

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19787

In the Matter of

Nano Magic Inc.,

Respondent

INFORMATION BEFORE THE COMMISSION
AT THE TIME OF THE TRADING SUSPENSION

Pursuant to the Commission's Order Requesting Additional Written Submissions issued May 8, 2020 ("Order"), the Division of Enforcement has attached the Declaration of Cecilia B. Connor, dated May 14, 2020, setting forth the substantive facts before the Commission at the time it issued the order suspending trading in Nano Magic Inc. securities on April 30, 2020. Pursuant to footnote 5 of the Order, the Declaration does not disclose privileged analysis or sensitive information about the staff's investigation methods. The Division additionally is not filing information the disclosure of which would otherwise violate applicable federal law or regulations.

Respectfully submitted,
DIVISION OF ENFORCEMENT
By its Attorneys:

Cecilia B. Connor

Cecilia B. Connor
Kingdon Kase
Christopher R. Kelly
Jennifer C. Barry
Securities and Exchange Commission
1617 JFK Boulevard, Suite 520
Philadelphia, PA 19103

Dated: May 14, 2020

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
Nano Magic Inc.,

Administrative Proceeding
File No. 3-19787

DECLARATION OF CECILIA B. CONNOR

I, CECILIA B. CONNOR, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am Counsel with the United States Securities and Exchange Commission (“Commission”) and have been employed by the Commission as an attorney in the Division of Enforcement (“Division”) since 2016.

2. I submit this Declaration in compliance with the Commission’s May 8, 2020 Order Requesting Additional Written Submissions (“Order”) ordering that the Division of Enforcement file all information that was before the Commission as of April 30, 2020, the date the Commission ordered a suspension of trading in the securities of Nano Magic Inc. (“NMGX” or the “company”). Paragraphs 4 through 27 below set forth the information that was before the Commission as of April 30, 2020 with respect to the suspension of trading in the securities of NMGX.

3. Pursuant to footnote 5 of the Order, the Division is not filing information which would disclose privileged legal analysis or sensitive information about the staff of the Division’s investigative methods. The Division additionally is not filing information the disclosure of which would otherwise violate applicable federal law or regulations.

A. Background

4. NMGX is a Delaware corporation incorporated in 2014 with its principal executive offices located in Bloomfield Hills, Michigan. NMGX was originally incorporated in 2014 under the name Applied Nanotech Holdings, Inc. On September 3, 2014, the company merged with Nanofilm, Ltd. (“Nanofilm”) and changed its name to PEN, Inc. (“PENC”). Nanofilm was founded in 1985 by PENC’s former CEO, Scott Rickert. On January 26, 2016, NMGX effected a 1-for-180 reverse split of its issued and outstanding shares of common stock. On October 18, 2018, NMGX’s current CEO, Tom Berman, replaced Scott Rickert as President of the company and, on April 3, 2019, Berman was elected to the position of CEO.

5. On March 2, 2020, NMGX’s Board of Directors adopted an amendment to its certificate of incorporation, changing its name from PEN, Inc. to Nano Magic Inc., in order “to better convey our business and products to investors and customers.” On April 7, 2020, the company announced the name change and a change in ticker symbol to NMGX, as well as a rebrand and new product line.

6. According to the OTC Markets Group Inc.’s website, NMGX purports to be “a global leader in developing, commercializing and marketing enhanced-performance products enabled by nanotechnology.” As stated in NMGX’s most recent Form 10-K, filed on November 13, 2019 for the fiscal year ended December 31, 2018, the company’s “[r]evenue is based on the retail and institutional sale of specialty products, sold as liquids, gels, foam, and towelettes, utilizing nanotechnology to deliver unique performance attributes”

7. As of April 21, 2020, NMGX had more than 7 million shares outstanding, and its market capitalization on April 22, 2020, was over \$12.9 million. NMGX’s latest financial

statements were included in a Form 10-Q filed with the Commission on January 14, 2020 for the period ended September 30, 2019, reporting: cash of \$110,692, total assets of \$1,254,697, liabilities of \$ 1,793,616, revenue of \$518,351, and a net loss of \$232,875.

8. NMGX has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (“Exchange Act”) and is quoted on OTC Link (previously “Pink Sheets”), operated by OTC Markets Group Inc., under the ticker symbol NMGX.

9. As of April 27, 2020, NMGX’s common stock had seven market makers and was eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3).

