

CYBEROPTICS CORP  
Form 8-K  
June 23, 2008

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**Form 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported):** June 23, 2008

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**CyberOptics Corporation**

(Exact name of registrant as specified in its charter)

**Minnesota**

(State or other jurisdiction of  
incorporation or organization)

**(0-16577)**

Commission File No.

**41-1472057**

(I.R.S. Employer  
Identification No.)

**5900 Golden Hills Drive**

**Minneapolis, Minnesota**

(Address of principal executive offices)

**55416**

(Zip Code)

**(763) 542-5000**

(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report.)

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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 (see General Instruction A.2. below):

- 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))

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### **Item 8.01. Other Events**

On June 23, 2008, CyberOptics Corporation issued a press release announcing its intention to repurchase up to \$15,000,000 worth of the common stock of the Company in a modified Dutch auction tender offer. CyberOptics currently expects to commence the tender offer within two weeks of the date of this Current Report on Form 8-K.

We have suspended our stock repurchase program under which we were seeking the purchase of 1,000,000 shares of our common stock during a one year period commencing on February 18, 2008 through a 10b5-1 plan.

A copy of the press release is being filed as Exhibit 99.1 to this Form 8-K and it is incorporated by reference in its entirety.

### **Additional Information and Where to Find It**

This communication is for informational purposes only and does not constitute an offer to purchase nor a solicitation of an offer to sell shares of the common stock of CyberOptics. The solicitation of offers to buy shares of the common stock will only be made pursuant to the offer to purchase, to be issued in connection with the launch of the tender offer (as may be amended or supplemented), the related letter of transmittal, and other related documents that CyberOptics intends to send to its stockholders. The tender offer materials will contain important information

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that should be read carefully before any decision is made with respect to the tender offer. Those materials will be distributed by CyberOptics to its stockholders at no expense to them. All of those materials (and all other documents the Company files with the Securities and Exchange Commission (the "SEC")) will also be available at no charge on the SEC's Website at [www.sec.gov](http://www.sec.gov) and from the information agent.

### Item 9.01. Exhibits

99.1 Press release Dated June 23, 2008

### SIGNATURES

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

CYBEROPTICS CORPORATION

By /s/ JEFFREY A. BERTELSEN  
Jeffrey A. Bertelsen, Chief Financial  
Officer

Dated: June 23, 2008

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**Interests of  
Named Experts and Counsel.**

Not applicable.



**Item 6.**

**Indemnification of Directors and Officers.**

The Tennessee Business Corporation Act ( TBCA ) allows a Tennessee corporation s charter to contain a provision eliminating or limiting, with certain exceptions, the personal liability of a director to the corporation or its shareholders for monetary damages for breach of the director s fiduciary duty as a director. Under the TBCA, a Tennessee business corporation may not eliminate or limit a director s monetary liability for (i) breaches of the director s duty of loyalty to the corporation or its shareholders; (ii) acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law; or (iii) unlawful dividends, stock repurchases or redemptions. This provision also may not limit a director s liability for violation of, or otherwise relieve a corporation or its directors from the necessity of complying with, federal or state securities laws, or affect the availability of non-monetary remedies such as injunctive relief or rescission. The Company s charter contains a provision stating that directors shall not be personally liable for monetary damages to the Company or its shareholders for breach of fiduciary duty as a director, except to the extent required by the TBCA in effect from time to time.

