

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA**

Midcontinent Independent System  
Operator, Inc.,

Plaintiff,

vs.

James F. Sullivan, a.k.a. Jim Cassidy,

Defendant.

Case No. 1:21-cv-143



Provided by:  
[Overhauser Law Offices LLC](http://www.iniplaw.org)  
[www.iniplaw.org](http://www.iniplaw.org)  
[www.overhauser.com](http://www.overhauser.com)

**COMPLAINT FOR TRADEMARK INFRINGEMENT AND COUNTERFEITING**

**DEMAND FOR JURY TRIAL**

Plaintiff Midcontinent Independent System Operator, Inc. (“MISO”), for its complaint against Defendant James F. Sullivan, a.k.a. Jim Cassidy, (“Sullivan”), alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for infringement of MISO’s federally registered service marks under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1) and for counterfeiting under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

2. MISO seeks injunctive and monetary relief.

**PARTIES**

3. MISO is a corporation organized and existing under the laws of Delaware and has a principal place of business at 720 City Center Drive, Carmel, IN 46032.

4. MISO is an independent, not-for-profit organization that delivers safe, cost-effective electric power across 15 U.S. states and the Canadian province of Manitoba. MISO operates one of the world's largest energy markets with more than \$29 billion in annual gross market energy transactions.

5. On information and belief, Sullivan is a citizen of Massachusetts residing at 41 Carrier Street, Bellingham, MA 02019.

6. On information and belief, Sullivan does business as Acoustic Design Studios, Acoustic Design Studios of New England LLC, ADSNELLC Development, among others. On information and belief, Sullivan created and maintains the website [www.acousticdesignstudios.com](http://www.acousticdesignstudios.com) that describes his various business ventures. Among those ventures, the website describes software development.

#### **JURISDICTION**

7. The Court has subject-matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332(a), 1338(a)-(b).

8. The Court has federal question jurisdiction over this action because the action arises from the Lanham Act.

9. The Court has diversity because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the parties are citizens of different states. MISO is a citizen of Delaware and Indiana, while Sullivan is a citizen of Massachusetts.

10. Sullivan purposefully directed that a mobile software application, which infringed MISO's federally registered trademarks, be made available for download in Indiana.

11. More specifically, on information and belief, Sullivan caused the infringing mobile application to be published on Google's Google Play application store, a repository

where users of Android-powered mobile devices may download applications onto mobile devices, intending the infringing mobile application to be downloaded in Indiana.

12. The circumstances under which the infringing mobile application could be downloaded was interactive, requiring affirmative action by the user to initiate a download. The infringing mobile application requires further interactivity by the user, including the input of login credentials.

13. The infringing mobile application was downloaded by a MISO employee in Carmel, Indiana, which is in this judicial district.

14. MISO's claims charge Sullivan, through the infringing mobile application downloaded in Carmel, Indiana, with infringing MISO's trademarks, counterfeiting of MISO's trademarks, and false designations of origin and false descriptions in violation of the Lanham Act.

15. Accordingly, this Court has personal jurisdiction over Sullivan.

#### **VENUE**

16. Venue is proper under 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to the claims occurred in this district.

#### **FACTS**

17. MISO owns the valid and subsisting United States Service Mark Registration No. 4,129,745 on the Principal Register in the United States Patent and Trademark Office for service mark MISO ("Word Mark") for business administration, business management and operation of the transmission and distribution of bulk electricity, and arranging and conducting wholesale sales for others of bulk electricity in Class 35; for brokerage services in the field of power and energy trading markets in Class 36; and for utility services, namely, transmission and distribution

of bulk electricity in Class 37. Attached as Exhibit 1 is a true and correct copy of registration certificate for United States Service Mark Registration 4,129,745, which the United States Patent and Trademark Office issued on April 17, 2012.

18. MISO owns the valid and subsisting United States Service Mark Registration No. 4,616,653 on the Principal Register in the United States Patent and Trademark Office for service



mark (“Uncolored Design Mark”) for business administration,

business management and operation of the transmission and distribution of bulk electricity, and arranging and conducting wholesale sales for others of bulk electricity in Class 35; for brokerage services in the field of power and energy trading markets in Class 36; and for utility services, namely, transmission and distribution of bulk electricity in Class 37. Attached as Exhibit 2 is a true and correct copy of registration certificate for United States Service Mark Registration 4,616,653, which the United States Patent and Trademark Office issued on October 7, 2014.

