

# Black Rifle Coffee (BRCC) Is Battling Survival

February 26, 2023

## Summary

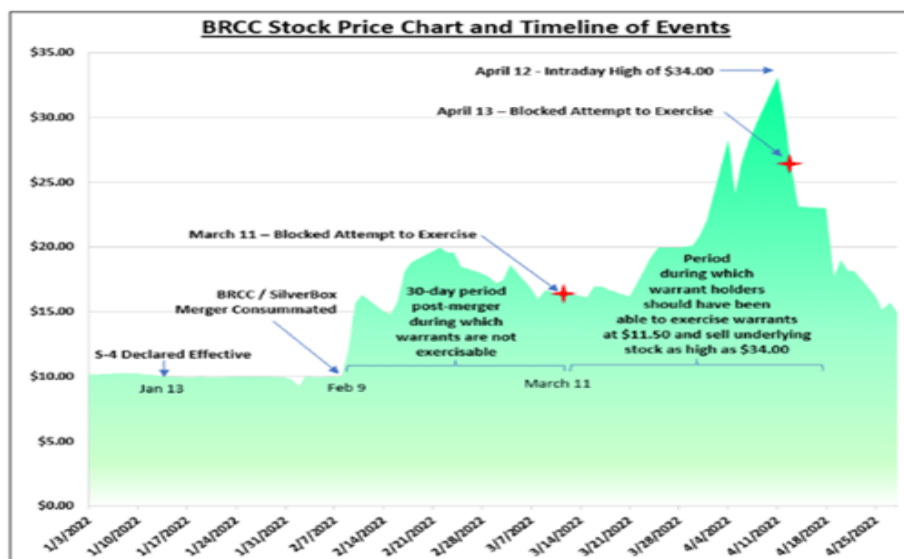
- BRCC is facing legal claims north of \$20 million just from securities fraud lawsuits only.
- 2023 BRCC legal fees to exceed \$2 million this year.
- BRCC's sales channels have evaporated, doubt the company can survive in the lowest margin business of Ready-to-Drink ("RTD").

## Introduction

BRCC is involved in lawsuits ranging from securities fraud to breach of royalty contracts. BRCC's securities fraud lawsuits could cut its available cash by 30%. Which is not an ideal situation for a growth company with negative free-cash-flow per quarter and limited financing options. But even if BRCC can fight off the securities fraud lawsuits, they will suffer substantial litigation expenses at the hands of Kirkland & Ellis (one of the top-paid law firms in the business). And even assuming they could absorb the securities lawsuits, they face even bigger challenges to their survival due to a new lawsuit filed by SEI for BRCC breach of a royalty contract with them. This lawsuit was filed just as BRCC publicly announced their primary focus is on ready-to-drink-products ("RTD") because they're losing online-direct-to-consumer and their retail-stores ("Outposts") are too expensive and not profitable to operate. Hence, BRCC is "all in" on ready-to-drink ("RTD") and the recent lawsuit could put their RTD business out of business.

## Tang Vs. BRCC

According to legal filings, Tang owned 1,035,364 BRCC warrants. When Tang tried to exercise the warrants, BRCC refused to deliver the stock in exchange for the warrants (breaching the contract with public shareholders). BRCC's potential liability in this lawsuit is  $\$11,389,004 = 1,035,364 * [(\$26 - \$11.5) - (\$15 - \$11.5)]$  given that Tang could have sold BRCC shares at \$26. This case is entering its 11th month and Tang appears to be winning. A judge recently ordered BRCC to turn over all internal communications pertaining to the company's decision to breach the warrant agreement.



