

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney**

_____)	
In the Matter of)	
)	
MPHJ TECHNOLOGY INVESTMENTS, LLC,)	Docket No. C-_____
a limited liability company;)	
)	
JAY MAC RUST,)	
individually and as an officer of)	
MPHJ TECHNOLOGY INVESTMENTS, LLC;)	
and)	
)	
FARNEY DANIELS, P.C.,)	
a professional corporation.)	
_____)	

COMPLAINT

The Federal Trade Commission (“Commission”), having reason to believe that MPHJ Technology Investments, LLC, a limited liability company; Jay Mac Rust, individually and as an officer of MPHJ Technology Investments, LLC; and Farney Daniels, P.C., a professional corporation (collectively, “Respondents”) have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges as follows:

1. Respondent MPHJ Technology Investments, LLC, (“MPHJ”) is a Delaware limited liability company with a registered agent at 1013 Centre Road, Suite 403S, Wilmington, Delaware, 19805. MPHJ has 101 subsidiaries, each of which is a Delaware limited liability company, and each of which has a registered agent at 1013 Centre Road, Suite 403S, Wilmington, Delaware, 19805.

2. Respondent Jay Mac Rust is the sole member and manager of MPHJ and the sole manager of each of MPHJ's 101 subsidiaries. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of MPHJ, including the acts and practices set forth in this Complaint. His principal place of business is 510 North Valley Mills Drive, Suite 505, Waco, Texas, 76710.

3. Respondent Farney Daniels, P.C., ("Farney Daniels") is a Texas professional corporation with its principal office or place of business at 800 South Austin Avenue, Suite 200, Georgetown, Texas, 78626.

4. The acts and practices of the Respondents as alleged in this Complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

RESPONDENTS' BUSINESS ACTIVITIES

5. MPHJ and the subsidiaries that it controls are Patent Assertion Entities. Patent Assertion Entities purchase patent rights and seek to generate revenue by licensing to or litigating against those who are or may be using patented technology.

6. In September 2012, MPHJ purchased from another Patent Assertion Entity, Project Paperless, LLC, all right, title, and interest to four U.S. patents and one pending U.S. patent application on the work of inventor Laurence C. Klein (the "Klein Patents"). The four patents, U.S. Patent Nos. 7,986,426; 6,771,381; 7,477,410; and 6,185,590; and Application No. 13/182,857 (issued as Patent No. 8,488,173 in 2013) generally pertain to networked scanning systems. More particularly, Respondents assert that the Klein Patents, individually or in combination, cover certain computer management systems capable of transmitting electronic images, graphics, and/or documents through a communications network from a network addressable scanner, digital copier, or other multifunction peripheral to external devices, files, and applications.

7. Beginning in September 2012 and continuing through June 2013, the Respondents conducted a campaign to promote and sell licenses for the Klein Patents through letters sent to thousands of small businesses located in all fifty states and the District of Columbia.

8. In September 2012, MPHJ entered into written “Exclusive License Agreements” with various of its subsidiaries. Each written license agreement assigned to a respective subsidiary a purportedly exclusive right to license the Klein Patents to entities within a specified “Commercial Field” and “Geographical Field.”

9. Each of the various written “Exclusive License Agreements” between MPHJ and its subsidiaries, and each amendment to such agreements, was signed by Respondent Rust both on behalf of MPHJ and on behalf of each subsidiary.

10. In September 2012, MPHJ also entered into a written agreement with Farney Daniels. The terms of the agreement provided that Farney Daniels “will represent MPHJ in connection with legal services related to enforcement, monetization, assertion, licensing, and/or sale” of the Klein Patents. Under the agreement, Farney Daniels would not charge MPHJ hourly fees, and MPHJ gave the firm a 30–40% interest in all payments to MPHJ or its subsidiaries from any licensees, alleged infringers, or purchasers of the Klein Patents that had been contacted or identified by Farney Daniels. Specifically, the agreement entitles Farney Daniels to 40% of the gross amount paid by entities that Farney Daniels had sued or with which Farney Daniels was “substantially engaged,” and 30% of the gross amounts paid by all other entities.

11. The September 2012 written agreement between MPHJ and Farney Daniels was signed by Respondent Rust on behalf of MPHJ.

Respondents’ Three-Stage Campaign to Promote and Sell Licenses

12. In September 2012, the Respondents began their nationwide campaign to promote and sell licenses for the Klein Patents to small businesses. The Respondents’ campaign involved three stages of letters.

13. Respondents selected the recipients of their letters based on two pieces of information obtained from business directory databases: (a) an estimate of the number of the business’s employees, and (b) the business’s standard industrial classification (“SIC”). Specifically, Respondents sent their letters to businesses identified as having (a) between 20 and 99 employees; and (b) a primary line of business in one of 54 SIC codes selected by

Respondents, including those for Veterinary Services, Lawn and Garden Services, Building Maintenance Services, and Medical Laboratories.

