United States of America before the
Securities and Exchange Commission
Exchange Act Release № 80701
Administrative Proceeding File № 3-17990

----------X File № 3-17990

In the matter of

Digital Brand Media & Marketing Group, Inc.

Respondent

----------X

POST-TRIAL REPLY MEMORANDUM

of Respondent's Digital Brand Media & Marketing Group, Inc.

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Table of Contents

Table of Authorities & Cases

Digital Brands Media and Marketing Group, Inc. ("Respondent" or "DBMM") the Respondent in the aforecaptioned matter, hereby submits its Post Hearing Reply Brief, as direct by Administrative Law Judge Patil, pursuant to 17 C.F.R. 201.340.

I. Preliminary Statement

We learned about honestly and integrity – that the truth matters... that you don't take shortcuts or play by your own rules... and success doesn't count unless you earn it fair and square.

- *Michelle Obama*

1. The Respondent has gone through an extraordinary series of events; having complied with prior orders from the Securities and Exchange Commission (the "Commission") to reaudit three prior years of financial statements[1], having their stock chilled at the Depository Trust and Clearing Corporation ("DTCC") which they have successfully vindicated themselves from[2], entered into a contentious litigation[3] with a FINRA designated "Bad Actor[4]", went through no less than four auditors[5] in the process and paid out over $100,000 to auditors and accounting services to perform audits for the Respondent to reaudit[6], and finally, as a result of what the Commission themselves describes as a "parade of woes,"[7] the instant hearing to revoke the Respondents registration. The Commission argues that the Respondent has made no effort to cure its current delinquencies and has made no creditable assurance of future compliance, despite spending 12 of 46 pages of its Post Hearing Brief dismissing the improbable

[1] Tr. 49:21 – 50:2
[2] Resp. Exhibit. E, Tr. 159:18 – 163:24
[3] Resp. Exhibit F
[4] Tr. 135:5-136:7; Tr. 166:16-167:2
[5] Tr. 42:9-18
[6] Tr. 158:11-159:12
[7] Div. Post Hearing Brief p. 27

sequence of events that culminated in hard won trial and tribulations that the Respondent has went through to get to this point. Roughly 26% of the Commission's brief decrying the mammoth efforts the Respondent has made, which is the very essence of a creditable assurance. One quarter of the Commission's brief is minimizing the hard fought and costly victories that are proof in and of itself of creditable assurances of future compliance. The Respondent could have quit at any time. If the Respondent did not have a tenacious zeal to be compliant, why do the reaudit, why lift the chill, why fight the Bad Actor, why go through no less than four certifying accountants, why contest the Commission, except for the fact the Respondent is a fighter, dedicated to putting one foot in front of the other, regardless how steep the incline is. That is the truth. These are not just words to "win" a brief, these are hard fought and costly victories that are irrefutable facts of creditable assurances of future compliance.

2. Theodore Roosevelt famously said, "It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds..." The Respondent has earned their integrity through their scars, fair and square, regardless of the aspersions slung, the crushing home court advantage of the Commission, the case law developed on undefended cases, law, or rule and regulation violations. The truth is the truth, and the truth is

Respondent went through all of those trials and tribulations to move forward; then, now, and in the future.

II. Substantive Arguments

i. The Commission states it demonstrated harm to investors in their brief by case law but no evidence of demonstrated harm was brought forth at trial to be discussed in conjunction with the totality of the distinguishing circumstances.

3. The Commission relies on case law to prove the demonstrated harm to investors. *Gateway International Holdings*[8] is the current leading case and is frequently cited in the Commission's post hearing brief, cited 11 times and listed as passim in the Commission's table of authorities. *Gateway* states that not just the current investors should be protected, but the potential investors should be protected as well, and "turns on the effect on the investing public..."[9] In the instant, the Commission does not take into account the effect and harm on the public market Asher Enterprises, Inc. involvement had and the balancing of the equities between not filing and Asher's deeds which earned them the infamy of being designed by FINRA as a Bad Actor, sanctioned and censured by the Commission multiple times, and written up in the Washington Post for their path of destruction through public markets and being sanctioned by the

[8] Initial Decision Rel. No. 294, File No. 3-11894 (2005)
[9] *Gateway* on appeal Rel. No. 53907, AP File No. 3-11894, at 10 (2006)

Commission $1.4 million in just that one article.[10] The Commission has also stated specifically that decisions are dependent on particular facts and circumstances involved and that other considerations could justify different results.[11] The fact that Asher was mentioned in the transcript no less than 75 times, according to the index, justifies a pervasive impact on the Respondent and the Commission never once took that into account before unilaterally declaring demonstrated harm.

4. You have to do something really bad to get written up in the context of a micro-cap scourge, and the Commission never once delved into a weighing of harms from lack of information versus the harm from Asher, or even acknowledged that a harm was created. The Commission only exclaimed Scienter! Scienter! when the Respondent made a Sophie's choice[12] to pay Asher a settlement using the business judgment rule to choose between the lesser of two evils. Decisions are premised upon particular facts and circumstances and a draconian one-sided hindsight critic is not remotely reflective of the truth of the circumstance. The sad truth of the circumstance was harm will be done to the investors regardless of the choice made, and after an assessment of a continuum of risk it was decided that Asher was the greater harm that protected the investors the most.[13]

ii. The Commission has reliable assurance of filings because Respondent stated that as soon as they received capital it would be deployed for getting an auditor. The

[10] Resp. Ex. I, M, N, and O; Tr. 135:5-25, 136:1-7
[11] Gateway at 8 citing *eSmart Techs. Inc.* 83 DEC Docket 3586, 3587 (2004)
[12] Tr. 125:11-12, using the exact term "Sophie's choice"
[13] Tr. 123:23 through 125:22

Respondent received capital, filed an 8K regarding its new auditor, and the Commission verified that with the new auditor.