The TBCA provides that a corporation may indemnify any of its directors, officers, employees and agents against liability incurred in connection with a proceeding if (a) such person acted in good faith; (b) in the case of conduct in an official capacity with the corporation, he reasonably believed such conduct was in the corporation s best interests; (c) in all other cases, he reasonably believed that his conduct was at least not opposed to the best interests of the corporation; and (d) in connection with any criminal proceeding, such person had no reasonable cause to believe his conduct was unlawful. In actions brought by or in the right of the corporation, however, the TBCA provides that no indemnification may be made if the director or officer was adjudged to be liable to the corporation. The TBCA also provides that in connection with any proceeding charging improper personal benefit to an officer or director, no indemnification may be made if such officer or director is adjudged liable on the basis that such personal benefit was improperly received. In cases where the director or officer is wholly successful, on the merits or otherwise, in the defense of any proceeding instigated because of his or her status as a director or officer of a corporation, the TBCA mandates that the corporation indemnify the director or officer against reasonable expenses incurred in the proceeding. The TBCA provides that a court of competent jurisdiction, unless the corporation s charter provides otherwise, upon application, may order that an officer or director be indemnified for reasonable expenses if the court determines that the director or officer is entitled to mandatory indemnification as described above, in which case the court shall also order the corporation to pay his reasonable expenses incurred to obtain court-ordered indemnification. Unless the corporation s charter provides otherwise, upon application, the court may also order indemnification for reasonable expenses if, in consideration of all relevant circumstances, the court determines that the director or officer is fairly and reasonably entitled to indemnification, notwithstanding the fact that (a) such officer or director was adjudged liable to the corporation in a proceeding by or in the right of the corporation; (b) such officer or director was adjudged liable on the basis that personal benefit was improperly received by him; or (c) such officer or director failed to meet the standard of conduct normally required for indemnification as described above.

The Company s charter and bylaws require the Company to indemnify its directors and officers to the fullest extent permitted by applicable law. The Company s bylaws further require the Company to advance expenses to each of its directors and officers to the full extent allowed by Tennessee law. Under the Company s charter and bylaws, such indemnification and advancement of expenses provisions are not exclusive of any other right that a director or officer may have or acquire both as to action in his or her official capacity and as to action in another capacity.

The Company has in effect a directors and officers liability insurance policy that covers its directors and officers in amounts that the Company believes are customary in its industry. Under this policy, the insurer agrees to pay, subject to certain exclusions, for any claim made against directors or officers of the Company for a wrongful act or omission by such persons, but only if and to the extent such persons become legally obligated to pay such claim or incur certain costs in defending such claim. Furthermore, the Agreement and Plan of Merger among Buck Holdings, L.P., Buck Acquisition Corp. and the Company, dated as of March 11, 2007, requires the Company to maintain indemnification of directors and officers to the fullest extent permitted by law following the July 6, 2007 completion of the merger of Buck Acquisition Corp. with and into the Company.

In connection with entering into a monitoring agreement with an affiliate of Kohlberg Kravis Roberts & Co. and an affiliate of Goldman, Sachs & Co., the Company entered into a separate indemnification agreement with the parties to the monitoring agreement pursuant to which the Company agreed to provide customary indemnification to such parties and their affiliates. See the Certain Relationships and Related Transactions, and Director Independence Related Party Transactions Monitoring Agreement and Indemnity Agreement section of our fiscal 2007 Form 10-K.

Pursuant to the Company's employment agreement with Mr. Dreiling, effective as of January 11, 2008 (the Employment Agreement), the Company has agreed that if Mr. Dreiling is made or threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, relating to a claim by his prior employer that Mr. Dreiling has breached or attempted to breach certain covenants to which he is bound as a result of his employment arrangement with his prior employer, the Company will indemnify and hold harmless Mr. Dreiling to the fullest extent authorized by applicable law from and against any and all liabilities, amounts paid in settlement, costs, claims and expenses, including all costs and expenses incurred in defense of any such proceeding (including attorneys' fees). The Company will pay costs and expenses Mr. Dreiling incurs in defense of any such proceeding (including attorneys' fees) in advance of the final disposition of such litigation upon receipt of (a) a written request for payment, (b) appropriate documentation evidencing the incurrence, amount and nature of the costs and expenses for which payment is being sought, and (c) an undertaking adequate under applicable law made by or on behalf of Mr. Dreiling to repay the amounts so paid if it shall ultimately be determined that he is not entitled to be indemnified under his Employment Agreement with the Company. Notwithstanding the foregoing, if as a result of such proceeding Mr. Dreiling is prohibited from continuing his employment with the Company, the Company shall pay to Mr. Dreiling his base salary until the earliest to occur of (i) the date upon which he ceases to be so prohibited, (ii) the date, if any, upon which he becomes employed by a subsequent employer and (iii) the first anniversary of the effective date of such prohibition.

