



United States of America  
FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580

Office of the Secretary

March 13, 2015

Sharon A. Israel  
President  
American Intellectual Property Law Association  
241 18th Street, South  
Suite 700  
Arlington, VA 22202

Re: *In the Matter of MPHJ Technology Investments, LLC, et al.*  
FTC File No. 142 3003, Docket No. C4513

Dear Ms. Israel:

Thank you for your comment on the Federal Trade Commission's proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii).

Your comment expresses support for the initiation of FTC action in this matter and proposes two revisions to Section I.D to potentially clarify two points.

Your first proposed revision is intended to clarify that a representation that a respondent will take a particular action (for example, initiate a lawsuit against recipient *X*) cannot be substantiated by evidence that the respondent is prepared to and able to take a different action (for example, initiate a lawsuit against recipients *Y* and *Z*). Upon review, the Commission believes that the language of this provision is sufficiently clear that a representation that a respondent will take an action must be substantiated by evidence that the respondent is "prepared to and able to take the action necessary to make the representation true" rather than by evidence that would make a different representation true.

Your second proposed revision is intended to clarify that a representation subject to Section I.D is required to be true and substantiated at the time that it is made. As presently drafted, however, Section I.D would prohibit the proposed respondents or their affiliates from representing that they will initiate a lawsuit "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 that they are prepared to and able to take the action necessary to make the representation true." (emphasis added). Upon review, the Commission believes that the terms of this provision are sufficiently clear concerning this point and will deter the conduct alleged in the complaint.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and the Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commissions website, [ftc.gov](http://ftc.gov).

Thank you again for your comment. Hearing from a variety of sources is helpful to the Commission's analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark  
Secretary



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FEDERAL TRADE COMMISSION  
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March 13, 2015

Jon Potter  
Application Developers Alliance  
1025 F Street NW, Suite 720  
Washington, DC 20004

Re: *In the Matter of MPHJ Technology Investments, LLC, et al.*  
FTC File No. 142 3003, Docket No. C4513

Dear Mr. Potter:

Thank you for your comment on the Federal Trade Commission's proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii). Your comment expresses support for the initiation of FTC action in this matter but dissatisfaction with the proposed relief.

More particularly, your comment objects to the conduct provisions of the proposed consent order on the grounds that they are "vague" and that you are unable to determine what acts and practices would be prohibited under their terms. The conduct provisions of the proposed consent order prohibit certain false or unsubstantiated representations when asserting patent rights. Specifically, Section I.A and I.B of the proposed consent order prohibit false or unsubstantiated representations about the licensing, sales, settlement, or litigation of a patent, or about the responses of recipients of patent assertion communications. Section I.C and I.D of the proposed consent order prohibit false or unsubstantiated misrepresentations that a lawsuit has been or will be initiated and about the imminence of such a lawsuit. These provisions appear to the Commission to be both clearly stated and consistent with an extensive and well-developed body of case law concerning deceptive representations.

Your comment also raises other objections to the proposed consent order. Specifically, your comment objects that the proposed consent order does not fine the respondents for their alleged violations of Section 5 of the FTC Act. Fines are not available as a remedy for violations of Section 5 of the FTC Act. However, once the Commission issues a final order, the respondents could be liable for substantial civil penalties (up to \$16,000 per violation) in the event that they violate the order. In addition, your comment proposes that the proposed consent order be revised to impound the patents asserted by the respondents. The proposed complaint, however, challenges certain alleged deceptive representations and does not challenge the right of the proposed respondents to seek licensing fees through truthful representations or non-deceptive conduct.

Lastly, your comment suggests that the proposed consent order be revised to require the respondents to disgorge any funds that they received from recipients of their letter campaign. The Commission considers many factors in electing between potential remedies for alleged deceptive conduct, such as the nature and extent of the injury experienced by consumers and the ability of the remedy to promote general and specific deterrence. In this case, the main harm caused by the alleged misconduct was not from payments to the respondents, but rather from the cost and disruptions suffered by businesses that investigated the respondents' claims, including in some cases the cost incurred in the hiring of patent counsel. Moreover, an administrative order provides a strong monetary deterrent against this type of misconduct because the respondents would be liable for civil penalties of up to \$16,000 for each violation of the order. Under the present circumstances, the Commission believes that an administrative order will more effectively deter future deceptive conduct than would an equitable monetary remedy, such as disgorgement.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and the Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commission's website, [ftc.gov](http://ftc.gov).