14. In the first stage of the campaign, Respondents sent a letter in the name of one of MPHJ's various subsidiaries on letterhead featuring the name of that subsidiary ("First Letter"). In each First Letter, Respondents stated that the entity identified as the sender is the licensing agent for the Klein Patents. Eighty-one different subsidiary names were used over the length of Respondents' campaign: AllLed, LLC; AbsMea, LLC; AccNum, LLC; AllOrd, LLC; AdzPro, LLC; ArdSan, LLC; ArdTec, LLC; AppVal, LLC; BavLin, LLC; BarMas, LLC; BetNam, LLC; BilOlt, LLC; BriPol, LLC; BruSed, LLC; BosTra, LLC; BunVic, LLC; CalLad, LLC; CapMat, LLC; CalNeb, LLC; CleOrv, LLC; ChaPac, LLC; CelSta, LLC; ComTim, LLC; CraVar, LLC; DelLog, LLC; DayMas, LLC; DesNot, LLC; DreOcc, LLC; DucPla, LLC; DriSud, LLC; DraTom, LLC; DolVol, LLC; EliLand, LLC; ElaMon, LLC; EntNil, LLC; EleOde, LLC; EliPut, LLC; EstSto, LLC; EtaTri, LLC; EquiVas, LLC; FasLan, LLC; FraMor, LLC; FolNer, LLC; FenObe, LLC; FanPar, LLC; FreSta, LLC; FinTas, LLC; FloVis, LLC; GreLea, LLC; GraMet, LLC; GosNel, LLC; GanOrb, LLC; GanPan, LLC; GamSta, LLC; GenTro, LLC; GimVea, LLC; HunLos, LLC; HanMea, LLC; HarNol, LLC; HadOpp, LLC; HeaPle, LLC; HorSan, LLC; HurTom, LLC; HasVen, LLC; InnLost, LLC; IsaMai, LLC; InaNur, LLC; IndOrp, LLC; IntPar, LLC; InkSen, LLC; IntTen, LLC; IbiVen, LLC; JusLem, LLC; JonMor, LLC; JitNom, LLC; JanOrt, LLC; JudPar, LLC; JunSpe, LLC; JabTre, LLC; JamVor, LLC; and Networked Scanning Solutions, LLC.

15. Each First Letter states that the recipient is likely infringing the Klein Patents by using common office equipment, and that "we are contacting you to initiate discussions regarding your need for a license."

16. Over the course of the campaign, the Respondents used different versions of the First Letter that share a core text. One such First Letter, redacted to remove the name and address of the recipient, is attached as **Exhibit A**.

17. Beginning in September 2012 and continuing through May 2013, the Respondents sent First Letters to approximately 16,465 small businesses located in all fifty states and the District of Columbia.

18. In the second stage of their campaign, Respondents sent letters in the name of Farney Daniels on Farney Daniels letterhead (“Second Letter”). The signature block of each Second Letter contains the name of one of two Farney Daniels attorneys.

19. Each Second Letter references the First Letter and states that, because there has been no response to the First Letter, “our client reasonably assumes you have an infringing system and need a license” and has referred the matter to Farney Daniels. Each Second Letter identifies Farney Daniels’s client by one of the eighty-one different subsidiary names that had been used in the First Letters. Each Second Letter states that “[w]hile our representation of [one of eighty-one different subsidiary names] can involve litigation, it is our client’s preference here that we first make all reasonable efforts to reach agreement on a license. To that end, we do need to hear from you within the next two weeks.”

20. Over the course of the campaign, the Respondents used different versions of the Second Letter that share a core text. One such Second Letter, redacted to remove certain name and address information, is attached as **Exhibit B**.

21. Beginning in October 2012 and continuing through May 2013, Respondents sent Second Letters to approximately 10,265 of the small businesses located in all fifty states and the District of Columbia that had been sent the First Letter.

22. In the third stage of their campaign, Respondents sent a letter in the name of Farney Daniels on Farney Daniels letterhead (“Third Letter”). Like the Second Letter, the Third Letter identifies Farney Daniels’s client by one of the eighty-one different subsidiary names that had been used in the First Letters. The signature block of each Third Letter contains the name of one of two Farney Daniels attorneys.

23. Each of the Third Letters references the First and Second Letters and states that, if the recipient does not respond within two weeks, it will be sued for patent infringement.

24. Each Third Letter was accompanied by a Complaint, typically nine pages in length, that alleges a cause of action for patent infringement against the small business to which the letter was addressed.

25. Over the course of the campaign, the Respondents used different versions of the Third Letter and Complaint that share a core text. One such Third Letter and Complaint, redacted to remove certain name and address information, is attached as **Exhibit C**.