5. The Respondent has filed, post hearing, an 8K, dated 16 October 2017 that states it has retained a new auditor. (See DBMM's 8K EDGAR filing dated 16 October 2017) Furthermore, the Commission has called the Respondent's new certifying auditor and spoke to the partner involved while he was in Vietnam on business, concerning the legitimacy of the Respondent's engagement, while the Respondent had signed an engagement letter and paid the retainer. In addition to the testimony of Ms. Perry stating adamantly and repeatedly that there was a doggedly high level of commitment to get Respondent current[14] and that some of the pre-audit work was already performed[15], and the Respondent had complied with prior orders of the Commission[16], and Ms. Perry is under the belief the Respondent can get the audits done within three to six months[17]. Ms. Perry stated that when the capital arrives she would deploy it immediately[18]. Despite the Commission's skepticism regarding Ms. Perry's veracity, going so far as to ask Ms. Perry to look in her purse for any documentation of funding[19], capital arrived and was deployed to retain an auditor; exactly as she stated. Non-believers will always not believe; but the proof is always in the pudding.

[14] Tr. 104:15-24; Tr. 180:14-17; Tr. 182:3-5
[15] Respondent's Exhibit J; Tr. 96:19-25; Tr. 98:11-24
[16] Tr. 179:6-7; 184:19-20
[17] Tr. 184:1-2
[18] Tr. 182:19-21
[19] Tr. 191:2-7

6. In conclusion, it cannot be reasonably said that the Respondent have not demonstrated reasonable assurances for not becoming current in their filings. Moreover, the Respondent has done everything in its ability to protect their investors.

III. Procedural Arguments

i. The Commission has not complied with their obligations under Brady[20], and their own rules, and as such the matter must be dismissed.

7. The Commission called Marc-Andre Boisseau, Mitchell Prizansky, and Michael Naparstek, and did not disclose their subpoenas, nor any subpoenas, even when demanded by discovery documents. This is compounded because the Respondent does not know who else was subpoenaed in the matter, if any, or if those subpoenaed testimony would be relevant to the guilt or punishment of the Respondent, or be relevant for impeachment purposes[21]. But the Respondent does know the subpoenas existed by virtue of witnesses' presence at the hearing.
8. Furthermore, the Commission violated their own rule, Rule 230 (a) (1) (i), specifically stating the Commission must disclose each subpoena issued; which they did not. Disclosing a witness list, which the Commission did disclose pursuant to order of the ALJ, is not curative. The Respondent has the right to know who was subpoenaed, not just who will be appearing at the hearing.

[20] *Brady v. Maryland*, 373 US 83 (1963)
[21] *Youngblood v. West Virginia*, 547 US 867, 05-6997 (2006)

ii. No formal order was issued, and thus the Commission instituted the entire proceeding without authority and should be properly vacated.

9. The Commission stated at trial there was no formal order in the matter.[22] The Commission's own policy states the filing of any enforcement action must be authorized by the Commission.[23] No other authorization(s) was entered into the record. The Commission staff cannot simply go off on a lark of their own and wander into the ALJs chambers, whom are ostensibly on the payroll of the Commission to begin with. and institute an enforcement action without possessing some authorization. That closed system would be ripe for something to go very wrong, as did when subpoenas were executed by the ALJ for parties known to be foreign nationals residing abroad in this very matter, which was eventually corrected by the same ALJ once brought to his attention.

iii. Case law that was undefended is simply a subterfuge for Commission policy.

10. The Commission relies upon case law that was undefended which is simply a subterfuge for Commission policy. The Commission cites numerous cases that were based on cases

[22] Tr. 141:9-10
[23] SEC Division of Enforcement, Enforcement Manual, 2.5.1, p. 23, October 16, 2016

that were not defended.[24] Undefended case law should have no binding effect as it is a shadowy extension of Commission policy.

IV. Conclusion

i. The Respondent respectfully requests this court to either dismiss the matter for procedural failings or grant the Respondent relief to become current.

11. The Respondent respectfully requests this court to dismiss the proceedings based upon the procedural irregularities of violation of its own rules, which is irrefutable, or violation of the Respondents constitutional rights. In the alternative, the Respondent requests this court grant relief, in which time the Respondent can become current again.

Yours etc.

Dated: 20 October 2017
Carle Place, New York

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[24] *Absolute Potential, Inc.* 2014 SEC LEXIS 1193 (2014), *Law Enforcement Associates Corp.* 2013 SEC LEXIS 1436 (2013), *Bio-Life Labs, Inc.* 2011 SEC LEXIS 2546 (2011), *Cirtran Corp.* 2017 WL 193457 (2017), *Ocean Resources, Inc.* 2008 SEC LEXIS 81 (2009), etc.

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