

True Drinks Holdings, Inc.

Form S-1/A

April 22, 2016

As filed with the Securities and Exchange Commission on April 22, 2016.

Registration No. 333-209549

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

FORM S-1/A
(Amendment No. 1)

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

TRUE DRINKS HOLDINGS, INC.
(Exact Name of Registrant as Specified in its Charter)

Nevada
(State or Other Jurisdiction
of
Incorporation or
Organization)

2086
(Primary Standard
Industrial
Classification Code
Number)

84-1575085
(I.R.S. Employer
Identification Number)

18662 MacArthur Blvd., Suite 110
Irvine, CA 92612
(949) 203-3500

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

Kevin Sherman
Chief Executive Officer
18662 MacArthur Blvd., Suite 110
Irvine, CA 92612
(949) 203-3500

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

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From time to time after the effective date of this Registration Statement.

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(Approximate date of commencement of proposed sale to the public)

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 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.

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

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

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.

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

(do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered (1)	Amount to be Registered (2)	Proposed Maximum Aggregate Offering Price (3)	Amount of Registration Fee (3)
Common Stock, \$0.001 par value per share	44,863,395	\$ 7,537,050.36	\$ 758.98(4)

(1) Consists of up to (i) 20,589,334 shares of common stock issuable upon conversion of shares of Series C Convertible Preferred Stock (“Series C Preferred”) issued in a series of private placement transactions, first consummated on August 13, 2015 (the “Private Placements”); (ii) 6,479,324 shares of common stock issuable upon exercise of warrants issued in connection with the Private Placements; (iii) up to 17,500,000 shares of common stock issuable upon exercise of a warrant issued to Mr. Vincent C. Smith in connection with the execution of a personal guaranty; and (iv) up to 294,737 shares of common stock issuable upon exercise of a warrant issued to Novelty Capital Group LLC, as consideration for certain advisory services related to investor relations.

(2) In the event of a stock split, stock dividend or similar transaction involving the common stock of the Registrant, in order to prevent dilution, the number of shares registered shall be automatically increased to cover additional shares in accordance with Rule 416(a) under the Securities Act of 1933, as amended (“Securities Act”).

(3) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) under the Securities Act.

(4) Previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. The Selling Stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS
(Subject to Completion)

Dated _____, 2016

44,863,395 Shares of Common Stock

TRUE DRINKS HOLDINGS, INC.

We are registering 44,863,395 shares of our common stock, \$0.001 per share, of True Drinks Holdings, Inc. (“we,” “us,” or the “Company”), by selling stockholders listed beginning on page 38 of this prospectus (“Selling Stockholders”). All of the shares being offered, when sold, will be sold by the Selling Stockholders. The shares of common stock registered for resale under this registration statement include:

up to 20,589,334 shares of common stock issuable upon conversion of shares of Series C Convertible Preferred Stock (“Series C Preferred”) issued in a series of private placement transactions, first consummated on August 13, 2015 (the “Private Placements”);

up to 6,479,324 shares of common stock issuable upon exercise of warrants issued in connection with the Private Placements (the “Warrants”);

up to 17,500,000 shares of common stock issuable upon exercise of a warrant issued to Mr. Vincent C. Smith in connection with the execution of a personal guaranty (the “Personal Guaranty Warrant”); and

up to 294,737 shares of common stock issuable upon exercise of a warrant issued to Novelty Capital Group LLC, as consideration for certain investment relations services provided to the Company (the “Novelty Warrant”).

We will not receive any proceeds from the sale of the shares by the Selling Stockholders; however, if the warrants are exercised we will receive the exercise price of the warrants, if exercised at all. We will pay the expenses of registering the shares sold by the Selling Stockholders. See “Selling Stockholders” beginning on page 38 of this prospectus for a list of the Selling Stockholders.