19. MISO owns the valid and subsisting United States Service Mark Registration No. 4,136,817 on the Principal Register in the United States Patent and Trademark Office for service



mark (“Color Design Mark”) for business administration, business

management and operation of the transmission and distribution of bulk electricity, and arranging and conducting wholesale sales for others of bulk electricity in Class 35; for brokerage services in the field of power and energy trading markets in Class 36; and for utility services, namely, transmission and distribution of bulk electricity in Class 37. Attached as Exhibit 3 is a true and correct copy of registration certificate for United States Service Mark Registration 4,136,817,

which the United States Patent and Trademark Office issued on May 1, 2012 and amended on May 29, 2018.

20. The validity of the Word Mark is incontestable.

21. The validity of the Uncolored Design Mark is incontestable.

22. The validity of the Color Design Mark is incontestable.

23. MISO has the right to sue for infringement of its Word Mark, Uncolored Design Mark, and Color Design Mark (collectively, MISO's Marks).

24. MISO has used the Word Mark and Color Design Mark in commerce in the United States continuously since at least June 7, 2011 in connection with business management and operation of the transmission and distribution of bulk electricity, arranging and conducting wholesale sales for others of bulk electricity, brokerage services in the field of power and energy trading markets, and the transmission and distribution of bulk electricity. Attached as Exhibit 4 is an example of MISO's use of the Word Mark and Color Design Mark in commerce.

25. MISO has used the Uncolored Design Mark in commerce in the United States continuously since at least January 20, 2014 in connection with business management and operation of the transmission and distribution of bulk electricity, arranging and conducting wholesale sales for others of bulk electricity, brokerage services in the field of power and energy trading markets, and the transmission and distribution of bulk electricity. Exhibit 4 also shows MISO's use of the Uncolored Design Mark in commerce.

26. Each of MISO's Marks is distinctive to both the consuming public and MISO's trade.

27. MISO has expended considerable time, money, and efforts marketing services related to wholesale selling of bulk electricity, brokerage services in power and energy trading

markets, and transmitting and distributing bulk electricity. MISO maintains a website at <https://www.misoenergy.org/> through which MISO describes and advertises its services related to wholesale selling of bulk electricity, brokerage services in power and energy trading markets, and transmitting and distributing bulk electricity.

28. MISO markets its services related to wholesale selling of bulk electricity, brokerage services in power and energy trading markets, and transmitting and distributing bulk electricity under MISO's Marks to energy market traders, energy generators, energy distributors, transmission planners, and the like. MISO has about 471 market participants that serve approximately 42 million people. MISO oversees 65,800 miles of transmission lines and 6,692 generation units.

29. MISO offers only high-quality services related to wholesale selling of bulk electricity, brokerage services in power and energy trading markets, and transmitting and distributing bulk electricity under MISO's Marks. Consumers in MISO's markets have come to associate MISO's Marks with the high quality and sterling reputation of MISO's services.

30. As a result of MISO's expenditures and efforts, MISO's Marks have come to signify the high quality of the services related to the wholesale selling of bulk electricity, brokerage services in power and energy trading markets, and transmitting and distributing bulk electricity. MISO's Marks have acquired incalculable distinction, reputation, and goodwill belonging exclusively to MISO.

31. Defendant Sullivan, through various names such as Acoustic Design Studios, Acoustic Design Studios of New England LLC, ADSNELLC Development, and others, engages in a myriad of activities ranging from operating a recording studio, providing automated

telephone calling services for politicians and political issues, operating a radio show using the stage name Jim Cassidy, and mobile app development.

