



S 234351
Court File No.: _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DEYAR ASMARO

Plaintiff

- and -

CANOPY GROWTH CORPORATION, DAVID KLEIN, and JUDY HONG

Defendants

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF CIVIL CLAIM

Proceeding under the *Class Proceedings Act, RSBC 1996, c. 50*

This action has been commenced by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and**
- (b) serve a copy of the filed response to civil claim on the plaintiff.**

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and**
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.**

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,**
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,**
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or**
- (d) if the time for response to civil claim has been set by order of the court, within that time.**

Date: June 13, 2023

Issued by: _____

Local Registrar

Address of Court Office:

800 Smithe Street

Vancouver, BC

V6Z 2E1

TO: CANOPY GROWTH CORPORATION
Legal Department
1 Hershey Drive
Smith Falls, Ontario
K7A 0A8

CLAIM OF THE PLAINTIFF

PART 1. NATURE OF THIS ACTION

1. This is a shareholder class action on behalf of a class of investors consisting of all persons and entities who purchased or otherwise acquired the securities of Canopy Growth Corporation (hereinafter “**Company**” or “**WEED**”) between August 6, 2021 and May 10, 2023 (the “**Class Period**”).
2. WEED is a cannabis and consumer packaged goods (i.e., edibles) company which produces, distributes, and sells a range of cannabis, hemp, and consumer packaged products. Its products are sold by its subsidiaries Storz & Bickel, BioSteel Sports Nutrition Inc. (“**BioSteel**”), This Works located in Canada, Germany, and the United States.
3. WEED is federally incorporated with its home office in Smith Falls, Ontario. WEED is a reporting issuer in all the provinces and its principal regulator is the Ontario Securities Commission. It lists its securities on the Toronto Stock Exchange (“WEED”), Frankfurt Stock Exchange (“11L1”), and the U.S. Nasdaq (“WEED”).
4. The Plaintiff, on behalf of himself and the Class (as defined within **Part 2**, herein), alleges that between August 6, 2021 and February 9, 2023, WEED published core and non-core documents containing misrepresentations that were publicly corrected on May 10, 2023 (the “**Public Corrective Statement**”).

PART 2. STATEMENT OF FACTS

5. The Plaintiff relies upon the British Columbia *Securities Act* (“**BCSA**”) for definitions in addition to the terms that are defined elsewhere herein.

The Plaintiff

6. The Plaintiff is a resident of North Vancouver, British Columbia, Canada. On December 30, 2022, the Plaintiff purchased 10,000 shares of WEED, held all those shares until after the Public Corrective Statement, and suffered an economic loss.

The Class

7. The Plaintiff is advancing his causes of action on behalf of himself and other investors (the “Class”) defined as: All investors, except excluded investors, that purchased the Defendant’s securities between August 6, 2021 and May 10, 2023, and held all or some of those purchased securities after May 10, 2023 (the “Class Period”).

8. The excluded investors are defined as any insider and his/her immediate family of the Defendants.

The Defendants

9. The Defendant was incorporated pursuant to Canadian federal law and maintains its principal executive offices in Ontario, Canada. It is a Responsible and Reporting Issuer that lists its securities on the TSX, Nasdaq, and Frankfurt Stock Exchange.

10. Defendant David Klein was Canopy’s Chief Executive Officer (CEO) at all relevant times. He signed a Certification accompanying the FYE 2022 Filings stating that Canopy’s financial statements for the fiscal year ended March 31, 2022 were fairly stated and did not contain any untrue statements of material fact.

11. Defendant Judy Hong was the Company’s Chief Financial Officer (CFO) at all relevant times. She signed a Certification accompanying the FYE 2022 Filings stating that Canopy’s financial statements for the fiscal year ended March 31, 2022 were fairly stated and did not contain any untrue statements of material fact.

12. Each of the Individual Defendants knew, before and during the Class Period, that the Company was a reporting issuer and that in their roles as CEO and CFO, they would have direct responsibility for ensuring the accuracy of Canopy's financial statements and related disclosure documents.

13. The Individual Defendants were aware of and accepted these obligations in assuming their positions as officers of the Company.

Relevant Third-Party

14. KPMG was Canopy's independent public accountant at all relevant times.

15. KPMG served as Canopy's auditor from 2019 to the present. KPMG's Ottawa office signed the FYE 2022 audit report at issue in this matter.

16. The Alberta Securities Act contains liability limits for auditors unless the plaintiff can prove fraud.

17. There is an indemnification agreement between the Defendant and KPMG.

18. The Plaintiff hereby puts KPMG on notice and tolls the limitations' periods for the benefit of all parties and to conserve the court's resources until after a reasonable amount of time after the parties exchange all materials associated with the anticipated s.140.8 motion records.