The shares of common stock are being registered to permit the Selling Stockholders to sell the shares from time to time, in amounts and at prices and on terms determined at the time of the offering. The Selling Stockholders may sell the shares of our common stock covered by this prospectus in a number of different ways, and at prevailing market prices or privately negotiated transactions. We provide more information about how the Selling Stockholders may sell the shares in the section entitled “Plan of Distribution” beginning on page 40 of this prospectus.

Our common stock is quoted on the OTC Pink Marketplace under the symbol “TRUU.” The last reported sale price of our common stock on April 21, 2016 was \$0.12 per share.

No underwriter or other person has been engaged to facilitate the sale of shares of common stock in this offering.

You should rely only on the information contained in this prospectus. We have not, and the Selling Stockholders have not, authorized anyone to provide you with different information. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representations. If anyone provides you with different information, you should not rely on it. We are not, and the Selling Stockholders are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information contained in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

Investing in our common stock involves a high degree of risk. See “Risk Factors” beginning on page 2 of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2016.

TRUE DRINKS HOLDINGS, INC.
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FORWARD-LOOKING STATEMENTS

This prospectus, including the information incorporated by reference, contains forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995. The use of any statements containing the words “intend,” “believe,” “estimate,” “project,” “expect,” “anticipate,” “plan,” “should” or similar expressions are intended to identify a statement. Forward-looking statements inherently involve risks and uncertainties that could cause actual results to differ materially from the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, changes in demand for our products and services, changes in the level of operating expenses, our ability to execute our business and operating plan, changes in general economic conditions that impact government spending, regulatory issues, dependence on third party suppliers, and other risks detailed in this prospectus under the heading “Risk Factors” and in our periodic report filings with the Securities and Exchange Commission (the “SEC”).

Forward-looking statements are subject to numerous assumptions, risks and uncertainties, which change over time. Forward-looking statements speak only as of the date they are made, and we assume no duty to and do not undertake to update forward-looking statements. These forward-looking statements may not meet the safe harbor for forward-looking statements pursuant to Sections 21E or 27A of the Securities Act of 1933, as amended. Actual results could differ materially from those anticipated in forward-looking statements and future results could differ materially from historical performance.

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PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus. This summary does not contain all the information you should consider before buying our common stock. You should read the following summary together with the more detailed information appearing in this prospectus, including our consolidated financial statements and related notes, and our risk factors beginning on page 2, before deciding whether to purchase shares of our common stock.

As used in this prospectus, “we”, “us”, “our”, “True Drinks”, “Company” or “our Company” refers to True Drinks Holdings and all of its subsidiaries, unless the context requires otherwise. We are a holding company and conduct no operating business, except through our subsidiaries.

Overview

True Drinks Holdings, Inc. (the “Company”, “us” or “we”) was incorporated in the state of Nevada in January 2001 and is the holding company for True Drinks, Inc. (“True Drinks”), a beverage company incorporated in the state of Delaware in January 2012 that specializes in all-natural, vitamin-enhanced drinks. Our primary business is the development, marketing, sale and distribution of our flagship product, AquaBall(TM) Naturally Flavored Water, a vitamin-enhanced, naturally flavored water drink packaged in our patented stacking spherical bottles. We distribute the AquaBall(TM) nationally through select retail channels, such as grocery stores, mass merchandisers, drug stores and online. We also market and distribute Bazi(R) All Natural Energy, a liquid nutritional supplement drink, which is currently distributed online and through our existing database of customers.

Our principal place of business is 18662 MacArthur Boulevard, Suite 110, Irvine, California, 92612. Our telephone number is (949) 203-2500. Our corporate website address is <http://www.truedrinks.com>. Our common stock is currently listed for quotation on the OTC Pink Marketplace under the symbol “TRUU.”

THE OFFERING

Securities Offered by the Selling Stockholders 44,863,395 shares of common stock

Common stock Outstanding as of April 19, 2016 112,049,107 shares

Use of Proceeds We will not receive any of the proceeds of the shares offered by the Selling Stockholders. We may receive proceeds upon exercise of the warrants, if they are exercised. The shares that will be resold under this prospectus were sold by us, or were issued upon the conversion of securities issued by us.