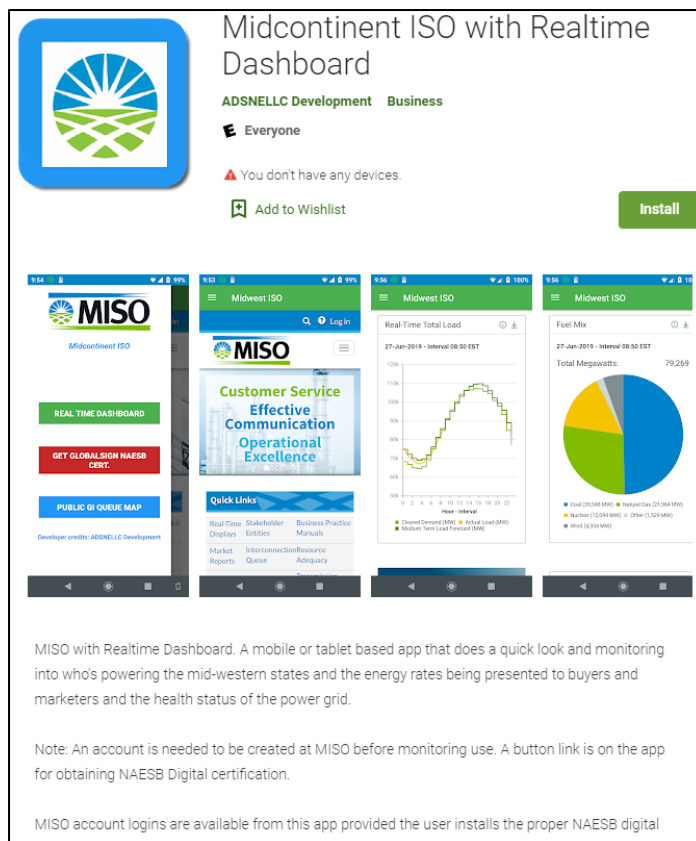
32. On information and belief, Sullivan, under the name ADSNELLC Development, published a mobile application called Midcontinent ISO with Realtime Dashboard (the “Infringing App”) that not only infringes but also counterfeits MISO’s federally registered marks and misleads the public that MISO produced or approves of the infringing application.

33. MISO has no affiliation whatsoever with Sullivan or ADSNELLC Development.

34. MISO has no affiliation with the Infringing App and has not and does not endorse the use of MISO’s Marks either in the Infringing App or to advertise the Infringing App.

35. The wholesale, identical misappropriation of MISO’s Marks in and on the Infringing App constitutes counterfeiting.

36. Sullivan’s misappropriation, infringement, and counterfeiting of MISO’s Marks and distinctive elements thereof are evident from the Infringing App’s listing on the Google Play app store. Excerpts from the Google Play listing follow, and the Infringing App’s listing on Google Play is attached as Exhibit 5.



*Infringing, Counterfeit App*

37. The Google Play listing for the Infringing App indicated that the Infringing App was downloaded more than 100 times. *See* Exhibit 5. On information and belief, most—if not all—of those downloads were from individuals confused through the Infringing App’s misappropriation of MISO’s Marks into thinking that MISO either developed the Infringing App or endorsed or otherwise approved of the Infringing App’s development. This confusion trades off of MISO’s hard-earned goodwill and reputation in the market.

38. The description about the Infringing App indicated that “[a]n account is needed to be created at MISO before monitoring use. A button link is on the app for obtaining NAESB Digital certification.” If users are being tricked into entering legitimate MISO credentials into the Infringing App having no approval from or association with MISO, Sullivan could be mining legitimate MISO login credentials from MISO customers and stakeholders. Any use of these



credentials by Sullivan may harm MISO's customers and stakeholders—and thus may harm MISO and impair its hard-earned goodwill.

39. MISO was already forced to take action by requesting that Google remove the Infringing App from further download in the Google Play store. MISO was successful in those efforts and, on January 11, 2021, the Infringing App was removed.

40. Separately, the illegal association of MISO's Marks with the Infringing App and the ADSNELLC Development name is likely to imminently and irreparably harm MISO's goodwill.

41. For example, Sullivan, also through the ADSNELLC Development name, advertises another mobile application under development called "De-Icer." *See* Exhibit 6. According to Sullivan's website, the De-Icer application is intended for individuals to report other individuals who may have entered the country illegally or overstayed a visa to Immigration and Customs Enforcement and wishes downloaders "'HAPPY HUNTING' for illegal immigrants." *Id.*

42. MISO wants nothing to do with any individual or business who encourages the "HAPPY HUNTING" of suspected illegal immigrants.

