

JONES SODA CO  
Form POS AM  
March 31, 2014

Registration No. 333-166556

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 3

TO FORM S-3

ON FORM S-1

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

JONES SODA CO.

(Exact Name of Registrant as Specified in its Charter)

Washington  
(State or Other Jurisdiction of  
  
Incorporation)

2086 52-2336602  
(Primary (IRS Employer  
Standard  
Industrial  
Classification Identification Number)  
Code  
Number)

1000 First Avenue South, Suite 100  
Seattle, Washington 98134  
(206) 624-3357  
(Address, Including Zip Code, and Telephone Number, including area code,  
of Registrant's Principal Executive Offices)

Jennifer L. Cue  
Chief Executive Officer  
Jones Soda Co.

With a copy to:  
Timothy M. Woodland, Esq.  
524 Second Ave., Suite 500

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1000 First Avenue South, Suite 100  
Seattle, Washington 98134  
(206) 624-3357

Seattle, Washington 98104-2323  
(206) 254-4424

(Name, Address, including Zip Code, and Telephone Number,  
including Area Code, of Agent for Service)

Approximate date of commencement of proposed sale to the public: From time to time after the Registration Statement becomes effective.

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

## CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered (1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee (4)
Common stock, no par value, and warrants to purchase common stock (2) (3)	\$30,000,000	\$2,139

- (1) The table lists each class of securities being registered and the aggregate proceeds to be raised in the primary offering, but does not specify information by each class as to the amount to be registered, the proposed maximum aggregate offering price per unit or the proposed maximum aggregate offering price. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder. In no event will the aggregate offering price of all securities issued from time to time pursuant to the registration statement exceed \$30,000,000, inclusive of any exercise price thereof. Pursuant to Rule 416(a) under the Securities Act of 1933, the shares being registered hereunder also include such indeterminate number of shares of our common stock as may be issued or issuable from time to time with respect to the securities being registered hereunder as a result of stock splits, stock dividends or similar transactions.
- (2) Subject to note (1) above, there is being registered hereunder an indeterminate number of shares of our common stock as may from time to time be sold hereunder. In addition, pursuant to Rule 457(i) under the Securities Act of 1933, the shares being registered hereunder include an indeterminate number of shares of our common stock as may be issued from time to time upon exercise of the warrants issued directly hereunder.
- (3) Subject to note (1) above, there is being registered hereunder an indeterminate number of warrants to purchase shares of our common stock.
- (4) The registration fee was calculated pursuant to Rule 457(o) under the Securities Act of 1933 on the basis of the maximum aggregate offering price of the securities listed. The registration fee was previously paid in full with the filing by the registrant of its Form S-3 registration statement (File No. 333-166556) on May 6, 2010.

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, as amended, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

On May 6, 2010, we filed a Form S-3 registration statement (File No. 333-166556), which was declared effective on May 18, 2010 (the "Registration Statement"). The Registration Statement was a shelf registration for the primary offering and sale, from time to time, of up to \$30,000,000 of securities, consisting of shares of common stock and warrants to purchase shares of common stock. All filing fees payable in connection with the Registration Statement were paid in full at the time of the initial filing of the Registration Statement.

Upon filing our Annual Report on Form 10-K for the year ended December 31, 2012, we ceased to be eligible to use Form S-3. Accordingly, pursuant to Rule 401(b) under the Securities Act of 1933, and in order to comply with Section 10(a)(3) of the Securities Act, we filed a Post-Effective Amendment No. 1 to convert the Registration Statement from Form S-3 to Form S-1. After filing our Post-Effective Amendment No. 1, we filed a Post-Effective Amendment No. 2 to address the comments raised by the Securities and Exchange Commission regarding our Post-Effective Amendment No. 1.

We are filing this Post-Effective Amendment No. 3 in order to comply with Section 10(a)(3) of the Securities Act, with respect to the audited financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2013.