Risk Factors Prior to making an investment decision, you should carefully consider all of the information in this prospectus and, in particular, you should evaluate the risk factors set forth under the caption “Risk Factors” beginning on page 2.

Trading Symbol TRUU

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RISK FACTORS

Risks Related to the Company

We have a history of operating losses and, despite consummation of recent financings, we require additional financing to satisfy our current contractual obligations and execute our business plan.

We have not been profitable since inception. We had a net loss of \$11,990,563 and \$8,116,603 for the years ended December 31, 2015 and 2014, respectively. Additionally, sales of AquaBall(TM) Naturally Flavored Water are significantly below levels necessary to achieve positive cash flow.

Although we have recently consummated equity and debt financings that have resulted in aggregate net proceeds of approximately \$10.2 million for the year ended December 31, 2015, our cash position was approximately \$586,000 at December 31, 2015, and we used \$10,433,069 of cash for operations during the year ended December 31, 2015. To continue as a going concern, and to satisfy our contractual obligations under the bottling agreement with Niagara Bottling, LLC (“Niagara”) executed in October 2015 (the “Niagara Agreement”), we need to secure proceeds from the sale of additional debt or equity securities, whether in a private or public offering, in the near term. No assurances can be given that we will be successful in our attempts to generate proceeds to fund our operations. In the event we are unable to raise additional capital through the issuance of additional debt or equity securities, we will be unable to continue as a going concern.

We face substantial uncertainties in executing our business plan.

We must attain certain objectives in order to successfully execute our business plan over, including certain sales and distribution of AquaBall(TM) Naturally Flavored Water required by the minimum volume requirements for each 12-month period under the Niagara Agreement (the “Annual Commitment”). Failure to sustain sales sufficient to meet our Annual Commitment to Niagara will have a material adverse impact on our business, and no assurances can be given that we will be successful in our efforts.

We believe that, in order to execute our business plan and achieve sales growth, we must, among other things, successfully recruit additional personnel in key positions, develop a larger distribution network, establish a broader customer base and increase awareness of our brand name. In order to implement any of these initiatives, we will be required to materially increase our operating expenses, which may require additional working capital. If we are unable to secure additional working capital, we will be unable to accomplish our objectives, and if we are unable to accomplish one or more of these objectives, our business may fail.

Our licensing agreements with Disney Consumer Products, Inc. and Marvel Characters, B.V. are critical components of the marketing of the AquaBall(TM) line, and there is no guarantee the licensing agreements will be renewed at the end of each agreement’s term.

We currently have licensing agreements with Disney Consumer Products, Inc. (the “Disney Agreement”) and Marvel Characters, B.V. (the “Marvel Agreement”) that allow us to place popular Disney and Marvel characters on labels of AquaBall(TM) Naturally Flavored Water. The use of these characters, including Disney Princesses and Spider-Man, is critical to making AquaBall(TM) stand out among our competitors. These licensing agreements have varying terms, the Disney Agreement expires in March 31, 2017 and the Marvel Agreement expires in December 2017, and there is no guarantee we will be able to renew these agreements upon expiration, nor are we able to guarantee that we will have licensing agreements with other companies when the Disney Agreement and Marvel Agreement expire.

Certain large shareholders may have certain personal interests that may affect the Company.

As a result of securities held by Mr. Vincent C. Smith, the Vincent C. Smith, Jr. Annuity Trust 2015-1 (the “Smith Trust”), and Red Beard Holdings, LLC, an entity affiliated with Mr. Smith (“Red Beard”), Mr. Smith may be deemed the beneficial owner of up to 50% of the Company’s outstanding voting securities, after giving effect to certain voting limitations. As a result, Mr. Smith, the Smith Trust and/or Red Beard has the potential ability to exert influence over both the actions of the Board of Directors and the outcome of issues requiring approval by the Company’s shareholders. This concentration of ownership may have effects such as delaying or preventing a change in control of the Company that may be favored by other shareholders or preventing transactions in which shareholders might otherwise recover a premium for their shares over current market prices.