43. Thus, the Infringing App's mere presence is causing harm to MISO, and, as described, further irreparable harm is likely to come to MISO if the Infringing App is allowed to exist.

44. The infringing acts as alleged herein have already caused and are likely to further cause confusion, mistake, and deception among the relevant consuming public as to the source or origin of the Infringing App. The infringing acts as alleged herein have and are likely to deceive

the relevant consuming public into believing, mistakenly, that the Infringing App originates from, is associated or affiliated with, or is otherwise authorized by MISO.

45. Sullivan's counterfeiting of MISO's Marks and misappropriation of MISO's goodwill through the Infringing App are willful and done with the deliberate intent to trade on the goodwill of MISO's Marks, cause confusion and deception in the marketplace, erode the trust that MISO's customers place in MISO, and potentially mine MISO's customers' account credentials.

46. Sullivan's acts are causing and, unless enjoined, will continue causing damage and immediate irreparable harm to MISO and its valuable reputation and goodwill with the consuming public for which MISO has no adequate remedy at law. Sullivan must be enjoined from future efforts of re-launching the Infringing App on the Google Play store, on another platform, or through its website.

#### **COUNT I: TRADEMARK INFRINGEMENT**

47. MISO incorporates paragraphs 1 through 46 as if fully set forth herein.

48. Sullivan's infringing use of MISO's Marks in commerce is likely to deceive consumers as to the origin, source, sponsorship, or affiliation of Sullivan's Infringing App and is likely to cause consumers to believe, contrary to fact, that Sullivan's Infringing App is sold, authorized, endorsed, or sponsored by MISO, or that Sullivan is in some way affiliated with or sponsored by MISO.

49. Sullivan's conduct, therefore, constitutes infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

50. On information and belief, Sullivan committed the foregoing acts of infringement with full knowledge or in reckless disregard of MISO's rights in MISO's Marks and with the willful intent to cause confusion and trade on MISO's goodwill.

51. Sullivan's conduct has caused immediate and irreparable harm to MISO and, should the Infringing App be allowed to remain available for download or to exist on any devices, will continue to damage MISO and cause confusion unless enjoined by the Court.

52. MISO has no adequate remedy at law.

53. MISO is entitled to injunctive relief, an award of actual damages, any profits Sullivan gained through the Infringing App, enhanced damages, reasonable attorneys' fees, and costs of the action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116 and 1117, together with pre-judgment and post-judgment interest.

