

Alert

Antitrust/Competition

FTC Reaches Settlement with Patent Assertion Entity

By Wendy Fu

The Federal Trade Commission (FTC) reached a settlement with MPHJ, a patent assertion entity (PAE), and its counsel at the law firm of Farney Daniels, P.C., with respect to MPHJ's allegedly deceptive practices in violation of Section 5 of the Federal Trade Commission Act. This is the first time the FTC has taken action using its consumer protection authority against a PAE.¹

FTC Complaint

According to the FTC's administrative complaint, MPHJ purchased patents related to networked scanning systems in September, 2012. Specifically, MPHJ asserted that these patents covered computer management systems capable of transmitting electronic images and files through communication networks from scanners, copiers, and other devices.²

At the time of this acquisition, MPHJ began sending letters to thousands of small businesses across the country, informing them that they were likely infringing on MPHJ's patents and that MPHJ would be contacting them to initiate licensing discussions.³ Some of these letters claimed that many other businesses had entered into licenses, when in fact, few or none did.⁴ Letters were also sent on Farney Daniels' letterhead with its attorneys' signatures to many of the same businesses, stating that MPHJ believes the businesses were infringing patents and required a license.⁵

Lastly, another round of letters was sent on Farney Daniels' letterhead with its attorneys' signatures to businesses stating that if the businesses did not respond within two weeks, they would be sued for patent infringement.⁶ Attached to the second Farney Daniels letter was a draft complaint that alleged a cause of action for patent infringement against the addressees.⁷ The FTC alleged that at the time these letters were sent, the respondents were not prepared to initiate legal action.⁸

The FTC claimed MPHJ and Farney Daniels violated Section 5 of the Federal Trade Commission Act by making false or misleading representations about (1) the substantial number of businesses that had agreed to take patent licenses at substantial prices, and (2) their willingness to initiate legal action for patent infringement against businesses that did not respond to the letters.⁹

In January 2014, after receiving the FTC's draft complaint in December 2013, MPHJ sued the FTC in federal district court in Texas. MPHJ alleged that the FTC's investigation of its patent assertion practices violated its First Amendment rights. On September 16, 2014, the court dismissed the case, holding that MPHJ had not yet exhausted its administrative remedies.¹⁰

Respondents have now agreed to settle with the FTC on November 6, 2014. The settlement bars MPHJ and Farney Daniels from making deceptive or misleading representations when asserting patent rights about the substantial number of licensees patents have, the particular prices at which patents have been licensed, or otherwise about the results of licensing, sales, settlement, or litigation of patents, or about respondents initiation of lawsuits for patent infringement.¹¹ The FTC voted 5-0 to accept the proposed consent order and the order is currently available for public comment.¹²

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- 1 Press Release, Federal Trade Comm'n, FTC Settlement Bars Patent Assertion Entity from Using Deceptive Tactics (Nov. 6, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/11/ftc-settlement-bars-patent-assertion-entity-using-deceptive>.
 - 2 Complaint at 2, MPHJ Technology Investment, LLC, et al., F.T.C. File No. 142-3003 (Nov. 6, 2014).
 - 3 *Id.* at 3-4.
 - 4 See *id.* at 6-7.
 - 5 *Id.* at 5.
 - 6 *Id.*
 - 7 *Id.*
 - 8 *Id.* at 8.
 - 9 *Id.* at 8-9.
 - 10 Memorandum Opinion and Order, MPHJ Technology Investments, LLC v. Federal Trade Comm'n, Case no. w-14-cv-011 (W.D. Tex. Sept. 16, 2014).
 - 11 Agreement Containing Consent Order at 4-5, MPHJ Technology Investments, LLC, et al., F.T.C. File No. 142-3003 (Nov. 6, 2014).
 - 12 Press Release, *supra* note 1.

If you have questions concerning the contents of this Alert, or would like more information about Weil's Antitrust/Competition practice group, please speak to your regular contact at Weil, or to:

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