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NINTENDO OF AMERICA INC.

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
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17 NINTENDO OF AMERICA INC., a
Washington corporation,

18 Plaintiff,

19 vs.

20 HUMAN THINGS, INC. d/b/a GENKI,
21 a Delaware corporation.

22 Defendant.

Case No. 2:25-cv-3960

Judge:

COMPLAINT

JURY DEMANDED

23
24 **COMPLAINT**

25 Plaintiff Nintendo of America Inc., a Washington corporation (“Plaintiff” or
26 “NOA”), appearing through its undersigned counsel, alleges as follows:

27 **THE PARTIES**

28 1. Plaintiff Nintendo of America Inc. is a Washington corporation with a

1 principal place of business at 4600 150th Avenue NE, Redmond, Washington 98052.
2 NOA is a wholly owned subsidiary of Nintendo Co., Ltd. (“NCL”) (collectively with
3 NOA, “Nintendo”), a Japanese company headquartered in Kyoto, Japan. NOA is
4 responsible for the marketing, distribution, and sale of Nintendo’s products and the
5 enforcement of Nintendo’s intellectual property rights in the United States. NCL
6 develops and designs electronic video game consoles, games, and accessories,
7 including the Nintendo Switch, Nintendo Switch Lite, and Nintendo Switch OLED
8 consoles (collectively, the “Nintendo Switch”), and the Nintendo Switch 2 console.

9 2. Defendant Human Things, Inc., d/b/a Genki (“Defendant” or “Genki”),
10 is a Delaware corporation with a principal place of business at 2222 Felicia Avenue,
11 Rowland Heights, California 91748.

12 **NATURE OF ACTION AND JURISDICTION**

13 3. This is an action for trademark infringement, unfair competition, and
14 false advertising under the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et*
15 *seq.* (the “Lanham Act”); for trademark infringement and unfair competition under
16 California common law; and for statutory unfair competition under California
17 Business and Professions Code § 17200.

18 4. This Court has jurisdiction over the subject matter of this action pursuant
19 to Section 39 of the Lanham Act, 15 U.S.C. § 1121, and Chapter 85 of the Judiciary
20 and Judicial Procedure Code, 28 U.S.C. §§ 1331 and 1338, and has supplemental
21 jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

22 5. This Court has personal jurisdiction over Defendant because its principal
23 place of business is in California and because it engaged in wrongful action in
24 California, including acts within this District.

25 6. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because
26 Defendant is deemed to reside here under § 1391(c)(2) and (d). Venue is also proper
27 in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events
28 giving rise to NOA’s claims occurred here.

FACTS

NINTENDO AND ITS TRADEMARKS

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3 7. Nintendo is a company and brand famous throughout the United States
4 and the world, known by consumers of all ages for its video games, gaming consoles,
5 and characters.

6 8. For decades, Nintendo has been a leading developer and producer of
7 video games and video game consoles. In 1983, Nintendo released the Nintendo
8 Entertainment System, or “NES,” in the United States, which introduced millions of
9 fans to now-classic games like *Super Mario Bros.*, *The Legend of Zelda*, and *Donkey*
10 *Kong*.

11 9. Over the ensuing decades, Nintendo followed up the popularity of the
12 NES console with several generations of groundbreaking video game consoles,
13 including the Super Nintendo Entertainment System, Nintendo 64, Nintendo
14 GameCube, Wii, Wii U, and Nintendo Switch.

15 10. Nintendo’s consoles have achieved significant success and popularity.
16 Fans eagerly await each new entry in Nintendo’s line of consoles, with each console
17 delivering cutting-edge technological innovations and access to exclusive Nintendo
18 game titles.

19 11. Nintendo’s most recent hit console was the Nintendo Switch, released in
20 March 2017. The Nintendo Switch is a home video console that can also be played
21 “on the go” as a handheld console. Nintendo owns, develops, and distributes the
22 popular Nintendo Switch video game console.

23 12. The Nintendo Switch supports several gaming accessories, including
24 game controllers that calibrate to a player’s Nintendo Switch system. Nintendo’s
25 primary, official controllers for the Nintendo Switch are called Joy-Con controllers,
26 which can slide cleanly into the sides of a console to activate handheld use.

