

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of MPHJ Technology Investments, LLC, et al., File No. 142 3003

The Federal Trade Commission (the “Commission”) has accepted, subject to approval, an agreement containing a consent order from MPHJ Technology Investments, LLC; Jay Mac Rust; and Farney Daniels, P.C. (the “Respondents”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter concerns allegedly deceptive representations that the Respondents made in a campaign of letters sent to thousands of small businesses across the United States in an attempt to sell licenses for certain U.S. patents.¹ The complaint alleges that the Respondents made false or unsubstantiated representations in their letters that many small businesses had already agreed to pay thousands of dollars for such licenses. The complaint also alleges that the Respondents’ letters falsely represented that a patent infringement lawsuit would be filed against the recipient if it did not respond to the letter, and that this suit would be filed imminently. The complaint alleges that these representations constitute deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act.

The proposed consent order contains provisions designed to prevent the Respondents from engaging in similar acts and practices in the future. Section I.A of the proposed order would prohibit false or unsubstantiated representations that a patent has been licensed in substantial numbers, at particular prices, or within particular price ranges. Section I.B of the proposed order would prohibit false or unsubstantiated representations about the licenses for a patent or the responses of recipients of patent assertion communications, or concerning the results of licensing, sales, settlement, or litigation of a patent. Section I.C would prohibit misrepresentations that the Respondents or an affiliate of the Respondents has initiated a lawsuit. And Section I.D would prohibit representations that the Respondents or an affiliate of the Respondents will initiate a lawsuit unless they have decided to take such action and they possess competent and reliable evidence sufficient to substantiate that they are prepared and able to do so. In determining whether such a representation was substantiated at the time that it was made, evidence that an action was not taken because of a change in circumstances or information obtained subsequent to making the representation shall be considered.

These prohibitions in the proposed consent order apply to communications (other than filings in a lawsuit or correspondence between counsel in a lawsuit) that state that the intended recipient or anyone affiliated with the intended recipient is or may be infringing rights arising from a patent, is or may be obligated to obtain a license because of a patent, or owes or may owe compensation to another because of a patent.

¹ The complaint does not challenge the right of a patentholder to seek licensing fees through truthful representations or non-deceptive conduct.

The proposed consent order also contains reporting and compliance provisions. Section II requires the Respondents to maintain and upon request make available certain compliance-related records. Sections III through VI requires the Respondents to deliver a copy of the order to officers, employees, and representatives having managerial responsibilities with respect to the order's subject matter, notify the Commission of changes in corporate structure that might affect compliance obligations, and file compliance reports with the Commission.

Section VII of the proposed order provides that, with certain exceptions, the order will terminate in twenty years.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify in any way the proposed order's terms.