B. Promotional Activity Discussing NMGX and the Coronavirus

10. Between at least February 24, 2020 and April 14, 2020, accounts on Twitter.com (“Twitter”) and InvestorsHub.com (“InvestorsHub”) posted approximately 60 promotional messages, many authored by the same users, discussing NMGX in connection with coronavirus and claiming, among other things, that NMGX holds a patent for a product that kills human coronavirus. The posts implied that the company’s product was capable of killing the virus that causes COVID-19. Examples of these posts include:

- On February 24, 2020, InvestorsHub user luke424 posted, among several other similar posts in the following days, “PENC [the prior ticker symbol for NMGX] has a patent that kills Coronavirus 99.99% of the time.”
- On February 28, 2020, InvestorsHub user BJ_Cooper posted, “I truly believe that the Corona Virus patent is just the tip of the iceberg. It’ll be interesting to see what else is in the works.” InvestorsHub user BJ_Cooper posted at least nine promotional posts regarding NMGX between February and April 2020.
- On February 29, 2020, Twitter user @t4kingoff posted, “\$PENC On 10/15/19 patent approved for disinfectant that kills #coronavirus 99.9% of time and many other nasty things.” This user was the author of numerous posts promoting NMGX on both Twitter and InvestorsHub between February and April 2020.
- On March 1, 2020, Twitter user @JoeDTrader posted, “What?! \$PENC already have the solution to kill the Corona Virus since 2015?! All governments should get a hold of this company ASAP! #CoronaVirusUpdate.”
- On March 2, 2020, Twitter user Dream85705614 posted, “\$PENC 780k float #coronavirus play. People are starting to find it.”

- On March 8, 2020, Twitter user @holdingprofits posted, “\$PENC don’t sleep on this #CoronavirusOutbreak stock. PENC has . . . patent to kill virus in 10 minutes on public transportation systems.” User @holdingprofits was the author of at least six promotional posts regarding NMGX during February and March 2020.
- On March 29, 2020, Twitter user Auggie20010 posted, “CORONAVIRUS UPDATE: US SCIENTISTS FROM \$PENC ALREADY found the NANOMATERIAL that kills the VIRUS in 10 MINUTES on a surface for up to 5 DAYS. PATENTED 10/2019.” Auggie2010 was the author of six additional posts on InvestorsHub in March 2020, promoting NMGX as a lucrative investment.

11. In total, between February 14 and April 24, 2020 there were over 450 posts on the InvestorsHub message board, with additional posts on Twitter, promoting NMGX generally and discussing whether to purchase NMGX stock. This message board activity is a significant increase from previous periods. During the entire year of 2019, the InvestorsHub message board contained only nine posts discussing PENC (now known as NMGX).

12. Although NMGX’s predecessor company, PEN, Inc., was assigned a patent on October 15, 2019 for “[d]isinfectant material comprising a copper halide salt and surfactant” (“NMGX Patent”), neither copper halide salt nor surfactant are ingredients approved by the Environmental Protection Agency (“EPA”) for use against SARS-CoV-2,¹ and the patent contains no claims regarding COVID-19.

13. Additionally, although an experimental test of the disinfectant covered by the NMGX Patent conducted in approximately 2015 apparently resulted in a 99.99% reduction in the Human Coronavirus 229E, this type of coronavirus is distinctly different from SARS-CoV-2, the virus that causes COVID-19. Human Coronavirus 229E is a common type of coronavirus that causes mild to moderate illnesses such as the common cold, and the Centers

¹ The EPA’s list of disinfectants approved for use against SARS-CoV-2 is available at <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>.

for Disease Control and Prevention recently stated that it “*should not be confused with coronavirus disease 2019*”² [emphasis in original].

14. As of April 30, 2020, NMGX had not disavowed the promotional activity concerning its patent.

C. NMGX Press Release and an Interview With NMGX

15. On April 7, 2020, NMGX issued a press release titled “Nano Magic Inc., Formerly PEN Inc., Announces New Name, New Trading Symbol, Rebrand, and New Product Line Coming Soon.” According to the press release, “The Company is preparing for the launch of their new Nano Magic-branded product line that will include lens care, electronic device screen cleaning and protection, sport and safety anti-fog solutions, auto windshield cleaning and protection, as well as household surface cleaning and protectant solutions.” Furthermore the press release states: “In fact, Berman [CEO of NMGX] was excited to share that they are eager to join the Covid-19 fight.” Prior to this press release, the company last issued a press release on October 28, 2018.