27 13. The Nintendo Switch is sold in stores around the world and has become
28 one of the best-selling video game consoles of all time, selling over 150 million units


1 worldwide. Nintendo also makes award-winning video game software that consumers
 2 can play exclusively on the Nintendo Switch. The top five Nintendo-developed games
 3 released for the Nintendo Switch have sold more than 200 million copies as of
 4 December 2024, and individually each of those game titles has sold over 29 million
 5 copies. The Nintendo Switch is one of the most popular video game consoles of all
 6 time.

7 14. In addition to the Nintendo Switch’s famous reputation, Nintendo has
 8 developed strong common-law rights in Nintendo Switch-related trademarks that
 9 have been in use in commerce since as early as the Nintendo Switch’s original release
 10 campaign in 2016, including the following:






16 15. Further, Nintendo has trademark registrations in the above design marks
 17 as well as in the word marks NINTENDO SWITCH and JOY-CON for video game-
 18 related goods in Classes 9, 28, and 41 and for bags and apparel-related goods in
 19 Classes 18 and 25 (collectively, the “NINTENDO SWITCH Marks”). Examples of
 20 Nintendo’s registered NINTENDO SWITCH Marks are shown in the chart below.
 21 *See, e.g.*, 5,443,363; 5,609,612; 5,352,230; 5,511,496; 5,477,313; 5,298,339.

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Mark	Registration Number	Classes Covered
	5,443,363	Classes 9, 28, 41

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	5,609,612	Classes 9, 28
	5,352,230	Classes 9, 28, 41
	5,511,496	Class 18, 25
NINTENDO SWITCH	5,477,313	Classes 9, 28, 41
JOY-CON	5,298,339	Class 28

16. Plaintiff’s registrations are valid and subsisting, and many are incontestable pursuant to 15 U.S.C. § 1065. True and correct copies of these registrations and applications are attached as **Exhibit A**.

17. Nintendo’s NINTENDO SWITCH Marks are inherently distinctive and serve to identify and indicate the source of Plaintiff’s products and services to the consumer public.

18. The NINTENDO SWITCH Marks have become distinctive in the marketplace to designate Plaintiff, to distinguish Plaintiff and its offerings from those of others, and to distinguish the source or origin of Plaintiff’s offerings. The consuming public, including Nintendo’s devoted fanbase, widely recognizes and associates the NINTENDO SWITCH Marks with Plaintiff. Due to their widespread promotion and recognition by the consuming public, the NINTENDO mark and the NINTENDO SWITCH Marks have become famous within the meaning of Section

1 43(c) of the Lanham Act.

2 19. Nintendo's loyal and longstanding fanbase excitedly anticipates each
3 release of Nintendo's newest games and consoles. Given the extreme success of the
4 Nintendo Switch, fan anticipation is especially strong for the upcoming release of
5 Nintendo's next console: the Nintendo Switch 2.

6 20. Shortly after the release of the Nintendo Switch, Nintendo began
7 planning its successor console, with formal hardware development beginning around
8 2019. The Nintendo Switch 2 employs the same hybrid home-and-handheld model of
9 the original Nintendo Switch with increased processing power, a larger screen, new
10 chat and social features, and improved Joy-Con 2 controllers, which now have a new
11 mouse function.

12 21. Since 2011, Nintendo has used a unique series of strategically timed,
13 special livestreams to announce upcoming products and games and share company-
14 specific news with its fans and consumers. Each presentation, exclusively referred to
15 as a "Nintendo Direct," is not scheduled on a regular basis, but is rather reserved for
16 special announcements, such as the first official, public reveal of a particular product,
17 experience, or feature. Each Nintendo Direct is an especially curated, key marketing
18 tactic designed to announce, promote, and garner interest in specific Nintendo
19 hardware, software and experiences. Millions of Nintendo fans worldwide eagerly
20 await each Nintendo Direct and tune in to learn more about their next surprise and
21 delight.

22 22. On January 16, 2025, Nintendo premiered a Nintendo Direct to publicly
23 announce the Nintendo Switch 2's name and release images of the console for the
24 first time. Nintendo's announcement invited fans to tune into a Nintendo Direct
25 presentation scheduled for April 2, 2025, for more details related to the Nintendo
26 Switch 2. The announcement also promised a series of hands-on events around the
27 world for the Nintendo Switch 2, with details of those events to be provided through
28 Nintendo's official website.