Thank you again for your comment. Hearing from a variety of sources is helpful to the Commission's analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark  
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March 13, 2015

Daniel Ballard  
State of California

Re: *In the Matter of MPHJ Technology Investments, LLC, et al.*  
FTC File No. 142 3003, Docket No. C4513

Dear Mr. Ballard:

Thank you for your comment on the Federal Trade Commission's proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii).

Your comment expresses support for the initiation of FTC action in this matter but dissatisfaction with aspects of the proposed relief. Your comment suggests certain revisions to the proposed consent order.

In particular, you suggest modifying the proposed consent order to (i) name as respondents the individual lawyers at Farney Daniels, P.C., who participated in the acts and practices alleged in the complaint and (ii) require that those lawyers report such participation to their respective bar organizations. Your comment suggests that, without the modifications that you propose, those lawyers will not be subject to any restraint under the order. Under Section I of the proposed consent order, however, any such lawyers and all other lawyers employed or retained by the respondents would be subject to the order's conduct prohibitions whenever they act as agents, representatives, or employees of any respondent.

In addition, your comment expresses a concern that a claim of attorney-client or similar protection could be used successfully to withhold from FTC review future patent assertion communications sent to "alleged infringers." Upon review of the terms of the proposed consent order, the Commission believes that letters sent to alleged infringers could not be successfully withheld from FTC review under such a claim.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and the Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commission's website, [ftc.gov](http://ftc.gov).

Thank you again for your comment. Hearing from a variety of sources is helpful to the

Commission's analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark  
Secretary



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March 13, 2015

David Dimston  
State of Texas

Re: *In the Matter of MPHJ Technology Investments, LLC, et al.*  
FTC File No. 142 3003, Docket No. 4513

Dear Mr. Dimston:

Thank you for your comment on the Federal Trade Commission's proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii). Your comment expresses support for the initiation of FTC action in this matter but raises concerns about patent law and about the relief provided under the proposed consent order.

Your comment voices frustration that an individual could potentially be deemed an infringer under patent law for using a manufactured product for its intended purpose. *See* 35 U.S.C. § 271(a) (providing that the "use" of a patented invention can be infringement). Because this concern relates to patent law rather than to the terms of the proposed order, the Commission does not consider this portion of your comment to suggest revision of the order.

Your comment also proposes that the respondents be required to pay triple damages to letter recipients who paid for patent licenses. Triple damages, however, are not available as a remedy for deceptive acts or practices in violation of Section 5 of the FTC Act. Under the circumstances presented here, the Commission believes that the conduct provisions of the proposed consent order, combined with the potential for civil penalties of up to \$16,000 per letter for violations of those conduct provisions, will effectively remedy the violations alleged in the complaint and deter future deceptive conduct.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and the Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commission's website, [ftc.gov](http://ftc.gov).

Thank you again for your comment. Hearing from a variety of sources is helpful to the

Commission's analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark  
Secretary



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WASHINGTON, DC 20580

Office of the Secretary

March 13, 2015

Daniel Nazer  
Vera Ranieri  
Michael Barclay  
Electronic Frontier Foundation  
815 Eddy Street  
San Francisco, CA 94109

Re: *In the Matter of MPHJ Technology Investments, LLC, et al.*  
FTC File No. 142 3003, Docket No. C4513

Dear Mr. Nazer, Ms. Ranieri, and Mr. Barclay:

Thank you for the your comment on behalf of the Electronic Frontier Foundation and Engine Advocacy on the Federal Trade Commission's proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii).

Your comment expresses support for the initiation of FTC action in this matter and proposes several revisions to the proposed consent order.

In particular, your comment suggests that the proposed consent order be revised either to require the respondents to disgorge revenues obtained through the letter campaign alleged in the complaint or to provide licensees with an option to rescind their licensing agreements. Your comment also suggests that the proposed consent order enjoin the proposed respondents from the "use of sham licensing entities."

The Commission considers many factors in electing between potential remedies for alleged deceptive conduct, such as the nature and extent of the injury experienced by consumers and the ability of the remedy to promote general and specific deterrence. In this case, the main harm caused by the alleged misconduct was not from payments to the respondents, but rather from the cost and disruptions suffered by businesses that investigated the respondents' claims, including in some cases the cost incurred in the hiring of patent counsel. Moreover, an administrative order provides a strong monetary deterrent against this type of misconduct because the respondents would be liable for civil penalties of up to \$16,000 for each violation of the order. Under the present circumstances, the Commission believes that an administrative order will more effectively deter future deceptive conduct than would an equitable monetary remedy, such as disgorgement.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and the Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commissions website, [ftc.gov](https://www.ftc.gov).