Pursuant to the Registration Statement, we previously sold and issued an aggregate of 11,713,946 shares (the "Shares") and 3,207,500 warrants (the "Warrants") for the purchase of up to 3,207,500 shares of common stock (subject to adjustment in accordance with the terms of the Warrants) (the "Warrant Shares"). As of the date of this Post-Effective Amendment No. 3, Warrants for 150,000 Warrant Shares have been exercised and the Warrant Shares underlying the remaining unexercised 3,057,500 Warrants remain reserved for sale and issuance upon exercise of such Warrants in accordance with their terms. Accordingly, the prospectus included in this Post-Effective Amendment No. 3 relates only to the primary offering of the remaining 3,057,500 Warrant Shares, from time to time, upon future exercise of the Warrants.

Upon completion of the offering, in accordance with the undertaking contained in the Registration Statement pursuant to item 512(a)(3) of Regulation S-K, we will file a further Post-Effective Amendment to deregister the securities that were not sold, and will not be sold, pursuant to the Registration Statement. The aggregate offering price for all securities sold pursuant to the Registration Statement (inclusive of the exercise prices for the Warrants, as if they were exercised in full) is \$11,900,408, out of the maximum aggregate offering price of \$30,000,000 under the Registration Statement.



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The information in this Prospectus is not complete and may be changed. These securities may not be sold 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 an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, dated March 28, 2014

### PROSPECTUS

JONES SODA CO.

3,057,500 Shares of Common Stock underlying Warrants

This prospectus covers the sale and issuance of up to 3,057,500 shares of the common stock of Jones Soda Co. to holders of outstanding warrants, upon exercise of such warrants. The warrants were issued on February 6, 2012 in a registered direct offering. The warrants have an exercise price of \$0.70 per share and are exercisable at any time prior to the close of business on August 6, 2017.

To the extent that the warrants are exercised for cash, we will receive the cash proceeds from such exercise of up to a total potential of approximately \$2,140,250, based on the exercise price of \$0.70 per share. Any warrants that remain unexercised as of August 6, 2017, will be automatically exercised by cashless exercise, in accordance with the terms of the warrants.

The exercise price of the Warrants is subject to adjustment in the case of stock splits, stock dividends, combinations of shares and similar recapitalization transactions, and also upon any distributions to our shareholders, business combinations, sale of substantially all assets and other fundamental transactions. The exercise of the warrants is subject to certain beneficial ownership and other limitations set forth in the warrants.

Our common stock is traded on the OTCQB under the trading symbol "JSDA" and the closing sale price of our common stock on March 19, 2014 was \$0.46 per share. The warrants are not traded or listed for trading on any securities market.

Investing in our securities involves a high degree of risk and the purchasers of the securities may lose their entire investment. See “Risk Factors” beginning on page 3 of this prospectus and the risk factors described in the documents incorporated by reference into this prospectus. You should carefully read this prospectus, together with the documents incorporated by reference, before you invest in our securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this Prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this Prospectus is \_\_\_\_\_, 2014.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-1 that we filed with the Securities and Exchange Commission. From time to time, we may file one or more prospectus supplements to add, update or change information included in this prospectus. You should read both this prospectus and any applicable prospectus supplements, together with additional information described below under the caption “Where You Can Find More Information” and “Incorporation by Reference of Certain Documents.” You should also carefully consider, among other things, the matters discussed in the section entitled “Risk Factors.”

We are responsible for the information contained and incorporated by reference in this prospectus and any applicable prospectus supplements. We have not authorized any other person to provide information different from that contained in this prospectus, any prospectus supplement and the documents incorporated by reference herein. If anyone provides you with different or inconsistent information, you should not rely on it. The information contained in this prospectus, in any prospectus supplement or in any document incorporated by reference is accurate only as of its date, regardless of the time of delivery of this prospectus or any sale of common stock.



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This prospectus is not an offer to sell or solicitation of an offer to buy these shares of common stock in any circumstances under which or in any jurisdiction in which the offer or solicitation is unlawful.

Unless otherwise indicated or the context otherwise requires, all references in this prospectus to the “Company,” “we,” “us,” and “our” are to Jones Soda Co., a Washington corporation, and its wholly-owned subsidiaries.

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## ABOUT JONES SODA CO.

