

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

NANO MAGIC INC.

Administrative Proceeding
File No. 3-19787

**DIVISION OF ENFORCEMENT'S MOTION TO SEEK LEAVE TO RESPOND
TO NANO MAGIC, INC.'S SUPPLEMENTAL BRIEFING IN FURTHER
SUPPORT OF NANO MAGIC INC.'S MOTION TO COMPEL AND RESPONSE
IN OPPOSITION TO NANO MAGIC, INC.'S SUPPLEMENTAL BRIEFING**

Respectfully submitted,
DIVISION OF ENFORCEMENT
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The Division of Enforcement (“Division”) hereby submits this motion to seek leave to respond to Nano Magic Inc.’s (“NMGX’s”) Supplemental Briefing in Further Support of Motion to Compel and this response in opposition to NMGX’s Supplemental Briefing, pursuant to Rule 154(a) of the Commission’s Rules of Practice (17 C.F.R. § 201.154(a)).

PROCEDURAL HISTORY

On April 28, 2022, in considering NMGX’s motion to compel a redacted copy of the Division’s action memo, the Commission found that “the Information Statement and the Declaration set forth nearly all the factual information that was before us when we suspended trading in Nano Magic’s securities.” April 28, 2022 Order at 2. The Commission then disclosed four additional facts, and further held “that, collectively, this information, paired with the information included in the Information Statement and Declaration, fully and fairly set forth all of the factual information that was before us when we suspended trading in Nano Magic’s securities.” *Id.* As a result, the Commission denied NMGX’s motion to compel, reasoning: “Production of a redacted version of the action memorandum would provide Nano Magic no information beyond what it has already received.” *Id.* The Commission then allowed the parties to file supplemental briefs “addressing any matter directly implicated by the resolution of Nano Magic’s motion as set forth herein.” *Id.* at 3.

ARGUMENT

Rather than submitting a supplemental brief relating to the merits of the trading suspension at issue, NMGX’s Supplemental Brief attempts to relitigate its rejected and now moot motion to compel. The Commission should reject this meritless request that the Commission reconsider its denial of the motion to compel because, as the Commission already found, NMGX now has before it “precisely the information that would be contained in a redacted version of the action memorandum.” *Id.* at 2.

NMGX's Supplemental Brief is an exercise in distraction and misdirection, focused on facts entirely irrelevant not only to the motion to compel, but also to the question of whether the Commission properly suspended trading in NMGX securities. It focuses on facts that were irrelevant to the underlying Commission decision. The Division respectfully submits that facts were not included in the Information Before the Commission at the Time of the Trading Suspension because, quite simply, they have no bearing on the trading suspension, in which consideration is given to "whether or not there is sufficient public information about which to base an informed investment decision" *Bravo Enter. Ltd.*, Exch. Act Rel. No. 75775, 2015 WL 5047983 (Aug. 27, 2015), at *4 (Aug. 27, 2015) (Commission Opinion) (quoting Rules of Practice, Exch. Act Rel. No. 35833, 60 Fed. Reg. 32738, 32787 (June 23, 1995) (adopting release) (Comment to Rule 550 discussing the Commission's process for petitions to terminate a suspension of trading)). Tellingly, having been given an opportunity to explain how, if at all, these additional facts affect the question of whether the Commission appropriately suspended trading in the company, NMGX steers clear of addressing the actual merits of the trading suspension and instead focuses its attention on accusing the staff of baseless accusations of ethical violations.

It is not surprising that NMGX failed to address the merits of the trading suspension in its Supplemental Brief. It is clear, based on the record, that the Commission appropriately suspended trading in the securities of NMGX because misleading information was circulating in the marketplace concerning the role that NMGX and its products could play in the fight against the virus that causes COVID-19. That misinformation corresponded with a spike in both the price and volume of NMGX stock. Specifically, between at least February 24, 2020 and April 14, 2020, as the COVID-19 pandemic intensified throughout the world, NMGX was the subject of manipulative promotional activity that included approximately 60 misleading posts to

message boards promoting NMGX and stating, among other things, that NMGX has a patent for a product that kills “coronavirus.” In light of the global pandemic, these claims created the false impression that the company’s product could be used in the fight against COVID-19. However, none of the company’s products contained any ingredient approved by the EPA for use against SARS-CoV-2, the virus that causes COVID-19. The claims in the message board posts were exacerbated by an April 7, 2020 press release issued by the company, in which NMGX’s CEO, Tom Berman, misleadingly stated that he was “excited to share that [NMGX is] eager to join the Covid-19 fight.” The press release provided no information regarding the company’s efforts to address COVID-19, and, in a subsequent interview with the Division staff, CEO Berman admitted that NMGX had no specific plan to join the COVID-19 fight. NMGX does not now dispute, and never has disputed, that the information circulating in the marketplace was misleading. And the company has never made an attempt to defend the accuracy of the many message board posts.

As a result, during just the first two weeks of the promotional message board posts, NMGX’s share price more than doubled, and NMGX’s average trading volume increased more than 750% from the previous three months. Following the April 7, 2020, issuance by NMGX of the misleading press release, the closing share price of NMGX continued to increase from \$1.20 to \$2.40 as of April 24, 2020. NMGX also has never disputed this spike in both the price and volume of NMGX stock, or the fact that the significant increase in NMGX’s stock price and trading volume was coincident with the misinformation in the marketplace. Given all of these facts – none of which have been challenged by NMGX – it is quite obvious that the Commission properly suspended trading in NMGX.

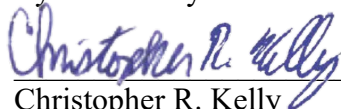
With respect to the March 2020 trading discussed in NMGX’s Supplemental Briefing, the Division had attributed this trading to Ronald Berman, a Director of NMGX and the father of

NMGX's CEO, based on information provided to it at the time that was later revealed to be incorrect. Regardless, however, of who placed these trades, this issue is not relevant to the misinformation in the market at the time of the suspension. Rather, it was included in the action memorandum only to communicate to the Commission that the Division intended to further investigate a separate issue, namely the circumstances surrounding the timely trading, which we now know was conducted not by Ronald Berman, but by his brother, Robert Berman.

CONCLUSION

For all these reasons, and those set forth by the Division in its prior submissions, the Commission should reject NMGX's attempt to relitigate its motion to compel and its petition to terminate the trading suspension.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of June, 2022, with respect to In the Matter of Nano Magic Inc., Administrative Proceeding File No. 3-19787, I caused a true and correct copy of the foregoing Division of Enforcement's Motion to Seek Leave to Respond to Nano Magic, Inc.'s Supplemental Briefing in Further Support of Nano Magic, Inc.'s Motion to Compel and Response in Opposition to Nano Magic, Inc.'s Supplemental Briefing to be served upon the following via the eFap filing system:

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