16. The press release provided no specific information as to how NMGX planned to “join the Covid-19 fight,” and, as of April 30, 2020, the company had made no subsequent claims regarding any COVID-19 related products or business activities. Nor was there any mention of either COVID-19 or the Human Coronavirus 229E disinfectant on the company’s website.

17. On April 14, 2020, FINRA’s Office of Fraud Detection and Market Intelligence sent written questions to the company in which FINRA inquired about the promotion of NGMX.

² Centers for Disease Control and Prevention – Common Human Coronaviruses, <https://www.cdc.gov/coronavirus/general-information.html>.

18. On April 24, 2020, Kingdon Kase, Assistant Regional Director, and I (the “Division’s staff”) conducted a telephonic interview with Berman, NMGX’s CEO, and its General Counsel, Jeanne Rickert, both of whom stated that they were not aware of any promotional activity involving NMGX in the past two months, including any claims related to COVID-19.

19. While Berman referenced the NMGX Patent in the April 24, 2020 interview, he acknowledged that the disinfectant covered by the NMGX Patent was never tested with respect to SARS-CoV-2, the virus that causes COVID-19. Berman stated that NMGX is attempting to re-register the product with the additional ingredient of povidone-iodine. However, he acknowledged that additional testing is needed to determine whether the product can be used against SARS-CoV-2, although he appeared unfamiliar with the EPA’s testing processes and did not know what testing would be required to establish the approved uses for the re-registered product. Berman stated that he did not believe that povidone-iodine was currently approved to treat the human coronavirus. In fact, povidone-iodine is not currently an ingredient approved by the EPA for any use, let alone use against human coronavirus or SARS-CoV-2.

20. Berman also stated that he used the phrase “eager to join the Covid-19 fight” in the April 7, 2020 press release because NMGX is “trying to sell cleaning products to ultimately provide cleaner surfaces to hopefully rid dirt and grime and nastiness from people’s lives.” Berman stated that NMGX “would love to be able to develop a product to join the COVID-19 fight,” but acknowledged that, at the present time, NMGX had no specific plan to do so, other than its attempts to re-register the NMGX Patent with povidone-iodine, an additional ingredient that is not approved by the EPA for any use, let alone to fight the human coronavirus or SARS-CoV-2.

21. Following this interview of Berman, Mr. Kase and I spoke with the product manager at the EPA's Office of Pesticide ("EPA Product Manager") who had previously communicated with Berman regarding re-registration of NMGX's disinfectant product with the additional ingredient of povidone-iodine. The EPA Product Manager confirmed that povidone iodine is not currently registered with the EPA, and thus any review of a product containing this ingredient would be a de novo review, rather than a re-registration.

According to the EPA Product Manager, such a review is a lengthy, complex, and costly process involving many studies to demonstrate, among other things, the toxicity of the new active ingredient, and takes an average of approximately two years.

D. NMGX's Stock Price and Trading Volume

22. In the three months prior to February 24, 2020, NMGX's closing share price fluctuated between \$0.55 and \$0.83 with an average closing price of \$.66 and an average daily trading volume of 1,626 shares. On 63% of the trading days during this time period, trading volume in NMGX securities was less than 500 shares. Between February 26 and March 8, 2020, during just the first two weeks of the promotional activity, NMGX's share price more than doubled, from a closing price of \$0.67 per share to a closing price of \$1.45 per share. NMGX's closing share price spiked during this period on March 2, 2020, the day after the Tweet by @JoeDTrader stating that PEN Inc. has had "the solution to kill the Corona Virus [sic] since 2015," to a closing share price of \$2.10, a 256% increase from its closing share price on the day before the commencement of the promotional activity. During this time period, NMGX's average trading volume also increased 770% from the previous three months to an average daily volume of 12,522 shares, and its average closing share price increased 218% from the previous three months to an average closing share price of \$1.44.

23. The closing share price of NMGX continued to fluctuate between \$0.95 and \$2.24 from March 9 until the issuance of the April 7, 2020 press release, with an average closing share price of \$1.43 and an average daily trading volume of 4,677, an increase of 287% from the average daily trading volume in the three months preceding the start of the promotional activity. Following the issuance of the April 7, 2020 press release, the closing share price of NMGX steadily increased each day from \$1.20 to \$2.40 as of April 24, 2020, a 292% increase from the closing price on the day before the commencement of the promotional activity. NMGX's trading volume fluctuated, but, as of April 24, 2020, remained significantly higher than the stock's average daily trading volume prior to the commencement of the promotional activity, with an average daily trading volume that was 239% higher than the average daily trading volume in the three months prior to February 24, 2020.

