

WINMARK CORP  
Form S-8  
March 11, 2011

As filed with the Securities and Exchange Commission on March 11, 2011.

Registration No. 333-

**UNITED STATES**  
**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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**WINMARK CORPORATION**

(Exact name of registrant as specified in its charter)

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

**41-1622691**  
(I.R.S. Employer  
Identification No.)

**605 Highway 169 North, Suite 400**

**Minneapolis, Minnesota 55441**

(Address of principal executive offices and zip code)

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**Winmark Corporation 2010 Stock Option Plan**

(Full title of the Plan)

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**Anthony D. Ishaug**

**Chief Financial Officer**

**Winmark Corporation**

**605 Highway 169 North, Suite 400**

**Minneapolis, Minnesota 55441**

**763-520-8500**

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

**Copy to:**

**Jonathan B. Levy**

Lindquist & Vennum, P.L.L.P.

4200 IDS Center

80 South 8th Street

Minneapolis, Minnesota 55402

612-371-3211

\*\*Indicate by check mark whether the registrant is a large accelerated filer, an 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. (Check one):

Large accelerated filer

Accelerated filer

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

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

**Title of Each Class of Securities to be Registered**

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	<b>Amount to be Registered (1)</b>		<b>Proposed Maximum Offering Price Per Share (3)</b>		<b>Proposed Maximum Aggregate Offering Price (3)</b>		<b>Amount of Registration Fee</b>
Common Stock, no par value	250,000(2)	\$	36.00	\$	9,000,000	\$	1,044.90

(1) Pursuant to Rule 416 of the Securities Act of 1933, as amended (the Securities Act), this Registration Statement of Form S-8 shall also cover such additional and indeterminate number of shares of the Registrant's common stock that may be issued by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant's outstanding shares of common stock.

(2) Maximum number of shares issuable under the Winmark Corporation 2010 Stock Option Plan

(3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h)(1) under the Securities Act of 1933, as amended (the Securities Act), and based upon the average of the high and low prices per share of the Company's Common Stock on The NASDAQ Global Market on March 7, 2011

**INTRODUCTION**

This Registration Statement on Form S-8 is filed by Winmark Corporation, a Minnesota corporation, ( Winmark or the Company ) to register 250,000 shares of its common stock issuable upon exercise of options granted under the Winmark Corporation 2010 Stock Option Plan.

**PART I**

Pursuant to the note to Part I of Form S-8, the information required by Items 1 and 2 of Form S-8 is not filed as a part of this Registration Statement on Form S-8 (the Registration Statement ) and documents containing the information specified in such Part I have been or will be delivered to participants as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933, as amended.

**PART II**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed with the Securities and Exchange Commission are hereby incorporated by reference:

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended December 25, 2010;
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the year ended December 25, 2010; and
- (c) The description of the Company's Common Stock to be offered pursuant to this Registration Statement is incorporated by reference to the Company's Registration Statement on Form 8-A (File No. 0-22012), filed on July 2, 1993, including any amendment or report filed for the purpose of updating this description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 prior to the completion or termination of this offering of shares of Common Stock shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

**Item 4. Description of Securities.**

The Company's common stock is registered under Section 12 of the Exchange Act and, therefore, a description of the Company's common stock to be offered pursuant to this Registration Statement has been incorporated by reference into this Registration Statement as described in Item 3 of this Part II.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The Company is subject to Minnesota Statutes Chapter 302A, the Minnesota Business Corporation Act (the "MBCA"). Section 302A.521 of the MBCA provides in substance that, unless prohibited by its articles of incorporation or bylaws, a corporation must indemnify an officer or director who is made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by such person in connection with the proceeding, if certain criteria are met. These criteria, all of which must be met by the person seeking indemnification, are: (a) that such person has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same act or omissions; (b) that such person must have acted in good faith; (c) that no improper personal benefit was obtained by such person and such person satisfied certain statutory conflicts of interest provisions, if applicable; (d) that in the case of a criminal proceeding, such person had no reasonable cause to believe that the conduct was unlawful; and (e) that such person must have acted in a manner such person reasonably believed was in the best interests of the corporation or, in certain limited circumstances, not opposed to the best interests of the corporation. In addition, Section 302A.521, subdivision 3 of the MBCA requires that the Company pay, upon written request, reasonable expenses in advance of final disposition in certain instances. A decision as to required indemnification is made by a majority of the disinterested board of directors present at a meeting at which a disinterested quorum is present, or by a designated committee of disinterested directors, by special legal counsel, by the disinterested shareholders, or by a court.

The Registrant's Articles of Incorporation limit the liability of its directors to the fullest extent permitted by the MBCA. Specifically, directors of the Registrant will not be personally liable for monetary damages for breach of fiduciary duty as directors except liability for (i) any breach of the duty of loyalty to the Registrant or its shareholders, (ii) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) dividends or other distributions of corporate assets that are in contravention of certain statutory or contractual restrictions, (iv) violations of certain Minnesota securities laws or (v) any transaction from which the director derives an improper personal benefit.



**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

Exhibit

- 4.1 Winmark Corporation 2010 Stock Option Plan (incorporated by reference to Appendix A to the Company's Definitive Proxy Statement filed with the Securities and Exchange Commission on March 11, 2010 for the Annual Meeting of Shareholders held on April 28, 2010)
- 5.1 Opinion of Lindquist & Vennum P.L.L.P.
- 23.1 Consent of Lindquist & Vennum P.L.L.P. (included in Exhibit 5.1)
- 23.2 Consent of Grant Thornton LLP, the Company's Independent Registered Public Accounting Firm
- 24.1 Power of Attorney (included on signature page)

**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:
    - (i) 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.

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(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**

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 Minneapolis, State of Minnesota, on March 11, 2011.

**WINMARK CORPORATION**

/s/ JOHN L. MORGAN  
John L. Morgan  
Chairman and Chief Executive Officer

**POWER OF ATTORNEY**

The undersigned officers and directors of Winmark Corporation hereby constitute and appoint John L. Morgan and Anthony D. Ishaug, each acting alone, with power to act as our true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for us and in our stead, in any and all capacities to sign any and all amendments (including post-effective amendments) to this Registration Statement and all documents relating thereto, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto each attorney-in-fact and agent, full power and authority to do and perform each and every act and thing necessary or advisable 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 attorney-in-fact and agent, or his or her 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 has been signed below by the following persons in the capacities indicated on March 11, 2011.

<b>SIGNATURE</b>	<b>TITLE</b>
/s/ JOHN L. MORGAN John L. Morgan	Chairman of the Board and Chief Executive Officer (principal executive officer)
/s/ ANTHONY D. ISHAUG Anthony D. Ishaug	Chief Financial Officer and Treasurer (principal financial and accounting officer)
/s/ JENELE C. GRASSLE Jenele C. Grassle	Director
/s/ KIRK A. MACKENZIE Kirk A. MacKenzie	Director
/s/ DEAN B. PHILLIPS Dean B. Phillips	Director
/s/ PAUL C. REYELTS Paul C. Reyelts	Director

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/s/ MARK L. WILSON  
Mark L. Wilson

Director

/s/ STEVEN C. ZOLA  
Steven C. Zola

Director