1 23. On April 2, 2025, as promised, Nintendo premiered its highly anticipated
2 Nintendo Direct presentation surrounding the Nintendo Switch 2. The hour-long live
3 presentation provided information on the Nintendo Switch 2, its features and
4 accessories, and upcoming games for the console. The presentation also announced
5 that the Nintendo Switch 2 would officially be released on June 5, 2025.¹

6 **DEFENDANT AND ITS UNLAWFUL ACTIVITIES**

7 *Genki's Actions Generally*

8 24. Defendant Genki operates an online business selling electronic
9 accessories for smartphones, tablets, and various gaming consoles.

10 25. Beginning at least as early as December 2024, Defendant embarked upon
11 a strategic campaign intended to capitalize on the public interest surrounding
12 Nintendo's next-generation console.

13 26. In January 2025, Defendant began advertising that it gained
14 unauthorized access to Nintendo's upcoming Nintendo Switch 2 console, which had
15 not yet been released or even revealed publicly by Nintendo.

16 27. Defendant also advertised that because of its unique access to a genuine
17 unreleased Nintendo Switch 2 console, it could manufacture gaming accessories that
18 are compatible with the Nintendo Switch 2. Further, Genki announced it would sell
19 those allegedly compatible accessories contemporaneously with Nintendo's release
20 of its console.

21 28. Following its initial claims of access to a genuine Nintendo Switch 2
22 console, Defendant's statements were contradictory and inconsistent, with Defendant
23 later stating that it was never in possession of a console. Nevertheless, Defendant has
24 since maintained its representation to consumers that its accessories will be
25 compatible with the Nintendo Switch 2 upon the console's release.

26 29. Ensuring the compatibility of Defendant's accessories would not be
27 possible unless and until Defendant has access to a Nintendo Switch 2 console or to

28 _____
¹ As of the filing of this action, the Nintendo Switch 2 has yet to be released to the public.

1 proprietary technical specifications, neither of which Nintendo provided and/or
2 authorized to be provided to Defendant.² Therefore, either (1) Defendant is not in
3 possession of a genuine console and thus cannot claim compatibility with enough
4 certainty to make its advertising claims in good faith, or (2) Defendant unlawfully or
5 illicitly obtained an authentic Nintendo Switch 2, or proprietary technical information
6 about the Nintendo Switch 2, prior to the console’s release to the public.

7 30. Additionally, Defendant has used the NINTENDO SWITCH Marks in
8 connection with the marketing and promotion of its unauthorized Nintendo Switch 2
9 accessories, misleading consumers into believing that it offers functional, authentic,
10 and authorized Nintendo Switch 2 products.

11 *A Timeline of Genki’s Wrongdoing*

12 31. Genki’s wrongful actions began in December 2024 when Genki first
13 began promoting its accessories for the then highly confidential, unrevealed, and
14 unannounced Nintendo Switch 2. For example, Genki attempted to connect with
15 GameStop CEO Ryan Cohen to discuss “the launch switch 2 accessories [Genki was]
16 working on.”

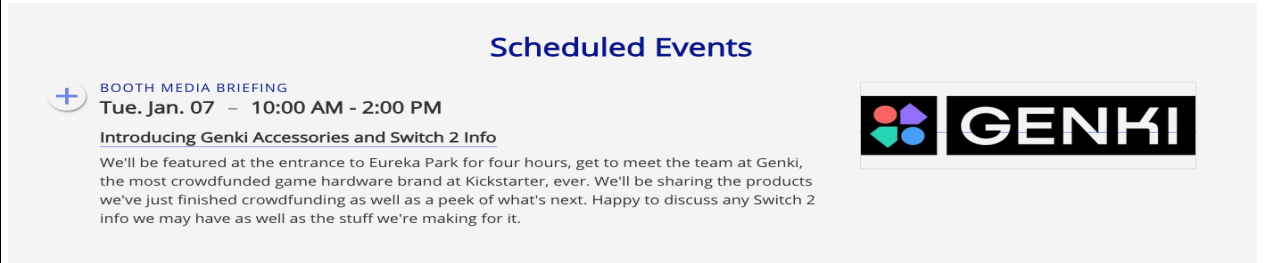
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² To avoid leaks of confidential information about its new games and consoles, Nintendo expends significant resources toward protection efforts, including but not limited to stringent disclosure requirements and confidentiality agreements, physical security, and elegant data security and encryption practices. Prerelease access to Nintendo’s physical products or schematics can only arise from illegal or illicit action.