## 1791 Management Vs. BRCC

Like the Tang lawsuit, 1791 Management also filed a lawsuit against BRCC for breaching the warrant agreement and claimed damages in excess of \$5,000,000 according to legal filings. This case is entering its 10th month. In addition to naming BRCC as defendants, 1791 Management also included the hedge fund that underwrote the Back-Door-De-SPAC transaction BRCC completed February 9th 2022 to become public.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE

1791 MANAGEMENT LP, a Delaware limited partnership, )  
Plaintiff, )  
v. )  
BRC INC., a business entity, form unknown, but believed to be a Delaware corporation; )  
AUTHENTIC BRANDS LLC, a business entity, form unknown, but believed to be a Delaware limited liability company; )  
BLACK RIFLE COFFEE COMPANY LLC, a business entity, form unknown, but believed to be a Delaware limited liability company; )  
ENGAGED CAPITAL, LLC, a business entity, form unknown, but believed to be a )

Case No. 30-2022-01260703-CU-FR-CJC  
Assigned for All Purposes to:  
Hon John C. Gastelum  
Department C11  
**FIRST AMENDED COMPLAINT**

## SEI Vs. BRCC

Unlike the Tang and 1791 Management lawsuits, SEI filed a new lawsuit against BRCC this month for breach of contract related to BRCC's Ready-to-Drink ("RTD") line of business. According to legal filings, SEI filed this suit because BRCC breached its royalty contract. The lawsuit states: ***"BRCC did not pay the royalties they agreed under the consulting agreement, including hundreds of thousands of dollars in currently unpaid, past-due royalties, tens of millions of dollars in future royalties, and other amounts owed under the consulting agreement."***

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

STRATEGY AND EDUCATION, INC.,  
a Michigan corporation,  
Plaintiff,  
v.  
BLACK RIFLE COFFEE COMPANY LLC,  
a Delaware limited liability company,  
Defendant

CIVIL ACTION NO. 23-cv-103  
JURY DEMAND

COMPLAINT AND JURY DEMAND

Strategy and Education, Inc. ("SEI" or "Plaintiff") brings this action for breach and anticipatory breach of contract and declaratory relief against Defendant Black Rifle Coffee Company LLC ("BRCC" or "Defendant").

Notice of the Case

- Plaintiff asserts this lawsuit to resolve current and future disputes with Defendant concerning royalties and other payments due from Defendant to Plaintiff pursuant to a written Consulting Agreement and subsequent express and/or implied contract(s) for payment of such royalties.
- Plaintiff also seeks declaratory judgment that Defendant does not possess intellectual property rights, greater than that it is to the exclusion of Plaintiff, in the ingredients, composition and/or formula for the Ready-to-Drink ("RTD") coffee line of beverages developed through Plaintiff's efforts.

## BRCC Claims RTD is Critical to its Success.

Based on BRCC's 2021 Audited Financials, SEI is the only broker for the development, production, and distribution of their "RTD Products". In January 2023, BRCC announced they are shifting focus away from DTC (direct-to-consumer online) and Outposts (retail locations), which means the only line of business BRCC has left is RTD Products.

## RTD Can't Save BRCC

In addition to BRCC's securities fraud and royalty lawsuits, RTD isn't even financially viable. Shifting from online DTC to retail RTD is a big challenge. RTD Products have severely limited margins due to the drastically higher distribution

costs. BRCC's RTD retails for \$3.99. An example of the additional cost and resulting gross profit BRCC can expect in the type of distribution channel is as follows:

**Marginal Cost Only**

Retail Price.....	\$3.99
Manufacturing Cost.....	\$1.59
<u>Wholesale / Distributor Cost....</u>	<u>\$2.10</u>
Gross Profit.....	\$0.30

The likelihood BRCC can generate positive EBITDA at a gross profit per/can of 7.5% is tiny. If BRCC is forced to pay a royalty, per the SEI contract, they will find themselves in an even worse position. If you consider the cost of BRCC's marketing strategy, "life-style-branding," they will continue burning cash to back RTD, which is unlikely to ever generate a profit.

**Summary**

BRCC is facing total legal claims north of \$20 million from the securities fraud lawsuits only (cutting their available cash by 30%) and is likely to spend more than \$2 million in legal expenses in 2023. The company's distribution channels have evaporated, so all their chips are on RTD (the lowest margin option). To sum up, I'm short BRCC in 2023.

Report Produced by 1791 Management LLC.