

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,)
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.)
_____)

DECISION AND ORDER

DOCKET NO. C-4513

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the Respondents named in the caption hereof, and the Respondents having been furnished thereafter with a copy of a draft of a complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondents with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; and

The Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by Respondents that they neither admit nor deny any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admit the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the Respondents have violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

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.
2. Respondent Jay Mac Rust is the sole member and manager of MPHJ, with his principal place of business at 510 North Valley Mills Drive, Suite 505, Waco, Texas, 76710.
3. Respondent Farney Daniels, P.C., is a Texas professional corporation with its principal office or place of business at 800 South Austin Avenue, Suite 200, Georgetown, Texas, 78626.
4. Respondents neither admit nor deny any of the allegations in the draft complaint, except as specifically stated in this agreement. Only for purposes of this action, respondents admit the facts necessary to establish jurisdiction.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. “Affiliate” means a person or entity with which a Respondent is associated, directly or indirectly, by a principal-agent relationship, by common control, or by a contract or business arrangement concerning a Patent that is the subject of a Patent Assertion Communication.
2. “Commerce” means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3. “Lawsuit” means any form of judicial, administrative, or private proceeding to adjudicate a dispute.
4. “Patent” shall include a patent, a patent application (including a provisional patent application), a group or portfolio of patents or patent applications, and a group or portfolio that includes one or more patents and one or more patent applications.
5. “Patent Assertion Communication” shall mean any communication in or affecting commerce, other than filings in a Lawsuit or correspondence between counsel in a Lawsuit, or communications between attorneys and clients or prospective clients for the purpose of providing or obtaining legal advice, where such communication represents, expressly or implicitly, 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.
6. “Respondents” shall mean Respondent MPHJ, Respondent Rust, and Respondent Farney Daniels, individually, collectively, or in any combination.
 - A. “Respondent MPHJ” shall mean MPHJ Technology Investments, LLC, a limited liability company, and its subsidiaries, successors, and assigns.
 - B. “Respondent Rust” shall mean Jay Mac Rust, individually and as an officer of Respondent MPHJ.
 - C. “Respondent Farney Daniels” shall mean Farney Daniels, P.C., a professional corporation, and its successors and assigns.

I.

Prohibited Misleading or Unsubstantiated Representations in Patent Assertion Communications

IT IS ORDERED that the Respondents, and their officers, agents, representatives, and employees, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, shall not

- A. Make any representation in a Patent Assertion Communication, expressly or by implication,
 1. that a particular Patent has been licensed to a substantial number of licensees,

2. that a particular Patent has been licensed at particular prices or within particular price ranges, or
3. otherwise concerning the results of licensing, sales, settlement, or litigation of a particular Patent,

unless the representation is non-misleading and, at the time such representation is made, Respondents possess and rely upon competent and reliable evidence sufficient to substantiate that the representation is true;

- B. Make any representation in a Patent Assertion Communication, expressly or by implication, about the licenses for a Patent or the responses of recipients of Patent Assertion Communications unless the representation is non-misleading, and, at the time the representation is made, Respondents possess and rely upon competent and reliable evidence that substantiates that the representation is true;
- C. Make any representation in a Patent Assertion Communication, expressly or by implication, that Respondents or an Affiliate have taken any action with respect to the filing of a Lawsuit, including initiating a Lawsuit, unless the representation is true and non-misleading; or
- D. Make any representation in a Patent Assertion Communication, expressly or by implication, that Respondents or an Affiliate will take any action with respect to the filing of a Lawsuit, including
 1. that they will initiate a Lawsuit;
 2. that they will initiate a Lawsuit if the recipient of a Patent Assertion Communication does not agree to a license, pay compensation, or otherwise respond to the Patent Assertion Communication as requested;
 3. that they will initiate a Lawsuit imminently or within a specified time; or
 4. that they will initiate a Lawsuit imminently or within a specified period of time if the recipient of a Patent Assertion Communication does not agree to a license, pay compensation, or otherwise respond to the Patent Assertion Communication as requested;

unless at the time such representation is made, Respondents have decided to take such action and possess and rely upon competent and reliable evidence sufficient to substantiate that they are prepared to and able to take the action necessary to make the representation true. Evidence that an action was not taken because of a change in circumstances or information obtained subsequent to making a

representation covered by this Subpart I.D, including a change in the decision by a client on whose behalf a representation was made on whether to initiate a lawsuit, shall be considered in determining whether a representation was substantiated at the time it was made.

Provided that, for purposes of Subpart I.D of this order, a statement made in a Patent Assertion Communication that Respondents

- (1) believe the recipient of the letter is or may be infringing a patent;
- (2) believe the recipient does or may need a license to a Patent; or
- (3) reserve their rights under the Patent with respect to the recipient's conduct

shall not be considered, in and of itself, to be a representation that Respondents will initiate a Lawsuit.

II. Recordkeeping Requirements

IT IS FURTHER ORDERED that each Respondent, shall, for five (5) years after the last date of dissemination of any written Patent Assertion Communication covered by Subsection II.A, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. A copy of each written Patent Assertion Communication that is authored, distributed, signed, or endorsed by Respondent or by a business that such Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly;
- B. The names, addresses, and phone numbers of all intended recipients of each written Patent Assertion Communication;
- C. Copies of all subpoenas and other communications with law enforcement agencies or personnel concerning Patent Assertion Communications;
- D. Business records demonstrating such Respondent's compliance with the terms and provisions of this Order, including but not limited to tests, reports, studies, or other records that relate to the truth or falsity of representations about the sale of licenses for a Patent, or the responses of recipients of Patent Assertion Communications, except such Respondent need not make available records to the

extent they are protected by the attorney-client privilege or the work product doctrine; and

- E. All signed and dated statements acknowledging receipt of the Order secured pursuant to the Order Acknowledgements provision of this Order.

III. Order Acknowledgments

IT IS FURTHER ORDERED that Respondents, for any business that sends Patent Assertion Communications and for which any Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly, shall deliver a copy of this Order to their counsel, and all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having managerial responsibilities with respect to Patent Assertion Communications, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Respondents shall deliver this Order to current managerial personnel within thirty (30) days after the date of service of this Order, and to future managerial personnel within thirty (30) days after the person assumes such position or responsibilities.

IV. Corporate Respondents Compliance Notification

IT IS FURTHER ORDERED that Respondent MPHJ and Respondent Farney Daniels shall notify the Commission at least thirty (30) days prior to any change in its structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in entity name or address. *Provided, however,* that, with respect to any proposed change in structure about which Respondent MPHJ or Respondent Farney Daniels learns less than thirty (30) days prior to the date such action is to take place, that respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be e-mailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In re MPHJ Technology Investments, LLC*.

V.
Individual Respondent Compliance Notification

IT IS FURTHER ORDERED that Respondent Rust, for a period of ten (10) years after the date of issuance of this Order, shall notify the Commission of the discontinuance any position with Respondent MPHJ, or of his affiliation with any new business or employment involving Patent Assertion Communications. The notice shall include Respondent Rust's new business address and telephone number and, for any new business or employment involving Patent Assertion Communications, a description of the nature of the business or employment and his duties and responsibilities. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be e-mailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In re MPHJ Technology Investments, LLC*.

VI.
Compliance Reporting

IT IS FURTHER ORDERED that Respondents, within sixty (60) days after the date of service of this Order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this Order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

VII.
Order Termination

This Order will terminate on March 13, 2035, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of

- A. Any Part in this Order that terminates in less than twenty (20) years;
- B. This Order's application to any Respondent that is not named as a Respondent in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or

upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: March 13, 2015