Our limited operating history makes it difficult to evaluate our prospects.

We have a limited operating history on which to evaluate our business and prospects. Our current flagship product, AquaBall(TM) Naturally Flavored Water, was formulated and introduced to the public for sale in 2012. Our other product, Bazi(R) All Natural Energy, has had limited market success. There can be no assurance that we will achieve significant sales as a result of us focusing our sales efforts on the AquaBall(TM) product, or that our new sales model will be successful.

We also may not be successful in addressing our other operating challenges, such as developing brand awareness and expanding our market presence through retail sales and our direct-to-consumer and online sales strategy. Our prospects for profitability must be considered in light of our evolving business model. These factors make it difficult to assess our prospects.

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We are affected by extensive laws, governmental regulations, administrative determinations, court decisions and similar other constraints, which can make compliance costly and subject us to enforcement actions by governmental agencies.

The formulation, manufacturing, packaging, labeling, holding, storage, distribution, advertising and sale of our products are affected by extensive laws, governmental regulations and policies, administrative determinations, court decisions and similar constraints at the federal, state and local levels, both within the United States and in any country where we conduct business. There can be no assurance that we, or our independent distributors, will be in compliance with all of these regulations. A failure by us or our distributors to comply with these laws and regulations could lead to governmental investigations, civil and criminal prosecutions, administrative hearings and court proceedings, civil and criminal penalties, injunctions against product sales or advertising, civil and criminal liability for the Company and/or its principals, bad publicity, and tort claims arising out of governmental or judicial findings of fact or conclusions of law adverse to the Company or its principals. In addition, the adoption of new regulations and policies or changes in the interpretations of existing regulations and policies may result in significant new compliance costs or discontinuation of product sales, and may adversely affect the marketing of our products, resulting in decreases in revenues.

Our ability to increase sales is dependent on growing in our existing markets as well as expanding into new markets in other countries. As we expand into foreign markets, we will become subject to different political, cultural, exchange rate, economic, legal and operational risks. We may invest significant amounts in these expansions with little success.

We currently are focusing our marketing efforts in the United States and, to a lesser extent, Canada. We believe that our future growth will come from both the markets that we are currently operating in and other international markets. We do not have any history of international expansion, and therefore have no assurance that any efforts will result in increased revenue. Additionally, we may need to overcome significant regulatory and legal barriers in order to sell our products, and we cannot give assurance as to whether our distribution method will be accepted. These markets may require that we reformulate our product to comply with local customs and laws. However, there is no guarantee that the reformulated product will be approved for sale by these regulatory agencies or attract local distributors.

We are currently dependent on a limited number of suppliers and manufacturers for the production of our products, and we do not independently analyze our products before distribution. If we are not able to ensure timely product deliveries, potential distributors and customers may not order our products, and our revenues may decrease.

We rely entirely on a limited number of third parties to supply and manufacture our product, and, beginning in the second quarter of 2016, we will rely entirely on Niagara to manufacture AquaBall(TM). These manufacturers may be unable to satisfy our supply requirements, manufacture our products on a timely basis, fill and ship our orders promptly, provide services at competitive costs or offer reliable products and services. The failure to meet any of these critical needs would delay or reduce product shipment and adversely affect our revenues, as well as jeopardize our relationships with our independent distributors and customers. In the event any of our manufacturers were to become unable or unwilling to continue to provide us with products in required volumes and at suitable quality levels, we would be required to identify and obtain acceptable replacement manufacturing sources. There is no assurance that we would be able to obtain alternative manufacturing sources on a timely basis. Additionally, all manufacturers source the raw materials for our products, and if we were to use alternative manufacturers we may not be able to duplicate the exact taste and consistency profile of the product from the original manufacturer. An extended interruption in the supply of our products would result in decreased product sales and our revenues would likely decline.

We are dependent on our third party manufacturers to supply our products in the compositions we require, and we do not independently analyze our products. Any errors in our product manufacturing could result in product recalls, significant legal exposure, and reduced revenues and the loss of distributors.