E. NMGX's March 2020 Capital Raise

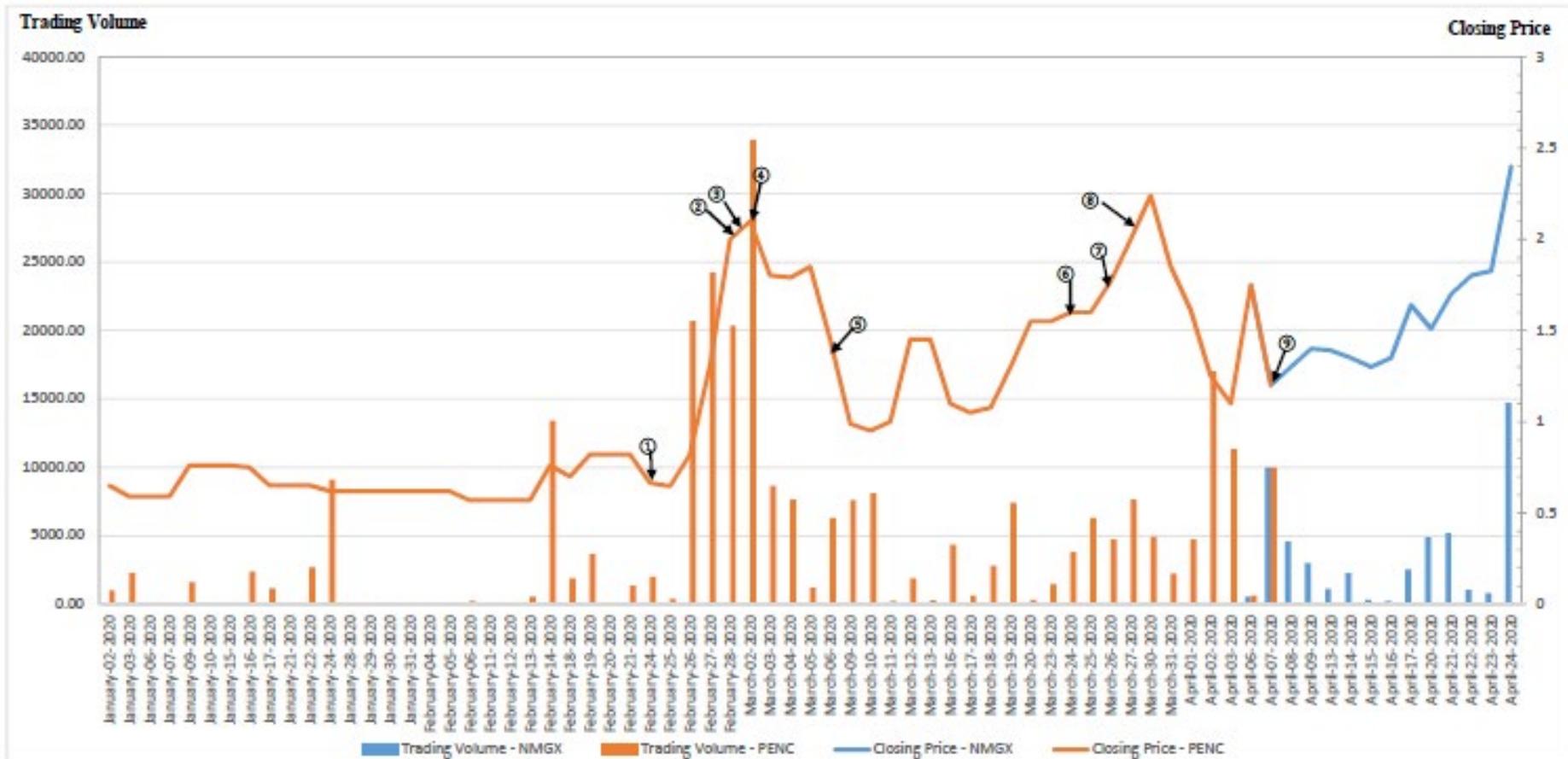
24. During the April 24, 2020 interview by the Division's staff, Berman stated that his main goal as CEO is to help NMGX get out of debt. When asked how he planned to accomplish that goal, Berman replied that he was working on negotiating payment plans and increasing sales for the company in order to ultimately make the company more profitable. After the Division staff asked Berman whether NMGX had recently made any efforts to obtain financing from investors, he revealed that NMGX had conducted two private capital raises, the first of which concluded in June 2019 and the second in March 2020, while the promotional activity described above was ongoing.

