

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

May 19, 2020

Admin. Proc. File No. 3-19787

In the Matter of  Nano Magic, Inc.  Petitioner.	PETITIONER'S REPLY TO DIVISION OF ENFORCEMENT'S OPPOSITION BRIEF TO MOTION TO COMPEL PRODUCTION OF INFORMATION BEFORE THE COMMISSION AT TIME OF TRADING SUSPENSION ISSUED PURSUANT TO SECTION 12(k)(1)(A) OF THE SECURITIES EXCHANGE ACT OF 1934
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Nano Magic Inc. (“Nano Magic”) responds expeditiously and with brevity to the opposition submission of the Philadelphia Regional Office, Division of Enforcement (“PRO”) to Nano Magic’s Motion to Compel Production of Information Before the Commission at Time of Trading Suspension in this matter.

The PRO contends that Nano Magic filed a brief without leave of the Commission. That is not correct. A Motion to Compel the PRO to do what the Commission ordered but did not is not a “brief” as contemplated by the Order Requesting Additional Written Submissions (at 2).<sup>1</sup> In fact, Nano Magic carefully circumscribed its narrative to address only the four corners of the “Information Before the Commission at the Time of the Trading Suspension” and accompanying “Declaration” of the assigned attorney. The narrative and challenge to the Declaration focused on the perceived implausibility of its purported completeness, as the paucity of information could not

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<sup>1</sup> The Order, as relating to “briefs,” refers first to the directive to the PRO to file, by May 21, 2020, a substantive response to the petition, and then to Nano Magic’s opportunity, if it so wishes, to “file a reply brief.” The Commission could not have foreseen this perceived non-compliance with the Commission’s order to the PRO to “file all the information that was before the Commission....”

possibly have been the basis for the Commission to enter a trading suspension. That explained and continues to support the need for the Action Memorandum redacted to provide only the facts.

As to the PRO citing to other declarations accepted by the Commission in other trading suspensions, it stands to reason that counsel to the issuers likely did not challenge the completeness or integrity of those declarations; here, doing so is fully justified. Nor, absent a challenge, would the Commission have reason to question *sua sponte* the declarations in those matters. It is the PRO, not Nano Magic, that is necessitating the Commission consider issues never before requiring resolution in a trading suspension.

Finally, Nano Magic stands by its legal analysis as to its entitlement to a redacted for facts only copy of the Action Memorandum. No different than all of the other cases, the authority that the PRO cites, *United States v. Klein*, No. 16-cr-442 (JMA), 2017 WL 782326 at \*1 (S.D.N.Y. Feb. 28, 2017), is yet another post-enforcement action discovery case. In fact, the PRO misses critical distinguishing language in the Southern District of New York's opinion, specifically, that, in *Klein*, “[n]o portion of the memorandum ‘merely relays factual information;’ the entire memorandum is the privileged and confidential legal advice of counsel.” *Id.* at \*3. Here, the only request, including to redact all other content, is for that which only conveyed to the Commission factual information. Although it is becoming more and more obvious that the PRO relayed to the Commission no factual information, if narrated fairly and completely, upon which the Commission should have relied as the basis for issuing a trading suspension, the reality here is the Commission ordered the PRO to provide a factual narrative. Nano Magic only

has moved to compel production of precisely what the Commission ordered the PRO to provide.

Accordingly, Nano Magic stands fully behind its Motion and prays that the Commission will order the PRO to produce as an Exhibit to its substantive response to the Petition due on May 21, 2020, its Action Memorandum seeking the trading suspension redacted such that only the facts presented to the Commission are provided to Nano Magic.

Dated: May 19, 2020  
Washington, DC



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**Statement of Filing by E-Mail**

I hereby certify that on May 19, 2020, I caused a true and correct copy of the foregoing Petitioner's Reply to Division of Enforcement's Opposition Brief to Motion to Compel Production of Information Before the Commission at Time of Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 to be filed via e-mail, in Administrative Proceeding File No. 3-19787, *In the Matter of Nano Magic Inc.*, with the Office of the Secretary of the United States Securities and Exchange Commission. This e-mail filing is pursuant to the SEC's Order of March 8, 2020, *In re Pending Administrative Proceedings*. I sent this filing to the e-mail address APFilings@sec.gov.

Dated: May 19, 2020, Washington, DC



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**Certificate of Service**

On May 19, 2020, I caused a true and correct copy of the foregoing Petitioner's Reply to Division of Enforcement's Opposition Brief to Motion to Compel Production of Information Motion to Compel Production of Information Before the Commission at Time of Trading Suspension Issued Pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 and Statement of Filing by E-Mail to be served upon the persons entitled to notice in the manner set forth to the right of each served party:

Division of Enforcement (via e-mail)  
Philadelphia Regional Office  
Securities and Exchange Commission  
Attn: Christopher R. Kelly, Esq. (to kellycr@sec.gov)  
Attn: Kingdon Kase, Esq. (to kasek@sec.gov)  
Attn: Cecilia Connor, Esq. (to connorce@sec.gov)  
Attn: Jennifer C. Barry, Esq. (to barryj@sec.gov)

Dated: May 19, 2020, Washington, DC



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