26. Beginning in December 2012 and continuing through May 2013, Respondents sent Third Letters to approximately 4,870 small businesses located in all fifty states and the District of Columbia. On several dates during this period, Respondents sent versions of these Third Letters to hundreds of small businesses in a single day. For example, on April 1, 2013, Respondents sent approximately 1,718 Third Letters threatening to file a complaint for patent infringement against small business recipients located in forty-nine states if Respondents did not hear from the recipient within two weeks of the date of the letter.

27. Respondents MPHJ, Farney Daniels, and Rust were aware of and approved or ratified the contents of all three letters used in Respondents' campaign.

28. Respondent Farney Daniels was aware of the contents of the First Letters and explicitly or implicitly referenced and incorporated the representations in those letters in Second and Third Letters sent in the name of Farney Daniels.

Respondents' Representations Concerning Substantial Sales

29. In each of the First Letters sent to small businesses from September 2012 through February 2013, Respondents represented, among other things, that "we have had a positive response from the business community to our licensing program," that "most businesses, upon being informed that they are infringing someone's patent rights, are interested in operating lawfully and taking a license promptly," and that "[m]any companies have responded to this licensing program in such a manner."

30. The First Letters sent from September 2012 through February 2013 further state that the responses of "[m]any companies" had allowed the entity identified as the sender "to determine . . . a fair price for a license negotiated in good faith and without the need for court action." Some versions of those First Letters state that the price determined through the responses of "[m]any companies" was "a payment of \$1,200 per employee." Other versions of

those First Letters state that the price determined through the responses of “[m]any companies” was “a payment of \$1,000 per employee.”

31. From September 2012 through February 2013, the Respondents sent to small businesses located in all fifty states approximately 9,081 First Letters that contain the representations concerning substantial sales of licenses for the Klein Patents identified in Paragraphs 29–30.

32. When Respondents sent the first 7,366 of these First Letters, Respondents had not sold a single license for the Klein Patents through Respondents’ nationwide campaign of letters.

33. When Respondents sent the next 1,077 of these First Letters, Respondents had sold a license for the Klein Patents to only one of the approximately 7,366 small businesses that Respondents had contacted in their licensing campaign.

34. When Respondents sent the final 638 of these First Letters, the Respondents had sold a license to the Klein Patents to only two of the 8,443 small businesses that Respondents had contacted in their licensing campaign.

35. Beginning in March 2013, Respondents sent First Letters that did not include the representations concerning substantial sales of licenses for the Klein Patents identified in Paragraphs 29–30.

Respondents’ Representations Concerning Legal Action

36. In each of the Third Letters sent to small businesses from December 2012 to May 2013, Respondents represented that patent licensing agent will initiate legal action for patent infringement against letter recipients that do not respond to the Respondents’ letters, and that such legal action is imminent. Specifically, the Third Letters state, among other representations, that “[i]f we do not hear from you within two weeks from the date of this letter, our client will be forced to file a Complaint against you for patent infringement in Federal District Court where it will pursue all of the remedies and royalties to which it is entitled.” The Third Letter further states that “we must hear from you within two weeks of the date of this letter” (emphasis in original) and that “litigation will ensue otherwise.”

37. Each Third Letter was accompanied by a Complaint. The Complaints generally are captioned for the federal judicial district in which the recipient small business's mailing address is located. The signature block of most of the Complaints accompanying the Third Letters bears the name and signature of one of two Farney Daniels attorneys. Each Complaint alleges a cause of action for patent infringement against the small business to which the letter was addressed, and claims that the small business is liable for damages and attorneys fees.

38. At the time Respondents sent the Third Letters and accompanying Complaints, Respondents were not prepared to initiate legal actions for infringement of the Klein Patents against the small businesses that did not respond to the Respondents' letters, and did not intend to promptly initiate such litigation.

39. To date, the Respondents have not initiated a single legal action for infringement against any of the small businesses that did not respond to the Third Letters and accompanying Complaints.

VIOLATIONS OF THE FTC ACT

Count I

40. In connection with the promotion, offering for sale, and sale of licenses relating to U.S. patents, the Respondents have represented, directly or indirectly, expressly or by implication, that substantial numbers of businesses who had received the Respondents' letters agreed to pay substantial compensation to license the Klein Patents.

41. The representations set forth in Paragraph 40 are false or misleading, or were not substantiated at the time the representations were made.

Count II

42. In connection with the promotion, offering for sale, and sale of licenses relating to U.S. patents, the Respondents have represented, directly or indirectly, expressly or by implication, that they will initiate legal action for patent infringement against small businesses that do not respond to the Respondents' letters, and that such legal action is imminent.

43. In fact, Respondents were not prepared to initiate legal action and did not intend to initiate legal action for patent infringement against small businesses that did not respond to the

Respondents' letters, and were not prepared to initiate and did not intend to initiate such legal action imminently. Therefore, the representations set forth in Paragraph 42 are false or misleading.

44. The acts or practices of the Respondents as alleged in this Complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this ____ day of _____, 2014, has issued this complaint against Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: