

GNC faces new suits from five franchisees

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By Teresa F. Lindeman, Pittsburgh Post-Gazette

GNC Corp. may not be getting the fresh start it hoped for this year.

Despite new ownership and a plan to re-emerge as a public company, the Downtown health supplements retailer has yet to launch an initial public offering of stock and yesterday found itself facing new yet familiar charges from disgruntled franchisees.

In a lawsuit filed in the U.S. Court of New Jersey, five New Jersey franchisees and a franchisee group revived accusations GNC runs promotions on top-selling products that undercut prices they have to pay to get them. They also alleged that the company recently began trying to put unfair restrictions on their purchases of goods from other suppliers. They are seeking compensatory and punitive damages.

The company, which has had a turbulent relationship with franchisees, said it hadn't seen the complaint, which seeks unspecified compensatory and punitive damages. But GNC said it planned to vigorously defend itself, noting its franchise system has been highly rated by a number of industry magazines.

Meanwhile, the environment for a planned GNC public offering has become less encouraging, not only because health-related stocks have cooled but because of a strategic move by one of the retailer's competitors.

NBTY Inc., which operates the rival Vitamin World stores but also supplies mass market retailers such as Wal-Mart, has begun shipping popular new products to mass merchants earlier than in the past. That is important because it shortens the time that specialty retailers, such as Vitamin World and GNC, have new hot sellers to themselves, said Matthew Patsky, portfolio manager for the Boston-based Winslow Green Growth Fund, which has holdings in NBTY.

"It really hurt GNC," he said, because it undercut the chain's newest products as comparable NBTY versions hit discounters quicker. Bohemia, N.Y.-based NBTY's shift from retail to wholesale sales was clear in its preliminary fourth-quarter results released two weeks ago that showed sales at its wholesale division rose 18 percent while its smaller Vitamin World retail sales fell 2 percent.

GNC, which has not commented on the status of its plans to go public since filing for the authority to do so in late May, expects to report quarterly earnings in the next several weeks.

Investment group Apollo Management paid \$750 million in December to buy GNC from its Dutch parent, Royal Numico, and take it private. The late May filing with the Securities and Exchange estimated the public offering could raise as much as \$345 million.

Conflict with franchisees spawned lawsuits under past ownership. In 2001, GNC settled three suits that sought class-action status, promising such things as extending a franchisee wholesale loyalty program offering rebates and restating a policy that allows franchisees to buy directly from third-party vendors.

The latest lawsuit accuses the company of running an October promotion for a TrimSpa dietary supplement offering a item for \$20.46 that franchisees buy for \$21. Corporate stores get the product at a lower price, said attorney Gerald A. Marks, whose Red Bank, N.J., firm is also pressing a separate franchisee case against GNC over advertising practices.

In addition, the lawsuit alleges GNC has begun requiring third-party vendors to sell first through the company's distribution system, a move the franchisees say increases their costs.

(Teresa Lindeman can be reached at tlindeman@post-gazette.com or 412-263-2018.)