, 2024).</u>	10-K		3.3	March 8, 2024
4.1	<u>Specimen stock certificate.</u>	S-1/A	333-257525	4.1	July 20, 2021
4.2	<u>2021 Long-Term Incentive Plan, and foreign addenda.</u>	S-1/A	333-257525	10.4	July 20, 2021
4.3	<u>Form of 2021 Employee Stock Purchase Plan.</u>	S-1/A	333-257525	10.14	July 20, 2021
5.1*	<u>Opinion of Day Pitney LLP.</u>				
23.1*	<u>Consent of Day Pitney LLP (included in Exhibit 5.1).</u>				
23.2*	<u>Consent of KPMG LLP, independent registered public accountants.</u>				
24.1*	<u>Power of attorney (included in signature page hereto).</u>				
107*	<u>Filing Fee Table</u>				

* Filed herewith.

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 New York, State of New York on March 8, 2024.

OUTBRAIN INC.

By: /s/ David Kostman

Name: David Kostman

Title: *Co-Chief Executive Officer*

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Yaron Galai, David Kostman, Jason Kiviat and Veronica Gonzalez, and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign the Registration Statement on Form S-8 of Outbrain Inc., and any or all amendments (including post-effective amendments), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite or necessary to be done in connection therewith and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Yaron Galai</u> Yaron Galai	Co-Founder and Co-Chief Executive Officer and Chairman of the Board (principal executive officer)	March 8, 2024
<u>/s/ David Kostman</u> David Kostman	Co-Chief Executive Officer and Director (principal executive officer)	March 8, 2024
<u>/s/ Jason Kiviat</u> Jason Kiviat	Chief Financial Officer (principal financial officer)	March 8, 2024
<u>/s/ Wenkai Bradshaw</u> Wenkai Bradshaw	Chief Accounting Officer and SVP, Corporate Controller (principal accounting officer)	March 8, 2024
<u>/s/Yoni Cheifetz</u> Jonathan (Yoni) Cheifetz	Director	March 8, 2024
<u>/s/Nithya B. Das</u> Nithya B. Das	Director	March 8, 2024
<u>/s/Shlomo Dovrat</u> Shlomo Dovrat	Director	March 8, 2024
<u>/s/ Kate Taneyhill Jhaveri</u> Kate Taneyhill Jhaveri	Director	March 8, 2024
<u>/s/Yaffa Krindel</u> Yaffa Krindel	Director	March 8, 2024
<u>/s/Arne Wolter</u> Arne Wolter	Director	March 8, 2024

Calculation of Filing Fee Table
Form S-8
(Form Type)
Outbrain Inc.

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Share ⁽⁴⁾	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, \$0.001 par value per share	Rule 457(c) and Rule 457(h)	2,486,325 ⁽²⁾	\$3.695	\$9,186,970.88	\$147.60 per \$1,000,000	\$1,356.00
Equity	Common Stock, \$0.001 par value per share	Rule 457(c) and Rule 457(h)	497,265 ⁽³⁾	\$3.695	\$1,837,394.18	\$147.60 per \$1,000,000	\$271.20
Total Offering Amounts					\$11,024,365.05		\$1,627.20
Total Fee Offsets⁽⁵⁾							\$—
Net Fee Due							\$1,627.20

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Registrant’s common stock, par value \$0.001 per share (“Common Stock”), that become issuable under the Registrant’s (i) 2021 Long-Term Incentive Plan (the “LTIP”) or (ii) Employee Stock Purchase Plan (the “ESPP”) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of Common Stock.
- (2) Represents 2,486,325 shares of Common Stock available for future issuance under the LTIP by reason of the automatic increase provisions therein.
- (3) Represents 497,265 shares of Common Stock available for future issuance under the ESPP by reason of the automatic increase provisions therein.
- (4) Estimated in accordance with Rule 457(c) and 457(h) solely for the purpose of calculating the registration fee, based upon the average of the high and low prices of the Common Stock as reported on the Nasdaq Global Select Market on March 5, 2024.
- (5) The Registrant does not have any fee offsets.

March 8, 2024

Outbrain Inc.
111 West 19th Street
New York, NY 10011

We refer to the Registration Statement on Form S-8 (the “Registration Statement”) filed by Outbrain Inc., a Delaware corporation (the “Company”), relating to the registration under the Securities Act of 1933, as amended (the “Act”), of an aggregate of 2,983,590 shares of common stock of the Company, par value \$0.001 per share (the “Shares”), issuable under the Company’s 2021 Long-Term Incentive Plan (the “LTIP”) and the Company’s Employee Stock Purchase Plan (the “ESPP,” and together with the LTIP, the “Plans” and each a “Plan”).

In connection with our opinion, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the Plans, the Registration Statement, the Twelfth Amended and Restated Certificate of Incorporation of the Company (as corrected by the Certificate of Correction to the Twelfth Amended and Restated Certificate of Incorporation of the Company) and the Amended and Restated By-laws of the Company, each as currently in effect, relevant resolutions of the Board of Directors of the Company or committees thereof, and such corporate records, documents, agreements, instruments and certificates of public officials of the State of Delaware and of officers of the Company as we have deemed necessary or appropriate in order to express the opinion hereinafter set forth.

In our examination of such documents and records, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the legal capacity of natural persons and the conformity with the originals of all documents submitted to us as copies, that the persons identified to us as officers are actually serving as such, and that any certificates representing the Shares will be properly executed by one or more such persons.

Based upon the foregoing and in reliance thereon, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that, when the Registration Statement shall have become effective under the Act and the Shares have been duly issued and delivered in the manner contemplated by the Registration Statement and the applicable Plan, upon payment of the agreed consideration therefor, if any, in accordance with the applicable Plan, the Shares will be validly issued, fully paid and non-assessable.

The foregoing opinion is limited to the General Corporation Law of the State of Delaware. We express no opinion as to the effect of the laws of any other jurisdiction. This opinion letter is rendered as of the date hereof and we express no opinion as to circumstances or events that may occur subsequent to such date. We assume no obligation or responsibility to supplement or update this opinion letter, or to advise any person of changes of law or the interpretation thereof, or any changes of fact, that occur after the date hereof, even though such

changes may affect a legal analysis, conclusion, informational confirmation or opinion set forth in this opinion letter.

We hereby consent to the use of this opinion letter as an exhibit to the Registration Statement. In giving such consent, we do not hereby 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 Securities and Exchange Commission thereunder.

Very truly yours,

/s/ DAY PITNEY LLP

DAY PITNEY LLP

Consent of Independent Registered Public Accounting Firm

The Board of Directors

Outbrain Inc.:

We consent to the use of our report dated March 8, 2024, with respect to the consolidated financial statements of Outbrain Inc., incorporated herein by reference.

/s/ KPMG LLP

New York, New York
March 8, 2024