

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

TRIARC COMPANIES INC

Form SC 13D/A

April 26, 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. 17)*

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)

April 20, 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 but shall be subject to all other provisions of the Act (however, see the

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Notes).

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)
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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 ☐

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

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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)

20.1% (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. 17 TO SCHEDULE 13D

This Amendment No. 17 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 and as amended by Amendment No. 16 dated January 15, 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 and 16, all references in the Statement to "Common Stock" shall be deemed to refer to the Class A Common Stock.

Item 3. Source and Amount of Funds or Other Consideration.

Item 3 of the Statement is amended by adding the following:

On February 27, 2004, Mr. Peltz exercised stock options with respect to 75,000 shares of Class A Common Stock and 150,000 shares of Class B

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Common Stock

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and paid the exercise price by delivery of 141,892 shares of Class B Common Stock. Out of the option shares, Mr. Peltz received 47,451 shares of Class A Common Stock (and delivery of 27,549 shares of Class A Common Stock was deferred and such shares placed in a rabbi trust) and received 94,911 shares of Class B Common Stock (and delivery of 55,089 shares of Class B Common Stock was deferred and such shares placed in a rabbi trust).

On February 27, 2004, Mr. May exercised stock options with respect to 50,000 shares of Class A Common Stock and 100,000 shares of Class B Common Stock and paid the exercise price by delivery of 94,595 shares of Class B Common Stock. Out of the option shares, Mr. May received 31,634 shares of Class A Common Stock (and delivery of 18,366 shares of Class A Common Stock was deferred and such shares placed in a rabbi trust) and received 63,274 shares of Class B Common Stock (and delivery of 36,726 shares of Class B Common Stock was deferred and such shares placed in a rabbi trust).

On April 20, 2004, Mr. Peltz exercised stock options with respect to 1,635,000 shares of Class A Common Stock and 3,270,000 shares of Class B Common Stock and paid the exercise price by delivery of 3,145,734 shares of Class B Common Stock (the "Peltz Exercise Shares"). In connection with such option exercise, the Purchaser transferred to Mr. Peltz title to the Peltz Exercise Shares. Out of the option shares, Mr. Peltz received 1,034,079 shares of Class A Common Stock (and delivery of 600,921 shares of Class A Common Stock was deferred and such shares placed in a rabbi trust) and received 2,068,157 shares of Class B Common Stock (and delivery of 1,201,843 shares of Class B Common Stock was deferred and such shares placed in a rabbi trust).

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Class B Common Stock: CUSIP NO. 895927 30 9

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On April 20, 2004, Mr. May exercised stock options with respect to 1,090,000 shares of Class A Common Stock and 2,180,000 shares of Class B Common Stock and paid the exercise price by delivery of 2,097,156 shares of Class B Common Stock (the "May Exercise Shares"). In connection with such option exercise, the Purchaser transferred to Mr. May title to the May Exercise Shares. Out of the option shares, Mr. May received 689,386 shares of Class A Common Stock (and delivery of 400,614 shares of Class A Common Stock was deferred and such shares placed in a rabbi trust) and received 1,378,771 shares of Class B Common Stock (and delivery of 801,229 shares of Class B Common Stock was deferred and such shares placed in a rabbi trust).

Item 5. Interest in Securities of the Issuer.

Part (a) through (c) of Item 5 is amended by deleting the thirteenth through twentieth paragraphs thereof and replacing them with the following:

In addition to the foregoing, Messrs. Peltz and May

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beneficially own 1,498,333 and 876,666 shares of Class A Common Stock, respectively, representing stock options that may be exercised within 60 days of the date of this Statement.

The Purchaser, Mr. Peltz and Mr. May may be deemed to beneficially own an aggregate of 6,024,662, 9,038,698 and 7,924,830 shares of Class A Common Stock, respectively, representing approximately 29.8%, 41.6% and 37.5% of the outstanding shares of Class A Common Stock, respectively.

The Purchaser is the direct owner of an aggregate of 4,763,434 shares of Class B Common Stock; Mr. Peltz is the direct owner of an aggregate of

Class A Common Stock: CUSIP NO. 895927 10 1

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2,842,022 shares of Class B Common Stock; and Mr. May is the direct owner of an aggregate of 1,952,414 shares of Class B Common Stock.

The Purchaser beneficially owns 4,763,434 shares of Class B Common Stock, representing approximately 11.8% of the outstanding shares of Class B Common Stock.

By virtue of their positions as general partners of the Purchaser, Messrs. Peltz and May may be deemed to own beneficially the 4,763,434 shares of Class B Common Stock owned of record by the Purchaser. In such capacity, Messrs. Peltz and May may be deemed to share voting and dispositive power with the Purchaser and with each other with respect to such shares of Class B Common Stock.

In addition to the foregoing, Mr. Peltz beneficially owns and has the sole power to vote and dispose of 2,889,522 shares of Class B Common Stock and beneficially owns 2,996,666 shares of Class B Common Stock representing options that may be exercised within 60 days of the date of this Statement, and Mr. May beneficially owns and has the sole power to vote and dispose of 1,952,414 shares of Class B Common Stock and beneficially owns 1,753,332 shares of Class B Common Stock representing options that may be exercised within 60 days of the date of this Statement.

The Peltz L.P. is the beneficial owner of 47,500 shares of Class B Common Stock. By virtue of his position as general partner of the Peltz L.P., Mr. Peltz may be deemed to beneficially own the shares of Class B Common Stock owned by the Peltz L.P. Mr. Peltz disclaims beneficial ownership of such shares.

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Class B Common Stock: CUSIP NO. 895927 30 9

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As a result, Messrs. Peltz and May may be deemed to beneficially own an aggregate of 10,649,622 and 8,469,180 shares of Class B Common Stock, respectively, representing approximately 24.5% and 20.1%, respectively, of the outstanding shares of Class B Common

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Stock.

Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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SIGNATURES

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: April 26, 2004

DWG ACQUISITION GROUP, L.P.

By: *

Name: Nelson Peltz

Title: General Partner

By: /s/ Peter W. May

Name: Peter W. May

Title: General Partner

*

Nelson Peltz

/s/ Peter W. May

Peter W. May

* By: /s/ Neale M. Albert

Neale M. Albert

Attorney-in-fact

Class A Common Stock: CUSIP NO. 895927 10 1

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Exhibit Index

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Exhibit -----	Description -----	
1	Stock Purchase Agreement dated as of October 1, 1992 by and between the Purchaser, Posner, Posner Trust and Security Management.	Filed
2	Exchange Agreement dated as of October 12, 1992 between the Company and Security Management.	Filed
3	Agreement dated as of October 1, 1992 between the Company and the Purchaser.	Filed
4	Agreement of Limited Partnership of the Purchaser dated as of September 25, 1992.	Filed
5	Joint Filing Agreement of the Purchaser, Peltz and May.	Filed
6	Memorandum of Understanding, dated January 21, 1993, by and between the Purchaser and William A. Ehrman, individually and derivatively on behalf of SEPCO.	Filed
7	Letter dated January 25, 1993 from Steven Posner to the Purchaser Filed with Amendment (including proposed terms and conditions of Consulting Agreement to be No. 2 entered into between the Company and Steven Posner).	Filed
8	Undertaking and Agreement, dated February 9, 1993, executed by the Purchaser.	Filed
9	Amendment No. 3 dated as of April 14, 1993 to Agreement of Limited Partnership of the Purchaser.	Filed
10	Citibank Loan Documents (Exhibits and Schedule omitted).	Filed
11	Republic Loan Documents (Exhibits and Schedules omitted).	Filed
12	Pledge and Security Agreement, dated as of April 5, 1993, between the Purchaser and Citibank.	Filed
13	Custodial Loan Documents.	Filed
14	Agreement, dated May 2, 1994 among Nelson Peltz, Peter W. May and Leon Kalvaria.	Filed
15	Amended and Restated Pledge and Security Agreement, dated as of July 25, 1994 between the Purchaser and Citibank.	Filed

Class A Common Stock: CUSIP NO. 895927 10 1

Class B Common Stock: CUSIP NO. 895927 30 9

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Exhibit Description

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16	Amendment No. 1 dated as of November 15, 1992 to Agreement of Limited Partnership of the Purchaser.	Filed
17	Amendment No. 2 dated as of March 1, 1993 to Agreement of Limited Partnership of the Purchaser.	Filed
18	Amendment No. 4 dated a January 1, 1995 to Agreement of Limited Partnership of the Purchaser.	Filed
19	Amendment No. 5 dated as of January 1, 1996 to Agreement of Limited Partnership of the Purchaser.	Filed
20	BOA Loan documents (Exhibits and Schedules omitted).	Filed
21	Letter, dated October 12, 1998, from Messrs. Nelson Peltz and Peter W. May to the Company.	Filed
22	Press release, issued by the Company, dated October 12, 1998.	Filed
23	Letter, dated October 12, 1998, from the Company to Messrs. Nelson Peltz and Peter W. May.	Filed
24	Press release issued by the Company, dated March 10, 1999.	Filed
25	Amended and Restated Agreement of Limited Partnership of the Purchaser, amended and restated as of November 11, 2002.	Filed
26	Pledge Agreement dated April 2, 2001, made by Peltz Family Limited Partnership, in favor of Bank of America, N.A.	Filed
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