25. No brokers or underwriters were involved in either raise and NMGX did not file a Form D with respect to either raise. Specifically, Berman stated that NMGX

raised \$540,000 and \$25,000 on March 24 and 26, 2020, respectively. Berman also stated that it may be necessary for NMGX to raise additional funds through private offerings.

26. The following chart reflects the dates of certain of the events discussed above in relation to NMGX's closing price and trading volume during this time period:

NMGX's Closing Price and Trading Volume Between January 2, 2020 and April 24, 2020



Source: Bloomberg

NMGX press release and capital raise activity, and examples of promotional activity:

1. February 24, 2020: The beginning of the promotional activity. InvestorsHub user luke424 posts, "PENC has a patent that kills Coronavirus 99.99% of the time."
2. February 29, 2020: Twitter user @t4kingoff posted, "\$PENC On 10/15/19 patent approved for disinfectant that kills #coronavirus 99.9% of time . . ."
3. March 1, 2020: Twitter user @JoeDTrader posts, "What?! \$PENC already have the solution to kill the Corona Virus since 2015?!"
4. March 2, 2020: Twitter user Dream85705614 posts, "\$PENC 780k float #coronavirus play. People are starting to find it."
5. March 8, 2020: Twitter user @holdingprofits posts, "PENC has government contracts and patent to kill virus in 10 minutes on public transportation systems."
6. March 24, 2020: NMGX raises \$540,000 in a private offering.
7. March 26, 2020: NMGX raises \$25,000 in a private offering.
8. March 29, 2020: Twitter user Auggie20010 posts, "CORONAVIRUS UPDATE: US SCIENTISTS FROM \$PENC ALREADY found the NANOMATERIAL that kills the VIRUS in 10 MINUTES on a surface for up to 5 DAYS. PATENTED 10/2019."
9. April 7, 2020: NMGX press release announcing the name/ ticker change and that the issuer is "eager to join the Covid-19 fight."

27. In the April 24, 2020 interview by the Division's staff, Berman stated that, while he was generally aware that the price of NMGX stock increased over the past two months, he was "not focused on the stock price" and did not know the reason for the increase in price.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14th day of May, 2020 in Haddonfield, New Jersey.

Cecilia B. Connor

CECILIA B. CONNOR

STATEMENT OF FILING BY EMAIL

I hereby certify that, on this 14th day of May, 2020, 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 Information Before the Commission at the Time of the Trading Suspension and Declaration of Cecilia B. Connor to be filed via email with the Office of the Secretary of the U.S. Securities and Exchange Commission pursuant to the SEC's March 8, 2020, Order in In re Pending Administrative Proceedings. The filing was sent to the email address: APFilings@sec.gov.

Cecilia B. Connor

Cecilia B. Connor
Kingdon Kase
Christopher R. Kelly
Jennifer C. Barry
Securities and Exchange Commission
Division of Enforcement
Philadelphia Regional Office
One Penn Center
1617 JFK Blvd., Suite 520
Philadelphia, PA 1910
Tel: (215) 597-3100
Fax: (215) 597-2740
ConnorCe@sec.gov
KaseK@sec.gov
KellyCR@sec.gov
BarryJ@sec.gov

Counsel for the Division of Enforcement

CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of May, 2020, 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 Information Before the Commission at the Time of the Trading Suspension and Declaration of Cecilia B. Connor (together with the accompanying Statement of Filing by Email) to be served upon the following by email:

Jacob S. Frenkel
Dickinson Wright PLLC
International Square Building
1825 I St., N.W., Suite 900
Washington, DC 20006
E-mail: jfrenkel@dickinsonwright.com

Cecilia B. Connor

Cecilia B. Connor
Kingdon Kase
Christopher R. Kelly
Jennifer C. Barry
Securities and Exchange Commission
Division of Enforcement
Philadelphia Regional Office
One Penn Center
1617 JFK Blvd., Suite 520
Philadelphia, PA 1910
Tel: (215) 597-3100
Fax: (215) 597-2740
ConnorCe@sec.gov
KaseK@sec.gov
KellyCR@sec.gov
BarryJ@sec.gov

Counsel for the Division of Enforcement