We develop, produce, market and distribute premium beverages which we sell and distribute primarily in North America through our network of independent distributors located throughout the United States and Canada and directly to our national and regional retail accounts. We also sell products in select international markets. Our products are sold primarily in grocery stores, convenience and gas stores, “up and down the street” in independent accounts such as delicatessens and sandwich shops, as well as through our national accounts with several large retailers. We refer to our network of independent distributors as our direct store delivery (DSD) channel, and we refer to our national and regional accounts who receive shipments directly from us as our direct to retail (DTR) channel. We do not directly manufacture our products but instead outsource the manufacturing process to third-party contract manufacturers. We also sell various products online, including soda with customized labels, wearables, candy and other items, and we license our trademarks for use on products sold by other manufacturers.

Our company is a Washington corporation formed in 2000 as a successor to Urban Juice and Soda Company Ltd., a Canadian company formed in 1986. Our principal place of business is located at 1000 First Avenue South, Suite 100, Seattle, Washington 98134. Our telephone number is (206) 624-3357. Our website address is [www.jonessoda.com](http://www.jonessoda.com). The information on or accessible through our website is not part of this prospectus and should not be relied upon in connection with making an investment in our securities.

## RISK FACTORS

An investment in our common stock involves a high degree of risk. You should consider carefully the risks described in the section entitled “Risk Factors” contained in our Annual Report on Form 10-K for the year ended December 31, 2013, as filed with the SEC, which is incorporated herein by reference in its entirety, as well as in any applicable prospectus supplement and other documents that we incorporate by reference into this prospectus. The risks so described are not the only risks facing our company. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations. If any of these risks actually occur, our business, operating results, financial condition or prospects could be materially and adversely affected. This could cause the trading price of our common stock to decline and you may lose part or all of your investment. See also, “Special Note Regarding Forward-Looking Statements.”

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

We have made forward-looking statements in this prospectus and in documents that we incorporate by reference into this prospectus. We base these forward-looking statements on our expectations, assumptions, estimates and

projections about our business and the industry in which we operate as of the date of this prospectus. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “could,” “would,” “expects,” “plans,” “anticipates,” “believes,” “estimates,” “projects,” “predicts,” “potential” and similar expressions intended to identify forward-looking statements. Forward-looking statements include, but are not limited to, statements about:

- our ability to successfully execute on our turnaround strategy and our operating plan;
- our ability to increase revenues and achieve case sales goals;
- our ability to establish, maintain and grow our distributor channels and retail accounts;
- the potential markets for our products and our ability to successfully compete in those and our existing markets;
- our plans to continue to develop new products and create and maintain brand-name recognition;
- estimates of future growth, sales and inventory levels;
- estimates of the capacity of our suppliers, manufacturers, distributors and other third parties to perform their respective obligations;
- predictions regarding future economic conditions and trends;
- the scope of our intellectual property protection; and
- our operating and business strategies, our industry, our projected cash needs, liquidity and capital resources and our expected future revenues, operations and expenditures.

Discussions concerning these forward-looking statements can be found, among other places, in the “Business” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” sections incorporated in this prospectus by reference to our most recent Annual Report on Form 10-K, and in applicable prospectus supplements that we may file with the SEC. These statements are based largely on our expectations and projections about future events and trends affecting our business and represent our estimates and assumptions only as of the date of the document containing the applicable statement.

These forward-looking statements are subject to a number of risks and uncertainties that cannot be predicted, quantified or controlled and that could cause actual results to differ materially from those set forth in, contemplated by, or underlying the forward-looking statements. We discuss many of these risks in greater detail in the “Risk Factors” section incorporated in this prospectus by reference to our most recent Annual Report on Form 10-K, and in applicable prospectus supplements that we may file with the SEC. Given these uncertainties, you should not place undue reliance on these forward-looking statements. Except as required by law, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

## THE OFFERING

Securities offered by us in this offering	Up to 3,057,500 shares of common stock issuable upon exercise of warrants.
Warrant exercise price	The warrants are exercisable for an initial exercise price of \$0.70 per common share, subject to adjustment.
Term of warrants	The warrants are exercisable at any time prior to the close of business on August 6, 2017.
Common stock to be outstanding after this offering	41,767,916 shares of common stock (1)
Use of proceeds	We intend to use proceeds of this offering for working capital and other general corporate purposes. See “Use of Proceeds.”
OTCQB trading symbol	Our common stock is traded on the OTCQB Marketplace under the symbol
Risk factors	Investing in our common stock involves a high degree of risk and the purchasers of common stock upon exercise of warrants may lose their entire investment. See “Risk Factors” and the other information included and incorporated by reference in this prospectus and any applicable prospectus supplement for a discussion of risk factors you should carefully consider before deciding to invest in our securities

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(1)The number of shares of common stock to be outstanding after this offering is based on 38,710,416 shares outstanding as of March 19, 2014, and assumes the exercise in full of all of the warrants. The number of shares of common stock to be outstanding after this offering excludes shares issuable under our equity incentive plans, whether currently outstanding or that may be issued in the future.



