

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

Attitude Drinks Inc.

CIK: **1416183** | IRS No.: **650109088** | State of Incorporation: **DE** | Fiscal Year End: **0331**
Type: **8-K** | Act: **34** | File No.: **000-52904** | Film No.: **13521506**
SIC: **2080** Beverages

Mailing Address

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PALM BEACH GARDENS FL
333410

Business Address

10415 RIVERSIDE DRIVE,
#101
PALM BEACH GARDENS FL
333410
561-227-2727

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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): January 9, 2013

Attitude Drinks Incorporated
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

(000-52904)
(Commission File Number)

65-0109088
(IRS Employer Number)

10415 Riverside Drive # 102, Palm Beach Gardens, Florida 33410-4237
(Address of principal executive offices) (Zip Code)

Telephone number: (561) 227-2727

N/A
(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 (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 3.02 Unregistered Sales of Equity Securities.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On January 9, 2013, Attitude Drinks Incorporated (the “Company”) amended its Certificate of Designation with the State of Delaware to create 51 shares of Series A-1 Preferred Stock and to establish the rights, preferences, privileges and obligations thereof. As set forth in the Certificate of Designation, each one (1) share of the Series A-1 has voting rights equal to (x) 0.019607 multiplied by the total issued and outstanding shares of Common Stock eligible to vote at the time of the respective vote (the “**Numerator**”), divided by (y) 0.49, minus (z) the Numerator. With respect to all matters upon which stockholders are entitled to vote or to which stockholders are entitled to give consent, the holders of the outstanding shares of Series A-1 shall vote together with the holders of Common Stock without regard to class, except as to those matters on which separate class voting is required by applicable law or the Certificate of Incorporation or bylaws. If the Company effects a stock split which either increases or decreases the number of shares of Common Stock outstanding and entitled to vote, the voting rights of the Series A-1 shall not be subject to adjustment unless specifically authorized.

The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment to the Certificate of Designation, a copy of which is filed as an Exhibit 4(8) to this Current Report on Form 8-K and is incorporated herein by reference.

On January 9, 2013 the Company issued 51 shares of Series A-1 Preferred Stock to Roy Warren, Chief Executive Officer of the Company.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits.*

Exhibit No.	Description
4(8)	Certificate of Amendment to the certificate of Designation of the Series A Convertible Preferred Stock

SIGNATURES

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.

Date: January 10, 2013

ATTITUDE DRINKS INCORPORATED

By: /s/ Roy G. Warren
Name: Roy G. Warren
Title: Chief Executive Officer

Exhibit 4(8)

**AMENDMENT TO THE CERTIFICATE OF DESIGNATION OF THE RELATIVE RIGHTS AND PREFERENCES OF THE
SERIES A CONVERTIBLE PREFERRED STOCK OF
ATTITUDE DRINKS INCORPORATED**

The undersigned, being the Chief Executive Officer of Attitude Drinks Incorporated, a Delaware corporation (the "Company"), in accordance with the provisions of the Delaware General Corporation Law, does hereby certify that, pursuant to the authority conferred upon the Board of Directors of the Company by the Certificate of Incorporation of the Company, as amended, the following resolutions modifying the Certificate of Designation of the Relative Rights and Preferences of the Series A Convertible Preferred Stock (the "Certificate of Designation") were duly adopted on January 9, 2013:

WHEREAS, the Board of Directors of the Company, pursuant to the authority expressly vested in it, had previously adopted resolutions creating the Series A Convertible Preferred Stock, which resolutions were incorporated into the Certificate of Designation filed with the Secretary of State of the State of Delaware on or about June 2, 2006 and subsequently amended on September 19, 2009;

RESOLVED, that Section 2(A) of the Certificate of Designation is hereby deleted in its entirety and the following shall be substituted in lieu thereof:

2. Rights, Powers, and Preferences

The Series A shall have the voting powers, preferences and relative, participating, optional and other special rights, qualifications, limitations and restrictions as follows:

- A. Designation and Amount.** Out of the Twenty Million (20,000,000) shares of the \$.001 par value authorized preferred stock, Nineteen Million Nine Hundred Ninety Nine Thousand Nine Hundred Forty Nine (19,999,949) shares shall be designated as shares of "Series A," and Fifty One (51) shares shall be designated as shares of "Series A-1." The term "Series A" as used herein shall include the term "Series A-1" except in this Section 2.A. and Section 2.D.

RESOLVED, that Section 2(D) of the Certificate of Designation is hereby deleted in its entirety and the following shall be substituted in lieu thereof:

2. Rights, Powers, and Preferences

- D. Voting Rights.** In all matters the Series A shall have the same voting rights as the Common Stock on a six to one (6:1) basis. If the Company effects a stock split which either increases or decreases the number of shares of Common Stock outstanding and entitled to vote, the voting rights of the Series A shall not be subject to adjustment unless specifically authorized. Each one (1) share of the Series A-1 shall have voting rights equal to (x) 0.019607 *multiplied by* the total issued and outstanding shares of Common Stock eligible to vote at the time of the respective vote (the "Numerator"), *divided by* (y) 0.49, *minus* (z) the Numerator. For purposes of illustration only, if the total issued and outstanding shares of Common Stock eligible to vote at the time of the respective vote is 5,000,000 the voting rights of one share of the Series A-1 shall be equal to $102,036 (0.019607 \times 5,000,000) / 0.49 - (0.019607 \times 5,000,000) = 102,036$. With respect to all matters upon which stockholders are entitled to vote or to which stockholders are entitled to give consent, the holders of the outstanding shares of Series A-1 shall vote together with the holders of Common Stock without regard to class, except as to those matters on which separate class voting is required by applicable law or the Certificate of Incorporation or bylaws. If the Company effects a stock split which either increases or decreases the number of shares of Common Stock outstanding and entitled to vote, the voting rights of the Series A-1 shall not be subject to adjustment unless specifically authorized.

IN WITNESS WHEREOF, Attitude Drinks Incorporated has caused this Amendment to be signed by its Chief Executive Officer on this 9th day of January, 2013.

ATTITUDE DRINKS INCORPORATED

By: /s/ Roy Warren
Name: Roy Warren
Title: President, CEO