The Material Facts:

Total Mix of Information, Impugned Documents, and the Misrepresentations

19. Prior to the Class Period, the Defendant controlled the total mix of information for investors to make an investing decision to purchase, sell, or to hold its securities.

20. During the Class Period, the Defendant's division identified as BioSteel was its largest and most important subsidiary. The Defendant touted its BioSteel as the leading producer of sports nutrition products:

and lays the groundwork for the adoption of cannabidiol (“CBD”) in future product offerings in accordance with regulations...

* * *

Founded in 2009, BioSteel's focus on premium natural ingredients, product transparency, and identifying the essential nutrients needed to power physical activity has led to the brand achieving a reputation for being the hydration product provider of choice for high performance athletes. BioSteel products have been purchased by over 70% of the teams in North America's four major sports leagues and ambassadors of the brand include: Ezekiel Elliott, of the Dallas Cowboys; Connor McDavid, of the Edmonton Oilers; WTA player, Eugenie Bouchard; Andrew Wiggins with the Minnesota Timberwolves; Tyler Seguin with the Dallas Stars; Jalen Ramsey, with the Jacksonville Jaguars; NHL Hall of Famer, Wayne Gretzky; Gleyber Torres, with the New York Yankees; and Smiths Falls very own, LPGA golfer Brooke Henderson.

21. During the Class Period, the Company represented that its quarterly and annual financial statements did not contain misrepresentations or, in other words, material errors. The Defendant released Certifications on SEDAR affirming the accuracy of its quarterly and annual financial statements.

22. However, on May 10, 2023, Canopy released a Material Change Report reporting that revenues and accompanying balance sheet line items related to BioSteel contained material misstatements and would need to be restated. The Material Change Report stated:

- (a) The Company identified “**material misstatements in the Prior Financial Statements . . . related to sales in the BioSteel business unit that were accounted for incorrectly**”;
- (b) The misstatements involve the “**timing of revenue recognition**”;
- (c) The Company will need to “**reduce certain revenues previously recognized and adjust related balance sheet items**”;
- (d) The Company will be “**restating the Prior Financial Statements . . . as soon as practicable**”;
- (e) The misstatements were located in Canopy’s “**consolidated financial statements for the fiscal year ended March 31, 2022 . . . and . . . quarterly periods ended June 30, 2022, September 30, 2022 and December 31, 2022**”;

- (f) The Company also identified “**material weaknesses in internal control over financial reporting**” related to the revenue misstatements; and
- (g) The KPMG audit report for the FY 2022 financial statements, and KPMG’s accompanying opinion on Canopy’s internal controls, “should no longer be relied upon.”

23. The financial statements for the fiscal year ended March 31, 2022, which will be restated, were an accumulation of quarterly results for each quarter during the fiscal year. Therefore, the underlying financial statements *for the quarters ended June 30, 2021 (released on August 6, 2021), September 30, 2021 (released on November 8, 2021), and December 31, 2021 (released on February 8, 2022) as well as the subsequent year ending March 31, 2023, contained material misrepresentations when originally issued.*

24. The Material Change Report (the Corrective Disclosure) was released at the end of the trading day on May 10, 2023, which is an admission that the disclosure was material. The release of the Material Change Report caused the market to sell off Canopy shares, causing the stock price on the TSX exchange to decline from a closing price of \$1.67 on May 9, 2023 to \$1.62 on May 10, 2023, and to further decline to \$1.39 on May 11, 2023. The two-day drop from \$1.67 to \$1.39 represented a 17% decrease on heavy trading volume.

25. In sum, throughout the Class Period, the Canopy Defendants made false and misleading statements regarding Canopy’s: (i) revenues; (ii) associated balance sheet line items; and (iii) internal controls over financial reporting. KPMG also made false statements in its audit report regarding the accuracy of Canopy’s financial statements and the effectiveness of the Company’s internal controls.

26. The restatement is material to the Company’s overall financial results. Canopy specified that there are “material misstatements” in need of correction. BioSteel is a major business segment

within the Company, not a small or minor unit. BioSteel was Canopy's second-largest segment (in terms of revenue) among the Company's five reportable segments for the nine months ended December 31, 2022, the most current data available. BioSteel's revenue represented 19% of Canopy's total consolidated revenue during that period. Also, the restatement announcement was made in a Material Change Report, which by definition is reserved for material events. Investors also viewed the restatement announcement as material, evidenced by the 17% two-day stock price drop after the restatement was announced.

The Impugned Documents

27. BioSteel is a sports nutrition and hydration brand marketed to athletes and physically active consumers. BioSteel's products include sports nutrition beverages, mixes, protein, gum, and mints, some of which are infused with hemp-derived isolates. BioSteel's products are sold largely through third-party retailers. Canopy acquired BioSteel on October 1, 2019, for a purchase price of approximately \$47 million.

28. BioSteel's financial results are aggregated into Canopy's consolidated financial statements. BioSteel-specific revenue totals are set forth in the notes to Canopy's consolidated financial statements, and are discussed in the accompanying MD&A.

29. On August 6, 2021. On that day, Canopy released on SEDAR its Consolidated Financial Statements and accompanying MD&A for the first quarter ended June 30, 2021. The MD&A stated, in relevant part:

Net revenue was \$136.2 million in the first quarter of fiscal 2022, as compared to \$110.4 million in the first quarter of fiscal 2021. The year-over-year increase is attributable to: . . . Growth in our other consumer products segment, which was primarily due to the continued strong performance by Storz & Bickel and growth in our BioSteel business.

* * *

Revenue from BioSteel was \$6.7 million in the first quarter of fiscal 2022, a year-over-year increase of \$4.2 million due primarily to (i) the expansion of our United States distribution network beginning in the fourth quarter of fiscal 2021; (ii) new “ready-to-drink” product launches during the last year; and (iii) the adverse impact on revenue in the first quarter of fiscal 2021 related to COVID-19 related restrictions on retailers. (Emphasis added.)

30. The Consolidated Financial Statements contained these same revenue totals, in chart form.

31. On November 8, 2021, Canopy released on SEDAR its quarterly Consolidated Financial Statements and accompanying MD&A for the second quarter ended September 30, 2021. The MD&A stated, in relevant part:

Net revenue was \$131.4 million in the second quarter of fiscal 2022, as compared to \$135.3 million in the second quarter of fiscal 2021. The year-over-year decrease is attributable to: A 12% decrease in revenue from our other consumer products segment, as a decline at our Storz & Bickel business was only partially offset by **growth in our BioSteel . . . businesses.**

* * *

Revenue from BioSteel was \$7.5 million in the second quarter of fiscal 2022, a year-over-year increase of \$2.4 million due primarily to (i) the expansion of our United States distribution network beginning in the fourth quarter of fiscal 2021; (ii) new “ready-to-drink” product launches during the last year; and (iii) the adverse impact on revenue in the second quarter of fiscal 2021 related to COVID-19 related restrictions on retailers. (Emphasis added.)

32. The Consolidated Financial Statements contained these same revenue totals, in chart form.

33. On February 9, 2022, Canopy released on SEDAR its quarterly Consolidated Financial Statements and accompanying MD&A for the third quarter ended December 31, 2021. The MD&A stated, in relevant part:

Net revenue was \$141.0 million in the third quarter of fiscal 2022, as compared to \$152.5 million in the third quarter of fiscal 2021. The year-over-year decrease is attributable to a decrease of 20% in our global cannabis segment The declines in this segment were partially offset by . . . an increase of 19% in our other consumer products segment, which was primarily due to **growth in our**

BioSteel business.

* * *

Revenue from BioSteel was \$17.0 million in the third quarter of fiscal 2022, a year-over-year increase of \$9.6 million due primarily to (i) the expansion of our United States distribution network beginning in the fourth quarter of fiscal 2021; (ii) new “ready-to-drink” product launches during the last year; and (iii) higher international sales of ready-to-drink products and beverage mixes. (Emphasis added.)

34. The Consolidated Financial Statements contained these same revenue totals, in chart form.
35. On May 31, 2022, Canopy released on SEDAR its Consolidated Financial Statements and accompanying MD&A for the fiscal year ended March 31, 2022. The MD&A stated, in relevant part:

Net revenue was \$520.3 million in fiscal 2022, as compared to \$546.6 million in fiscal 2021. . . . The revenue decline . . . was . . . partially offset by growth of 9% in our other consumer products segment, which was primarily driven by the **growth in our BioSteel business.**

* * *

Revenue from BioSteel was \$44.6 million, a year-over-year increase of \$16.1 million due primarily to (i) the expansion of our United States distribution network beginning in the fourth quarter of fiscal 2021; (ii) new “ready-to-drink” product launches during the last year; and (iii) higher international sales of ready-to-drink products and beverages mixes. (Emphasis added.)