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32. Then on January 1, 2025, Genki’s exhibitor page went live for the 2025 Consumer Electronics Show (“CES”) publicizing Genki’s intention to host a “Booth Media Briefing” on January 7, 2025, in which it offered to discuss any information about the not-yet-announced “Switch 2 . . . [Defendant] may have as well as the stuff [Defendant is] making for it.”



33. At the CES event, Genki demoed and promoted unauthorized purported mockups and renderings of the Nintendo Switch 2 and its accessories. Further, Genki presented at least two unauthorized 3D-printed mockups of the Nintendo Switch 2 to reporters. Genki boasted its alleged early access to the unreleased console and allowed guests to hold and measure the mockups.

34. At Genki’s CES Booth, Genki’s CEO, Edward Tsai, personally showed

1 off the 3D-printed mockups and stated to different reporters that Genki had or had
2 access to an authentic “Switch 2,” on which Genki based the mockups, renderings,
3 and 3D-printed mockups. Genki’s representatives, including its CEO, also did
4 multiple media interviews discussing their “eight accessories” and purportedly
5 confirming specific, highly confidential designs and functionality of the not-yet
6 announced Nintendo Switch 2. An article detailing these statements from Genki is
7 attached as [Exhibit B](#).

8 35. Genki also [displayed a video](#) at its CES booth showing a purported 3D
9 render of the Nintendo Switch 2, which it later also posted on its website. Genki
10 included Nintendo’s marks on its rendering of the Nintendo Switch 2 dock, including
11 Nintendo’s registered design mark shown in Registration No. 5,352,230:



19 36. Genki’s presentation and statements garnered significant attention from
20 the media and public resulting in confusion among consumers as to the validity of
21 Genki’s statements and association with Nintendo. The media, especially those
22 having had direct contact with Genki at CES, promoted the impression that the 3D
23 printed mockups were accurate replicas of the Nintendo Switch 2. Similarly, many
24 consumers expressed belief that Genki (1) was sent a model of the Nintendo Switch
25 2 by Nintendo itself or (2) received approval from Nintendo to see the new hardware
26 for the purpose of developing accessories. The issue of whether or not Genki was an
27 authorized accessory manufacturer was further debated throughout “Nintendo Switch
28 2” Reddit community threads.

1 37. Public discourse and confusion over Genki’s announcements were so
2 significant that on January 10, 2025, Nintendo issued a statement to reporters about
3 the incident, clarifying that “the gaming hardware that Genki presented as Nintendo
4 hardware at CES is unofficial and was not provided to the company by us.” A copy
5 of an article discussing the January 10, 2025 statement is attached as [Exhibit C](#).

6 38. The same day that Nintendo issued its January 10 statement, Genki
7 backtracked on its bold claims of early access to the console. In an [interview](#), a Genki
8 representative stated that Genki never had access to an authentic pre-release model of
9 the Nintendo Switch 2. Genki also posted [a thread on x.com](#) (formerly Twitter)
10 retracting its statements. Instead, the representative claimed that Genki’s models were
11 based on alleged “leaked” information in the industry. The interview and Twitter
12 thread are attached as **Exhibit D**. Nevertheless, Genki continued to represent that its
13 accessories would be compatible with the upcoming Nintendo Switch 2.

14 39. On January 11, a news article published by The Game Post credited
15 Genki with a rendering of the Nintendo Switch 2 console, reproduced below, featuring
16 the official design mark and full name of the console, which had still not yet been
17 announced by Nintendo. A copy of the article is attached as [Exhibit E](#).



26 40. On January 20, Genki [posted a picture](#) of its CEO, Edward Tsai, on its
27 official Twitter account with the caption “Genki ninjas infiltrate Nintendo Kyoto HQ”
28 in an apparent attempt to further confuse the public as to whether Genki had access to

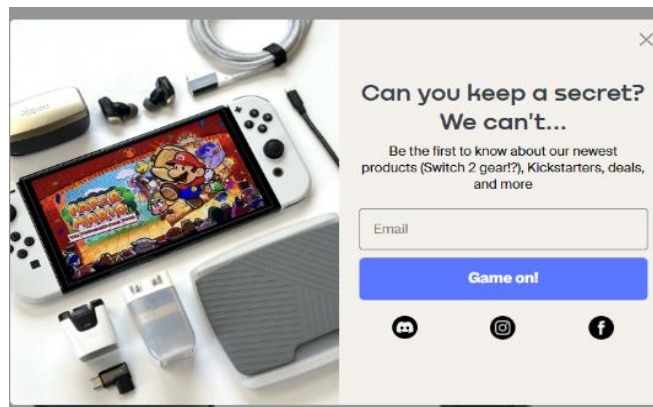
1 a Nintendo Switch 2 and/or an affiliation with Nintendo.