Thank you again for your comment. Hearing from a variety of sources is helpful to the Commission's analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark  
Secretary



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FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580

Office of the Secretary

March 13, 2014

James E. Brookshire  
Executive Director  
The Federal Circuit Bar Association  
1620 I Street NW, Suite 801  
Washington, DC 20006

Re: *In the Matter of MPHJ Technology Investments, LLC, et al.*  
FTC File No. 142 3003, Docket No. C4513

Dear Mr. Brookshire:

Thank you for your comment on the Federal Trade Commission's proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii).

Your comment expresses strong support for both the initiation of FTC action in this matter and for the general form of the proposed relief. You do not propose any modification to the proposed consent agreement.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and the Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commission's website, [ftc.gov](http://ftc.gov).

Thank you again for your comment. Hearing from a variety of sources is helpful to the Commission's analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark  
Secretary



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March 13, 2015

Phyllis T. Turner-Brim  
Russ Merbeth  
Intellectual Ventures  
3150 139th Avenue SE  
Bellevue, WA 98005

Re: *In the Matter of MPHJ Technology Investments, LLC, et al.*  
FTC File No. 142 3003, Docket No. C4513

Dear Ms. Turner-Brim and Mr. Merbeth:

Thank you for your comment on the Federal Trade Commission's proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii).

Your comment expresses support for both the initiation of FTC action in this matter and for the general form of the proposed relief. You do not propose any modification to the proposed consent agreement.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and the Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commission's website, [ftc.gov](http://ftc.gov).

Thank you again for your comment. Hearing from a variety of sources is helpful to the Commission's analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark  
Secretary



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WASHINGTON, DC 20580

Office of the Secretary

March 13, 2015

Charles Duan  
Director, Patent Reform Project  
Public Knowledge  
1818 N Street NW, Suite 410  
Washington, DC 20036

Re: *In the Matter of MPHJ Technology Investments, LLC, et al.*  
FTC File No. 142 3003, Docket No. C4513

Dear Mr. Duan:

Thank you for your comment on the Federal Trade Commission's proposed consent agreement in this proceeding. The Commission has considered your comment and placed it on the public record pursuant to its Rules of Practice. 16 C.F.R. § 4.9(b)(6)(ii).

Your comment expresses support for the initiation of FTC action and proposes several revisions to the proposed consent order.

Specifically, you propose broadening the conduct relief of the proposed consent order to enjoin misrepresentations about the validity of the patents and other deceptive conduct in which the respondents have not engaged but in which they might engage in the future. Your comment also proposes that the respondents be required to disclose in future patent assertion communications that they are subject to an FTC order.

The proposed consent order contains terms that would prohibit a broad array of false or unsubstantiated representations that relate to the conduct alleged in the complaint. Specifically, Section I.A and I.B of the proposed consent order prohibit false or unsubstantiated representations about the licensing, sales, settlement, or litigation of a patent, or about the responses of recipients of patent assertion communications. Section I.C and I.D of the proposed consent order prohibit false or unsubstantiated misrepresentations that a lawsuit has been or will be initiated and about the imminence of such a lawsuit. The proposed consent order is designed to address conduct similar to the misconduct alleged in the complaint and is not intended to enjoin all potentially deceptive conduct. The Commission believes that the relief set forth in the proposed consent order is appropriate to remedy the violations alleged in the complaint and to deter future violations.

In addition, your comment raises a concern that language included in the definition of "Patent Assertion Communication" could be used successfully to exclude from the scope of the order a letter that is sent to a potentially adverse recipient by an attorney representing a

patentholder. Upon review, the Commission believes that the specific language at issue, which excludes from the scope of the order “communications between attorneys and clients or prospective clients for the purpose of providing or obtaining legal advice,” is appropriately tailored to address only legitimate attorney-client communications, and that a letter to a potentially adverse recipient from an attorney could not be successfully characterized as a communication with a potential client.

Lastly, your comment suggests that the proposed consent order be revised to require that the respondents submit their future patent assertion communications to the Commission for review. Section II of the proposed consent order, however, would require that the respondents retain future patent assertion communications and produce them to the Commission upon request. In the Commission’s view, Section II would provide an appropriate mechanism for monitoring the respondents’ compliance with the requirements of the order and is consistent with recordkeeping requirements that the Commission has included in many other orders.

After carefully considering your comment, along with others received in this matter, the Commission has determined that the public interest is best served by issuing the Complaint and the Decision and Order in final form without modification. The Complaint and the final Decision and Order are available on the Commissions website, [ftc.gov](http://ftc.gov).

Thank you again for your comment. Hearing from a variety of sources is helpful to the Commission’s analysis, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark  
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