

Edgar Filing: TRIARC COMPANIES INC - Form SC 13D/A

TRIARC COMPANIES INC
Form SC 13D/A
June 29, 2004

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934

(Amendment No. 18)*

TRIARC COMPANIES, INC.
(Name of Issuer)

Class A Common Stock, Par Value \$.10 per share
Class B Common Stock, Series 1, Par Value \$.10 per share
(Title of Class of Securities)

Class A Common Stock: 895927 10 1
Class B Common Stock: 895927 30 9
(CUSIP Number)

PETER W. MAY
c/o TRIARC COMPANIES, INC.
280 Park Avenue
New York, New York 10017
Tel. No.: (212) 451-3000
(Name, Address and Telephone Number of
Person Authorized to Receive Notices
and Communications)

June 26, 2004
(Date of Event which Requires Filing
of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 1(f) or 1(g), check the following box ☐.

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-1(a) for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act

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but shall be subject to all other provisions of the Act (however, see the Notes).

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Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

DWG ACQUISITION GROUP, L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) ☐
(b) ☐

3 SEC USE ONLY

4 SOURCE OF FUNDS

Not applicable

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT
TO ITEMS 2(d) or 2(e) ☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7 SOLE VOTING POWER (See Item 5)

-0-

NUMBER OF
SHARES
BENEFICIALLY OWNED
BY EACH REPORTING
PERSON
WITH

8 SHARED VOTING POWER (See Item 5)

6,024,662 (Class A Common Stock)

4,763,434 (Class B Common Stock)

9 SOLE DISPOSITIVE POWER (See Item 5)

-0-

10 SHARED DISPOSITIVE POWER (See Item 5)

6,024,662 (Class A Common Stock)

4,763,434 (Class B Common Stock)

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON (See Item 5)

6,024,662 (Class A Common Stock)

4,763,434 (Class B Common Stock)

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES ☐

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13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

29.8% (Class A Common Stock)

11.8% (Class B Common Stock)

14 TYPE OF REPORTING PERSON

PN

Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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1 NAME OF REPORTING PERSON

S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

NELSON PELTZ

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a) ☐

(b) ☐

3 SEC USE ONLY

4 SOURCE OF FUNDS

Not applicable

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States

7 SOLE VOTING POWER (See Item 5)

3,014,036 (Class A Common Stock)

5,886,188 (Class B Common Stock)

NUMBER OF
SHARES
BENEFICIALLY OWNED
BY EACH REPORTING
PERSON
WITH

8 SHARED VOTING POWER (See Item 5)

6,024,662 (Class A Common Stock)

4,763,434 (Class B Common Stock)

9 SOLE DISPOSITIVE POWER (See Item 5)

3,014,036 (Class A Common Stock)

5,886,188 (Class B Common Stock)

10 SHARED DISPOSITIVE POWER (See Item 5)

6,024,662 (Class A Common Stock)

4,763,434 (Class B Common Stock)

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON (See Item 5)

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9,038,698 (Class A Common Stock)
10,649,622 (Class B Common Stock)

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
[]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

41.6% (Class A Common Stock)
24.5% (Class B Common Stock)

14 TYPE OF REPORTING PERSON

IN

Class A Common Stock: CUSIP NO. 895927 10 1
Class B Common Stock: CUSIP NO. 895927 30 9

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

PETER W. MAY

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) []
(b) []

3 SEC USE ONLY

4 SOURCE OF FUNDS

Not applicable

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT
TO ITEMS 2(d) or 2(e) []

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States

7 SOLE VOTING POWER (See Item 5)

1,900,168 (Class A Common Stock)
3,705,746 (Class B Common Stock)

NUMBER OF
SHARES
BENEFICIALLY OWNED
BY EACH REPORTING
PERSON
WITH

8 SHARED VOTING POWER (See Item 5)

6,024,662 (Class A Common Stock)
4,763,434 (Class B Common Stock)

9 SOLE DISPOSITIVE POWER (See Item 5)

1,900,168 (Class A Common Stock)
3,705,746 (Class B Common Stock)

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10 SHARED DISPOSITIVE POWER (See Item 5)

6,024,662 (Class A Common Stock)

4,763,434 (Class B Common Stock)

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON (See Item 5)

7,924,830 (Class A Common Stock)

8,469,180 (Class B Common Stock)

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
[]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

37.5% (Class A Common Stock)

20.0% (Class B Common Stock)

14 TYPE OF REPORTING PERSON

IN

Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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AMENDMENT NO. 18 TO SCHEDULE 13D

This Amendment No. 18 amends and supplements the Schedule 13D dated October 13, 1992 (the "Original Statement"), as amended and restated by Amendment No. 6 dated May 3, 1993, as amended by Amendment No. 7 dated February 14, 1996, as amended by Amendment No. 8 dated October 13, 1998, as amended by Amendment No. 9 dated March 12, 1999, as amended by Amendment No. 10 dated May 4, 1999, as amended by Amendment No. 11 dated November 12, 2002, as amended by Amendment No. 12 dated April 25, 2003, as amended by Amendment No. 13 dated July 1, 2003, as amended by Amendment No. 14 dated September 24, 2003, as amended by Amendment No. 15 dated December 4, 2003, as amended by Amendment No. 16 dated January 15, 2004 and as amended by Amendment No. 17 dated April 26, 2004 (the Original Statement, as so amended shall be known as the "Statement"), with respect to the Class A Common Stock, par value \$.10 per share (the "Class A Common Stock"), and the Class B Common Stock, Series 1, par value \$.10 per share (the "Class B Common Stock"), in each case of Triarc Companies, Inc., a Delaware corporation and successor by merger to Triarc Companies, Inc., an Ohio corporation formerly named DWG Corporation (the "Company"). Unless otherwise indicated, all capitalized terms used herein shall have the same meaning as set forth in the Statement.

Except as set forth below, there are no changes to the information set forth in the Statement. As noted in Amendment Nos. 14, 15, 16 and 17, all references in the Statement to "Common Stock" shall be deemed to refer to the Class A Common Stock.

Class A Common Stock: CUSIP NO. 895927 10 1

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Class B Common Stock: CUSIP NO. 895927 30 9

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ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO THE COMMON STOCK OF THE ISSUER.

Item 6 of the Statement is amended by adding the following:

As disclosed by the Company, on June 26, 2004, the Company entered into a Purchase Agreement (the "Deerfield Purchase Agreement") with Sachs Capital Management LLC, Deerfield Partners Fund II LLC, Scott A. Roberts and Marvin Shrear (collectively, the "Deerfield Sellers"), pursuant to which, inter alia, the Company agreed to purchase from the Deerfield Sellers, upon the terms and subject to the conditions set forth therein, approximately 63.6% of the membership interests in Deerfield & Company LLC ("Deerfield").

In connection with the transactions contemplated by the Deerfield Purchase Agreement, Deerfield and Deerfield Capital Management LLC, a wholly owned subsidiary of Deerfield ("DCM"), entered into an Employment Agreement with Gregory H. Sachs, the Chairman and Chief Executive Officer of Deerfield (the "Sachs Employment Agreement"), to become effective and subject to the consummation of the transactions contemplated by the Deerfield Purchase Agreement. Pursuant to the Sachs Employment Agreement, Mr. Sachs is entitled to, among other things, an annual bonus based on the EBITDA (as defined therein) of Deerfield and its consolidated subsidiaries during the applicable fiscal year, subject to adoption by the Company's stockholders of an amendment to the Company's 1999 Executive Bonus Plan (the "Amendment").

In connection with the transactions contemplated by the Deerfield Purchase Agreement, Messrs. Peltz and May entered into a Voting Agreement, dated as of June 26, 2004 (the "Sachs Voting Agreement") with Mr. Sachs.

Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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Pursuant to the Sachs Voting Agreement, Messrs. Peltz and May agreed to vote, or to cause their respective affiliates and certain family members to vote, on the terms and subject to the conditions set forth therein, at the next annual or special meeting of the Company's stockholders, all shares of Class A Common Stock and Class B Common Stock beneficially owned by them and their respective family members or affiliates, as the case may be, in favor of the adoption of the Amendment. The descriptions of the provisions of the Sachs Voting Agreement contained herein are qualified in their entirety by the actual terms of such Sachs Voting Agreement, a copy of which is filed as Exhibit 28 and is incorporated herein by reference.

Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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SIGNATURES

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After reasonable inquiry and to the best of its knowledge and belief, each of the undersigned certifies that the information set forth in this Statement is true, complete and correct.

Dated: June 29, 2004

DWG ACQUISITION GROUP, L.P.

By: /s/ Nelson Peltz

Name: Nelson Peltz
Title: General Partner

By: /s/ Peter W. May

Name: Peter W. May
Title: General Partner

/s/ Nelson Peltz

Nelson Peltz

/s/ Peter W. May

Peter W. May

Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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Exhibit Index

Exhibit -----	Description -----	Page No. -----
1	Stock Purchase Agreement dated as of October 1, 1992 by and between the Purchaser, Posner, Posner Trust and Security Management.	Filed with Original Statement
2	Exchange Agreement dated as of October 12, 1992 between the Company and Security Management.	Filed with Original Statement
3	Agreement dated as of October 1, 1992 between the Company and the Purchaser.	Filed with Original Statement

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4	Agreement of Limited Partnership of the Purchaser dated as of September 25, 1992.	Filed with Original Statement
5	Joint Filing Agreement of the Purchaser, Peltz and May.	Filed with Amendment No. 14
6	Memorandum of Understanding, dated January 21, 1993, by and between the Purchaser and William A. Ehrman, individually and derivatively on behalf of SEPSICO.	Filed with Amendment No. 2
7	Letter dated January 25, 1993 from Steven Posner to the Purchaser (including proposed terms and conditions of Consulting Agreement to be entered into between the Company and Steven Posner).	Filed with Amendment No. 2
8	Undertaking and Agreement, dated February 9, 1993, executed by the Purchaser.	Filed with Amendment No. 3
9	Amendment No. 3 dated as of April 14, 1993 to Agreement of Limited Partnership of the Purchaser.	Filed with Amendment No. 4
10	Citibank Loan Documents (Exhibits and Schedule omitted).	Filed with Amendment No. 4
11	Republic Loan Documents (Exhibits and Schedules omitted).	Filed with Amendment No. 4
12	Pledge and Security Agreement, dated as of April 5, 1993, between the Purchaser and Citibank.	Filed with Amendment No. 5
13	Custodial Loan Documents.	Filed with Amendment No. 5
14	Agreement, dated May 2, 1994 among Nelson Peltz, Peter W. May and Leon Kalvaria.	Filed with Amendment No. 6
15	Amended and Restated Pledge and Security Agreement, dated as of July 25, 1994 between the Purchaser and Citibank.	Filed with Amendment No. 6

Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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Exhibit -----	Description -----	Page No. -----
16	Amendment No. 1 dated as of November 15, 1992 to Agreement of Limited Partnership of the Purchaser.	Filed with Amendment No. 7
17	Amendment No. 2 dated as of March 1, 1993 to Agreement of Limited Partnership of the Purchaser.	Filed with Amendment No. 7
18	Amendment No. 4 dated a January 1, 1995 to Agreement of Limited Partnership of the Purchaser.	Filed with Amendment No. 7

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19	Amendment No. 5 dated as of January 1, 1996 to Agreement of Limited Partnership of the Purchaser.	Filed with Amendment No. 7
20	BOA Loan documents (Exhibits and Schedules omitted).	Filed with Amendment No. 7
21	Letter, dated October 12, 1998, from Messrs. Nelson Peltz and Peter W. May to the Company.	Filed with Amendment No. 8
22	Press release, issued by the Company, dated October 12, 1998.	Filed with Amendment No. 8
23	Letter, dated October 12, 1998, from the Company to Messrs. Nelson Peltz and Peter W. May.	Filed with Amendment No. 8
24	Press release issued by the Company, dated March 10, 1999.	Filed with Amendment No. 9
25	Amended and Restated Agreement of Limited Partnership of the Purchaser, amended and restated as of November 11, 2002.	Filed with Amendment No. 11
26	Pledge Agreement dated April 2, 2001, made by Peltz Family Limited Partnership, in favor of Bank of America, N.A.	Filed with Amendment No. 13
27	Pledge and Security Agreement dated April 2, 2003, made by Peter W. May, in favor of Bank of America, N.A. (Schedule II omitted).	Filed with Amendment No. 13
28	Voting Agreement, dated June 26, 2004, by and among Messrs. Nelson Peltz, Peter W. May and Gregory H. Sachs.	Filed herewith