Although we require each of our manufacturers to verify the accuracy of the contents of our products, we do not have the expertise or personnel to monitor the production of products by these third parties. We rely exclusively, without independent verification, on certificates of analysis regarding product content provided by our third party suppliers and limited safety testing by them. We cannot be assured that these outside manufacturers will continue to supply products to us reliably in the compositions we require. Errors in the manufacture of our products could result in product recalls, significant legal exposure, adverse publicity, decreased revenues, and loss of distributors and endorsers.

We face significant competition from existing suppliers of products similar to ours. If we are not able to compete with these companies effectively, we may not be able to achieve profitability.

We face intense competition from numerous resellers, manufacturers and wholesalers of liquid nutrition drinks similar to ours, including retail, online and mail order providers. We consider the significant competing products in the U.S. market for the AquaBall(TM) to be Capri-Sun, Good to Grow, Bug Juice, and other alternatives marketed towards children, and for Bazi(R) to be Red Bull(R), Monster(R), RockStar(R), and 5 Hour Energy(R). Most of our competitors have longer operating histories, established brands in the marketplace, revenues significantly greater than ours and better access to capital than us. We expect that these competitors may use their resources to engage in various business activities that could result in reduced sales of our products. Companies with greater capital and research capabilities could re-formulate existing products or formulate new products that could gain wide marketplace acceptance, which could have a depressive effect on our future sales. In addition, aggressive advertising and promotion by our competitors may require us to compete by lowering prices because we do not have the resources to engage in marketing campaigns against these competitors, and the economic viability of our operations likely would be diminished.

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Adverse publicity associated with our products or ingredients, or those of similar companies, could adversely affect our sales and revenues.

Adverse publicity concerning any actual or purported failure of our Company to comply with applicable laws and regulations regarding any aspect of our business could have an adverse effect on the public perception of our Company. This, in turn, could negatively affect our ability to obtain financing, endorsers and attract distributors or retailers for the AquaBall(TM) and/or Bazi(R), which would have a material adverse effect on our ability to generate sales and revenues.

Our distributors' and customers' perception of the safety and quality of our products or even similar products distributed by others can be significantly influenced by national media attention, publicized scientific research or findings, product liability claims and other publicity concerning our products or similar products distributed by others. Adverse publicity, whether or not accurate, that associates consumption of our products or any similar products with illness or other adverse effects, will likely diminish the public's perception of our products. Claims that any products are ineffective, inappropriately labeled or have inaccurate instructions as to their use, could have a material adverse effect on the market demand for our products, including reducing our sales and revenues.

Our products may not meet health and safety standards or could become contaminated.

We have adopted various quality, environmental, health and safety standards. We do not have control over all of the third parties involved in the manufacturing of our products and their compliance with government health and safety standards. Even if our products meet these standards they could otherwise become contaminated. A failure to meet these standards or contamination could occur in our operations or those of our bottlers, distributors or suppliers. This could result in expensive production interruptions, recalls and liability claims. Moreover, negative publicity could be generated from false, unfounded or nominal liability claims or limited recalls. Any of these failures or occurrences could negatively affect our business and financial performance.

The sale of our products involves product liability and related risks that could expose us to significant insurance and loss expenses.

We face an inherent risk of exposure to product liability claims if the use of our products results in, or is believed to have resulted in, illness or injury. Most of our products contain combinations of ingredients, and there is little long-term experience with the effect of these combinations. In addition, interactions of these products with other products, prescription medicines and over-the-counter drugs have not been fully explored or understood and may have unintended consequences. While our third party manufacturers perform tests in connection with the formulations of our products, these tests are not designed to evaluate the inherent safety of our products.

Although we maintain product liability insurance, it may not be sufficient to cover all product liability claims and such claims that may arise, could have a material adverse effect on our business. The successful assertion or settlement of an uninsured claim, a significant number of insured claims or a claim exceeding the