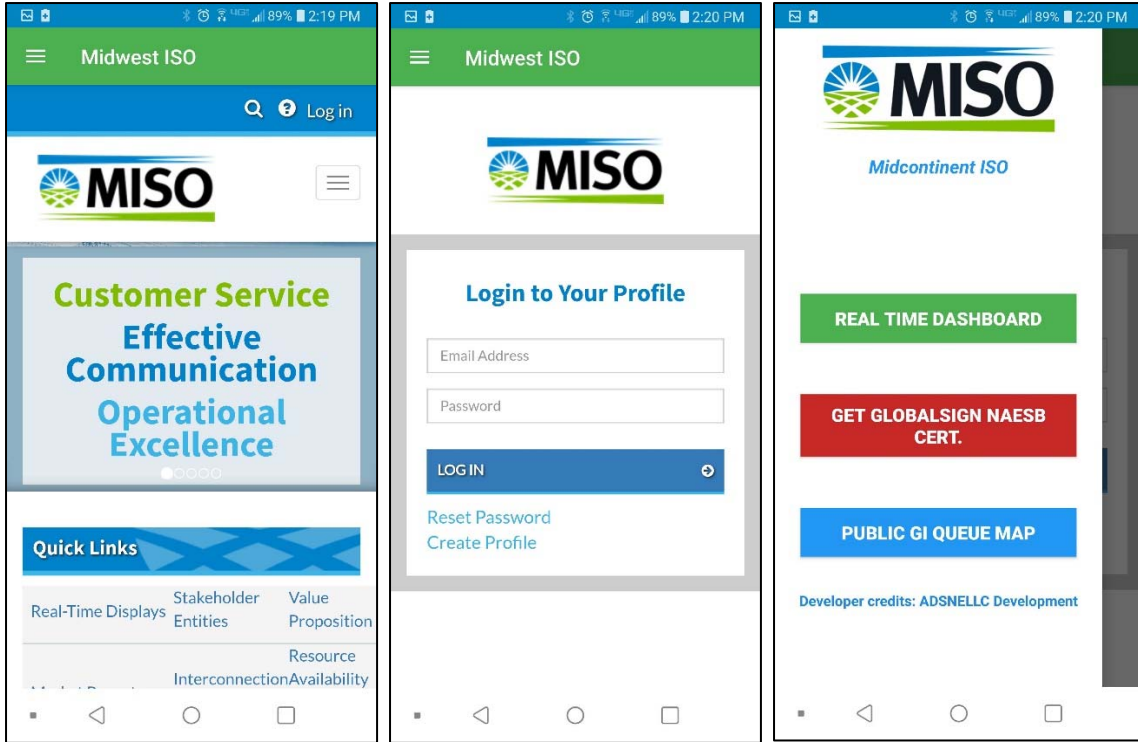
## **COUNT II: COUNTERFEITING**

54. MISO incorporates paragraphs 1 through 46 as if fully set forth herein.

55. Sullivan has counterfeited MISO's Marks as defined under Section 34 of the Lanham Act, 15 U.S.C. § 1116(d)(1)(B)(i).

56. Under 15 U.S.C. § 1127, a counterfeit "is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

57. The Infringing App prominently features pages—including on the log-in screen—displaying MISO's Marks:



58. The Infringing App constitutes a counterfeit of the Word Mark, as it features the word “MISO” identically and is likely to cause confusion, mistake, or to deceive.

59. The Infringing App constitutes a counterfeit of the Uncolored Design Mark, as it



features the registered design identically and is likely to cause confusion, mistake, or to deceive.

60. The Infringing App constitutes a counterfeit of the Color Design Mark, as it



features the registered design identically and is likely to cause confusion, mistake, or to deceive.

61. Sullivan’s counterfeit use in commerce of MISO’s Marks is likely to deceive consumers as to the origin, source, sponsorship, or affiliation of Sullivan’s Infringing App and is likely to cause consumers to believe, contrary to fact, that Sullivan’s Infringing App is sold,

authorized, endorsed, or sponsored by MISO, or that Sullivan is in any way affiliated with or sponsored by MISO. Sullivan's conduct, therefore, constitutes counterfeiting in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

62. On information and belief, Sullivan committed the foregoing acts of counterfeiting with full knowledge or in reckless disregard of MISO's rights in MISO's Marks and with the willful intent to cause confusion and trade on MISO's goodwill.

63. MISO is entitled to treble damages together with prejudgment interest or statutory damages under Section 35(c) of the Lanham Act, 15 U.S.C. § 1117(c).

#### **PRAYER FOR RELIEF**

WHEREFORE, MISO respectfully requests that the Court enter judgment in its favor, granting the following relief:

- A. Entry of judgment that Sullivan violated Section 32 of the Lanham Act (15 U.S.C. § 1114) by infringing MISO's Marks.
- B. Entry of judgment that Sullivan violated Section 32 of the Lanham Act (15 U.S.C. § 1114) by counterfeiting MISO's Marks.
- C. Entry of judgment that Sullivan willfully counterfeited MISO's Marks.
- D. Entry of a preliminary injunction and permanent injunction enjoining Sullivan and any partners, employees, agents, consultants, contractors, suppliers, distributors, and any others in privity with Sullivan from further acts of infringement and counterfeiting of MISO's Marks.
- E. Entry of a preliminary injunction and permanent injunction enjoining Sullivan and any partners, employees, agents, consultants, contractors, suppliers, distributors, and any others in privity with Sullivan from marking or displaying any statement, representation, or depiction that is likely to lead the public or trade to believe that (i) Sullivan and any goods or services

related to the display, operation, or visualization of the transmission, distribution, or sale of electricity are in any manner approved, endorsed, licensed, sponsored, authorized, or franchised by or otherwise associated, affiliated, or connected with MISO, or (ii) MISO's goods and services related to the display, operation, or visualization of the transmission, distribution, or sale of electricity are in any manner approved, endorsed, licensed, sponsored, authorized, or franchised by or otherwise associated, affiliated, or connected with Sullivan.