36. The Consolidated Financial Statements contained these same revenue totals, in chart form.
37. The FYE 2022 Filings were accompanied by two Certifications, one signed by the Defendant Klein and one signed by the Defendant Hong, stating that Canopy’s financial statements were fairly stated. Each Certification stated that: (i) the “financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of [Canopy]”; and (ii) the financial statements “do[] not contain any untrue statement of a material fact or omit to state a material fact necessary to make

the statements made, in light of the circumstances under which such statements were made, not misleading.”

38. KPMG’s FYE 2022 audit opinion was included within the Consolidated Financial Statements. The audit opinion opined on the accuracy of the Company’s financial statements, stating in relevant part: “In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of March 31, 2022 and 2021, and the results of its operations and its cash flows for each of the years in the three-year period ended March 31, 2022, in conformity with U.S. generally accepted accounting principles.” The Consolidated Financial Statements also included KPMG’s separate opinion on internal controls, which stated in relevant part: “In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of March 31, 2022.”

39. On August 9, 2022, Canopy released on SEDAR its quarterly Consolidated Financial Statements and accompanying MD&A for the first quarter ended June 30, 2022. The MD&A stated, in relevant part:

Net revenue was \$110.1 million in the first quarter of fiscal 2023, as compared to \$136.2 million in the first quarter of fiscal 2022. . . . Revenue in our other consumer products segment grew 1% relative to the first quarter of fiscal 2022, [due in part to] growth in our BioSteel business

* * *

Revenue from BioSteel was \$17.9 million in the first quarter of fiscal 2023, a year-over-year increase of \$11.2 million due primarily to (i) continued growth in our distribution channels and sales velocities across North America; and (ii) higher international sales of ready-to-drink products and beverage mixes. (Emphasis added.)

40. The Consolidated Financial Statements contained these same revenue totals, in chart form.

41. On November 9, 2022, Canopy released on SEDAR its quarterly Consolidated Financial Statements and accompanying MD&A for the second quarter ended September 30, 2022. The

MD&A stated, in relevant part:

Net revenue was \$117.9 million in the second quarter of fiscal 2023, as compared to \$131.4 million in the second quarter of fiscal 2022. . . . The[] declines were partially offset by **continued growth in our BioSteel business** resulting from the continued expansion of our distribution and retail channels, and strong international sales growth.

* * *

Revenue from BioSteel was \$29.9 million in the second quarter of fiscal 2023, as compared to \$7.5 million in the second quarter of fiscal 2022. The year-over-year increase is primarily attributable to: (i) continued growth in our distribution and retail channels, which resulted in increased sales velocities across North America; and (ii) strong international sales growth. All of BioSteel's major product lines contributed to the year-over-year revenue growth. (Emphasis added.)

42. On February 9, 2023, Canopy released on SEDAR its quarterly Consolidated Financial Statements and accompanying MD&A for the third quarter ended December 31, 2022. The MD&A stated, in relevant part:

Net revenue was \$101.2 million in the third quarter of fiscal 2023, as compared to \$141.0 million in the third quarter of fiscal 2022. . . .

* * *

Revenue from BioSteel was \$16.4 million in the third quarter of fiscal 2023, as compared to \$17.0 million in the third quarter of fiscal 2022. The year-over-year decrease is primarily attributable to timing shifts in the distribution and sales of our products into our key markets. (Emphasis added.)

43. These collective statements about Canopy's consolidated revenue totals and BioSteel's revenue figures were materially false because the revenue was overstated. Also, the accompanying balance sheet figures set forth in the Q1 2022 Filings, Q2 2022 Filings, Q3 2022 Filings, FYE 2022 Filings, Q1 2023 Filings, Q2 2023 Filings, and Q3 2023 filings were materially misstated.

44. These core documents and the information therein did not fairly present, in all material respects, the financial condition and results of Canopy's operations or the true effectiveness of its ICFR.

The Materiality

45. During the Class Period, the Defendant touted the value of BioSteel's business and revenues towards the overall investment quality of the total operations; as reflected in the by the Defendant's quarterly certification forms and Annual certification form

46. On May 10, 2023, WEED released its Material Change Report announcing that the fiscal year ended March 31, 2023, management of the Company identified certain trends in booking of sales by the BioSteel [] for further review. The Company together with external counsel and forensic accounts, and under the Audit Committee of the Board of Directors of the Company, initiated an internal review of the financial reporting matters related to BioSteel.

The Public Corrective Statement

47. On May 10, 2023, WEED released a Material Change Report calling in question its own financial statements for the prior few years.