In addition, the Company shall indemnify and hold harmless Mr. Dreiling for all acts and omissions occurring during his employment or service as a member of the Board (or both) to the maximum extent provided under the Company's charter, bylaws and applicable law. During the Term (as defined in the Employment Agreement) and for a term of six years thereafter, the Company, or any of its successors, shall purchase and maintain, at its own expense, directors, and officers, liability insurance providing coverage for Mr. Dreiling in the same amount as for Board members.

Mr. Dreiling shall provide his reasonable cooperation in connection with any proceeding (or any appeal from any proceeding) referenced above, as well as any proceeding which relates to events occurring during his employment.

**Item 7.**

**Exemption from Registration Claimed.**

Not applicable.

**Item 8.**

**Exhibits.**

See the Exhibit Index immediately following the signature page hereto, which Exhibit Index is incorporated herein by this reference.

**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 this registration statement to include any material information with respect to the

plan of distribution not previously disclosed 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 of 1933, 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 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 of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) 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 of 1933 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the 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 Act and will be governed by the final adjudication of such issue.



**SIGNATURES**

**The Registrant.** 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 Goodlettsville, State of Tennessee, on April 21, 2008.

DOLLAR GENERAL COPORATION

By: /s/ Richard W. Dreiling  
Richard W. Dreiling, Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints David M. Tehle and Susan S. Lanigan, and any of them (with full power in each to act alone), his or her true and lawful attorney-in-fact and agent, 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 any and all amendments to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in 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 each said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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>
/s/ Richard W. Dreiling Richard W. Dreiling	Chief Executive Officer (Principal Executive Officer)	April 21, 2008
/s/ David M. Tehle David M. Tehle	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	April 29, 2008
/s/ Michael M. Calbert Michael M. Calbert	Director	April 23, 2008

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/s/ Raj Agrawal

Director

April 22, 2008

Raj Agrawal

/s/ Adrian Jones

Director

April 28, 2008

Adrian Jones

/s/ Dean B. Nelson

Director

April 23, 2008

Dean B. Nelson

**EXHIBIT INDEX**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
4.1	2007 Stock Incentive Plan for Key Employees of Dollar General Corporation and its Affiliates (incorporated by reference to Exhibit 10.1 to Dollar General Corporation's Registration Statement on Form S-4, filed with the SEC on December 21, 2007 (file number 333-148320)).
4.2	Sections 7 and 8 of Dollar General Corporation's Amended and Restated Charter (incorporated by reference to Exhibit 3.1 to Dollar General Corporation's Current Report on Form 8-K dated July 6, 2007, filed with the SEC on July 12, 2007 (file number 001-11421)).
4.3	Article I, Section 1 of Article II, and Sections 3 and 4 of Article IV of the Amended and Restated Bylaws of Dollar General Corporation (adopted on September 20, 2007) (incorporated by reference to Exhibit 3.2 to Dollar General Corporation's Registration Statement on Form S-4, filed with the SEC on December 21, 2007 (file number 333-148320)).
4.4	Registration Rights Agreement, dated July 6, 2007, among Buck Holdings, L.P., Buck Holdings, LLC, Dollar General Corporation and Shareholders named therein (incorporated by reference to Exhibit 4.18 to Dollar General Corporation's Registration Statement on Form S-4, filed with the SEC on December 21, 2007 (file number 333-148320)).
5	Opinion of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
23.1	Consent of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (included in Exhibit 5).
23.2	Consent of Ernst & Young LLP.
24	Power of Attorney (included on the Signature Page hereto).