F. Entry of a judgment directing Sullivan to immediately cease all manufacture, display, distribution, marketing, advertising, promotion, sale, offer for sale and/or use of any and all packaging, labels, catalogs, shopping bags, containers, advertisements, signs, displays, and other materials that feature or bear any designation or mark incorporating any of MISO's Marks or any other mark that is a counterfeit, copy, simulation, confusingly similar variation, or colorable imitation of MISO's Marks, and to direct all distributors, retailers, wholesalers, and other individuals and establishments wherever located in the United States that distribute, advertise, promote, sell, or offer for sale Sullivan's goods or services to cease forthwith the display, distribution, marketing, advertising, promotion, sale, and/or offering for sale of any and all goods, services, packaging, labels, catalogs, shopping bags, containers, advertisements, signs, displays, and other materials featuring or bearing any of MISO's Marks or any other mark that is a counterfeit, copy, simulation, confusingly similar variation, or colorable imitation of MISO's Marks, and to immediately remove them from public access and view.

G. Entry of a judgment awarding MISO \$600,000 in statutory damages under Section 35(c)(2) of the Lanham Act, 15 U.S.C. § 1117(c), or \$6,000,000 in statutory damages if MISO can demonstrate that Sullivan's counterfeit uses of MISO's Marks was willful. Alternatively, entry of a judgment awarding MISO damages of either (a) Sullivan's profits,

MISO's damages, and the costs of the action, or, (b) three times the amount of Sullivan's profits or MISO's damages, whichever is greater, together with attorneys' fees and prejudgment interest.

H. Entry of a judgment directing Sullivan to account for and pay over to MISO all profits realized by their wrongful acts in accordance with Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

I. Entry of a judgment declaring that this is an exceptional case pursuant to Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)) and awarding MISO its costs and reasonable attorneys' fees.

J. Entry of a judgment directing Sullivan to provide MISO details of who downloaded the Infringing App and providing for the seizure and deletion of any downloaded copies of the Infringing App pursuant to Section 34 of the Lanham Act (15 U.S.C. § 1116).

K. Entry of a judgment awarding any further relief the Court deems just.

#### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, MISO demands trial by jury in this action of all issues so triable.

Respectfully submitted this 18th day of January 2021.

/s/ Kevin W. Kirsch

Kevin W. Kirsch

kkirsch@bakerlaw.com

David A. Mancino

dmancino@bakerlaw.com

Kevin P. Flynn (*pro hac vice* forthcoming)

kflynn@bakerlaw.com

BAKER & HOSTETLER LLP

312 Walnut Street, Suite 3200

Cincinnati, Ohio 45202-4074

Telephone: (513) 929-3400

Facsimile: (513) 929-0303

Jared A. Brandyberry (*pro hac vice*  
forthcoming)

jbrandyberry@bakerlaw.com

BAKER & HOSTETLER LLP

1801 California Street, Suite 4400

Denver, Colorado 80202-2662

Telephone: (303) 764-4072

Facsimile: (303) 861-7805

*Attorneys for Plaintiff Midcontinent  
Independent System Operator, Inc.*



## INDEX OF EXHIBITS

**Exhibit 1:** Copy of MISO's Word Mark registration obtained from United States Patent and Trademark Office database

**Exhibit 2:** Copy of MISO's Uncolored Design Mark registration obtained from United States Patent and Trademark Office database

**Exhibit 3:** Copy of MISO's Color Design Mark registration obtained from United States Patent and Trademark Office database

**Exhibit 4:** Example of MISO using MISO's Marks in commerce

**Exhibit 5:** Screenshot of Google's Google Play store advertising and describing the Infringing App

**Exhibit 6:** Screenshot of Sullivan's "ADSNELLC Development" website