48. The Material Change Report was released at the end of the trading day on May 10, 2023. The disclosure caused the Company's stock price on the TSX exchange to decline from a closing price of \$1.67 on May 9, 2023 to \$1.62 on May 10, 2023, and to further decline to \$1.39 on May 11, 2023. The two-day drop from \$1.67 to \$1.39 represented a 17% decrease in price-value, on heavy trading volume.

PART 3. THE LEGAL BASIS

49. The Plaintiff is a shareholder of the Defendant because he reviewed and relied upon more than one of the Impugned Documents to make an investment decision to purchase and hold the Defendant's securities during the Class Period.

50. The Plaintiff held those securities after the final public corrective statement was released into the market, resulting in an economic injury to the Plaintiff.

51. As reflected by the market's reaction to learning the information contained in the public corrective statements, i.e., the significant effect on the market price of the Defendant's securities, the omitted facts were material facts that the Defendant should have disclosed within the Impugned Documents.

Statutory Secondary Market Liability: Section 140.3 of the BCSA

1. Subject to s. 140.8 of the BCSA, the Plaintiff will advance the cause of action found at s. 140.3 of the BCSA.
2. The Defendant is a "responsible issuer" under ss. 1 and 140.1 of the BCSA.
3. The Impugned Documents are core and non-core documents as defined within the BCSA.
4. The Impugned Documents contained Form 52-109FV2 Certification Forms that based upon the exercise of reasonable diligence, it did not contain any untrue statements of material fact or omit to state a material facts required to be stated or that is necessary to to make a statement not misleading in light of the circumstances under which it was made.
5. The Defendant released the Impugned Documents that omitted the material facts identified within the Public Corrective Statements.
6. The Plaintiff alleges that the Defendant omitted material facts that would reasonably be expected to have a significant effect on the market price of the Defendant's securities had said omitted facts been disclosed within the Impugned Documents; as reflected by the market's reaction upon the publication of the Public Corrective Statements.
7. The Plaintiff purchased the Defendant's securities after an Impugned Document containing the misrepresentation was released and held said securities until after the Impugned Document was publicly corrected.

Common Law Secondary Market Liability

8. The Defendant had a duty of care to exercise due care and diligence to ensure that the Impugned Documents fairly and accurately disclosed all the material facts concerning each topic raised within the Impugned Documents so as to ensure that each statement is neither false or misleading in the circumstances in which it was made.
9. Each time a member of the Class purchased the Defendant's securities in the secondary market, a duty of care to that member of the Class was created.
10. As reflected by the material facts being disclosed within the Public Corrective Statements, the Defendant had access to the omitted material facts identified within the Public Corrective Statements that should have been disclosed within its core documents but where not and, therefore, making the Impugned Documents misleading in the circumstances of the then total mix of information about its business operations.
11. The Plaintiff, nevertheless, relied upon the Defendant's core documents that omitted to include all the material facts and make the investment decision to purchase and hold the Defendant's securities until after the release of the Public Corrective Statements thereby suffering an economic injury.
12. Had the Defendant disclosed all the material facts within the prospectus and/or offering memorandum, including the core documents referenced therein, the members of the Class would not have purchased the Defendant's securities or would not have purchased the Defendant's securities at the same price but, rather, a lower price reflected by the percentage the Defendant's securities dropped upon the release of the Public Corrective Statements.

Vicarious Liability

13. The Defendant is vicariously liable for the acts and omissions of its senior executives and directors, including those that prepared and authorized the publication of the Impugned Documents.

Real and Substantial Connection with British Columbia

14. There is a real and substantial connection between the Plaintiff, Class Members, ReconAfrica, and the province of British Columbia for the following reasons:
- a. The Defendant has a few dozen employees in British Columbia;
 - b. The Defendant is a reporting issuer in British Columbia;
 - c. The Defendant sells its products in the British Columbia; and
 - d. The Plaintiff and members of the Class are located in British Columbia.

Plaintiff's address for service:

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Lawyers for the Plaintiff

Place of Trial: Vancouver, British Columbia

The address of the registry is:

80 Smithe Street

Vancouver, BC

V6Z 2E1

Date: June 13, 2023



Signature of lawyer for plaintiff
Andrew JH Morganti (LSO#57989E)
Berger Montague (Canada) PC

DEYAR ASMARO

Plaintiff

v. **CANOPY GROWTH CORP. et**

al,

Defendants

Court File No.:

SUPREME COURT OF BRITISH COLUMBIA
PROCEEDINGS COMMENCED AT VANCOUVER

STATEMENT OF CLAIM

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