

## **FTC Hits Patent Troll and Its Law Firm for Deceptive Practices**

A patent troll company, its sole owner, and its law firm agreed that they engaged in deceptive practices according to a settlement with the Federal Trade Commission (FTC) after they sent out to thousands of small businesses threatening letters, some with draft complaints attached, with no intent to file any patent infringement lawsuits.

The complaint against MPHJ Technology Investments, LLC, Jay Mac Rust, and Farney Daniels, P.C. alleges that the three defendants conducted a campaign to promote and sell licenses for four patents pertaining to networked scanning systems. The campaign consisted of sending letters, which were staged to escalate in three waves, to nearly 16,500 small businesses located in all 50 states.

The first wave of letters to nearly 7,400 businesses was sent by one of the 101 subsidiaries of MPHJ. The letter stated that “we have had a positive response from the business community to our licensing program” and that “many companies have responded to this licensing program.” At the time the letter was sent, the company “had not sold a single license,” the FTC noted. In fact, after 8,443 letters were sent, only two businesses had signed up for a license.

The second wave of letters was sent by two attorneys at Farney Daniels in Georgetown, Texas, which had agreed to receive 40 percent of the gross amounts paid by the businesses with whom Farney Daniels “substantially engaged.” Otherwise, Farney Daniels was to receive 30 percent.

These attorneys’ letters gave businesses two weeks to respond. If there was no response, the attorneys sent a third wave of letters, enclosing a copy of a nine-page complaint naming the business as a defendant, which the attorneys threatened to file. The FTC complaint states that the attorneys “sent versions of these Third Letters to hundreds of small businesses in a single day.” The FTC found that 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 Complaint.”

The FTC alleged that “the 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 immediately.” Thus, the letters were “false and misleading.”

Under the FTC settlement, MPHJ, Rust, and Farney Daniels agreed to refrain from making certain deceptive representations when asserting patent rights, including prohibiting misrepresentations that a lawsuit will be initiated and about the imminence of such a lawsuit. The case is the first use by the FTC of its consumer protection authority against patent trolls.

*MPHJ Technology Investments, LLC et al., Federal Trade Commission, No. 142 3003, issued November 6, 2014.*