USE OF PROCEEDS

To the extent that the 3,057,500 warrants are exercised for cash, we will receive the cash proceeds from such exercise of up to a total potential of approximately \$2,140,250, based on the exercise price of \$0.70 per share. If any warrants are exercised on a “net share” or cashless basis, we will not receive any cash proceeds from such exercise. Any warrants that remain unexercised as of August 6, 2017, will be automatically exercised by cashless exercise, in accordance with the terms of the warrants. There can be no assurance that we will receive any cash proceeds from the exercise of the warrants.

To the extent we receive cash proceeds from the exercise of warrants, we intend to use such proceeds for working capital and other general corporate purposes. We cannot anticipate the timing or amount of any cash exercises of the warrants, if at all, and accordingly cannot specify with certainty the particular uses of the cash proceeds from this offering.

DILUTION

Purchasers of the shares of common stock upon exercise of the warrants will suffer immediate and substantial dilution in the net tangible book value per share of common stock. Our net tangible book value as of December 31, 2013, was approximately \$3,260,000, or approximately \$0.08 per share of common stock, based on 38,710,416 shares outstanding as of that date. Net tangible book value per share is determined by dividing our net tangible book value, which consists of our total tangible assets less total liabilities, by the number of shares of our common stock outstanding on that date.

Dilution in net tangible book value per share represents the difference between the price per share paid by purchasers in this offering and the net tangible book value per share of our common stock immediately after this offering. Without taking into account any other changes in the net tangible book value after December 31, 2013 (other than to give effect to our receipt of the estimated total gross proceeds assuming the cash exercise of all of the warrants to purchase 3,057,500 shares of common stock at an exercise price of \$0.70 per share, less our estimated offering expenses), our pro forma net tangible book value as of December 31, 2013 (unaudited), would have been approximately \$5,400,000, or approximately \$0.13 per share of common stock. This represents an immediate increase of approximately \$0.05 in net tangible book value per share to our existing shareholders and an immediate dilution of approximately \$0.57 per share to purchasers in this offering. The following table (unaudited) illustrates this per share dilution:

Assumed public offering price per share upon exercise of warrants	\$ 0.70
Net tangible book value per share as of December 31, 2013	0.08

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Pro forma net tangible book value per share as of December 31, 2013, after giving effect to this offering	0.13
Increase in pro forma net tangible book value per share attributable to this offering	0.05
Dilution in pro forma net tangible book value per share to purchasers in this offering	\$ 0.57

The above table is based on 38,710,416 shares of our common stock outstanding as of December 31, 2013, as adjusted pro forma for 3,057,500 shares of common stock that may be issued in this offering, and excludes stock option awards under our equity incentive plans, whether currently outstanding or that may be granted in the future. To the extent that any stock options are exercised, new options or other equity awards are issued under our equity incentive plans, or we otherwise issue additional shares of common stock in the future, there will be further dilution to the purchasers.

### DIVIDEND POLICY

We have never declared or paid any cash dividends with respect to our common stock. We currently intend to retain any future earnings to fund the development and growth of our business. We do not anticipate paying cash dividends on our common stock in the foreseeable future.

## DESCRIPTION OF COMMON STOCK

We are a Washington corporation. The rights of our shareholders are governed by the Washington Business Corporation Act (the "WBCA"), our articles of incorporation and our bylaws. The following summary of some of the material terms, rights and preferences of our capital stock is not complete. You should read our articles of incorporation and our bylaws for more complete information.

### Common Stock

We are authorized to issue up to 100,000,000 shares of common stock, no par value. As of March 19, 2014, we had 38,710,416 shares of common stock outstanding. We do not currently have in effect a shareholder rights plan.

Each share of common stock entitles its holder to one vote on all matters to be voted upon by the shareholders. Cumulative voting for directors is not permitted. Holders of common stock may receive ratably any dividends that our board of directors may declare out of funds legally available for that purpose, although to the date of this prospectus, no dividends have been declared or paid. In the event of our liquidation, dissolution or winding up, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities. The common stock has no preemptive rights. All outstanding shares of common stock are fully paid and nonassessable, and the shares of our common stock to be issued under this prospectus will be fully paid and nonassessable upon proper exercise of the warrants in accordance with their terms.

### Antitakeover Effects of Certain Provisions of Articles of Incorporation, Bylaws and Washington Law

The following is only a summary of certain provisions of the WBCA, our articles of incorporation and bylaws, and is not a complete discussion. You should read the WBCA and our articles of incorporation and bylaws for more complete information. The business combination provisions of Washington law, which are discussed below, and the provisions of our articles of incorporation and bylaws that are discussed below could have the effect of discouraging offers to acquire us and, if any such offer is made, could increase the difficulty of consummating such offer, even if the offer contains a premium price for holders of common stock or otherwise benefits shareholders.

**Shareholder Meetings; Quorum.** Our bylaws provide that our shareholders may call a special meeting only upon the request of holders of at least 10% of the votes entitled to be cast on any matter proposed for consideration at such special meeting. Additionally, our president or our board of directors may call special meetings of shareholders. Except as required by law, a quorum at any annual or special meeting of shareholders consists of the presence of at least 33 1/3% of the shares entitled to be cast by each voting group.



Requirements for Advance Notification of Shareholder Nominations. Our bylaws contain advance notice procedures with respect to the nomination of candidates for election as directors, other than nominations made by or at the direction of our board of directors or a committee thereof. The existence of these advance notification provisions may make it more difficult for a third party to acquire, or may discourage a third party from acquiring, control of our board of directors.

Washington Anti-Takeover Statute. Washington law imposes restrictions on certain transactions between a corporation and certain significant shareholders. Chapter 23B.19 of the WBCA generally prohibits a “target corporation” from engaging in certain significant business transactions with an “acquiring person,” which is defined as a person or group of persons that beneficially owns 10% or more of the voting securities of the target corporation, for a period of five years after the date the acquiring person first became a 10% beneficial owner of the voting securities of the target corporation, unless the business transaction or the acquisition of shares is approved by a majority of the members of the target corporation’s board of directors prior to the time the acquiring person first became a 10% beneficial owner of the target corporation’s voting securities. Such prohibited transactions include, among other things:

- a merger or consolidation with, disposition of assets to, or issuance or redemption of stock to or from, the acquiring person;
- termination of 5% or more of the employees of the target corporation as a result of the acquiring person’s acquisition of 10% or more of the shares; or
- receipt by the acquiring person of any disproportionate benefit as a shareholder.

After the five-year period, a “significant business transaction” may occur if it complies with “fair price” provisions specified in the statute. A corporation may not “opt out” of this statute. We expect the existence of this provision to have an antitakeover effect with respect to transactions that our board of directors does not approve in advance and may discourage takeover attempts that might result in the payment of a premium over the market price for common stock held by shareholders or otherwise might benefit shareholders.

#### Limitations of Liability and Indemnification Matters

Our articles of incorporation provide that, to the fullest extent permitted by the WBCA, a director of our company shall not be personally liable to our company or our shareholders for monetary damages for his or her conduct as a director, except in certain circumstances involving intentional misconduct, knowing violations of law, illegal corporate loans or distributions, or any transaction from which the director receives personal benefit in money, property or services to which the director is not legally entitled.

Pursuant to our bylaws, each person who was or is made a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of our company or who, while a director of our company, is or was serving at our company’s request as a director, officer, partner, trustee, employee or agent of another company or partnership, joint venture, trust or other enterprise, will be indemnified by us against all reasonable expenses incurred by such person in connection therewith. If a director or officer is made a party to a proceeding because he or she was or is a director or officer of our company, such director or officer will be indemnified for any judgment, settlement, penalty, fine or reasonable expenses incurred in such proceeding if:

- he or she acted in good faith; and
- he or she reasonably believed:
- in the case of conduct in the director’s or officer’s official capacity, that the conduct was in our company’s best interests; and