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13 41. Following Genki’s CES participation, Genki updated its [website](#) and
14 advertisements to boast about its early access to Nintendo Switch 2 information and
15 its attention-grabbing “leak” of the console renders at CES, saying “Can you keep a
16 secret? We can’t...”

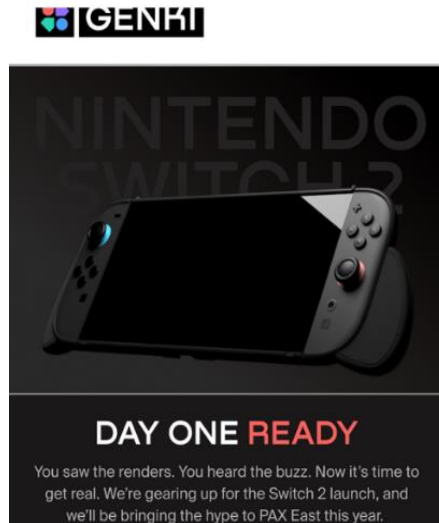
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24 42. Genki advertised that its accessories will be immediately compatible
25 with the Nintendo Switch 2 on “day one” of the console’s release, as shown below.
26 The advertisement explicitly capitalizes on the attention Genki garnered for the leaked
27 “renders” it displayed at CES: “You saw the renders. You heard the buzz. Now it’s
28 time to get real. We’re gearing up for the Switch 2 launch, and we’ll be bringing the

1 hype to PAX East this year.”

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43. PAX East is an annual gaming conference scheduled to be held this year from May 8 through May 11 in Boston, Massachusetts.

44. On April 1, 2025—the day before Nintendo’s highly anticipated Nintendo Switch 2 Nintendo Direct—Genki mass-emailed its marketing list and [posted on social media](#) an announcement of its *own* “Direct” presentation to be held on the same day as Nintendo’s highly anticipated presentation.

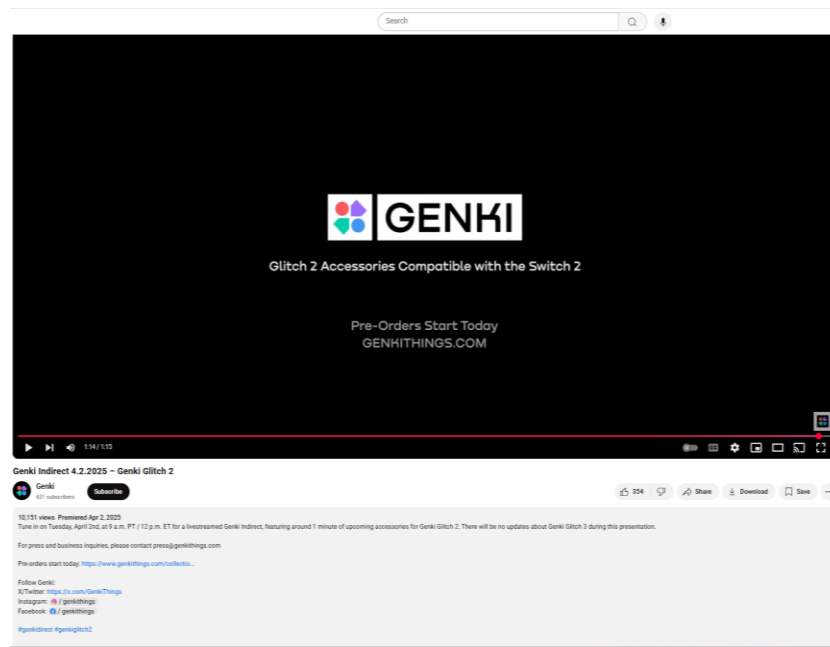
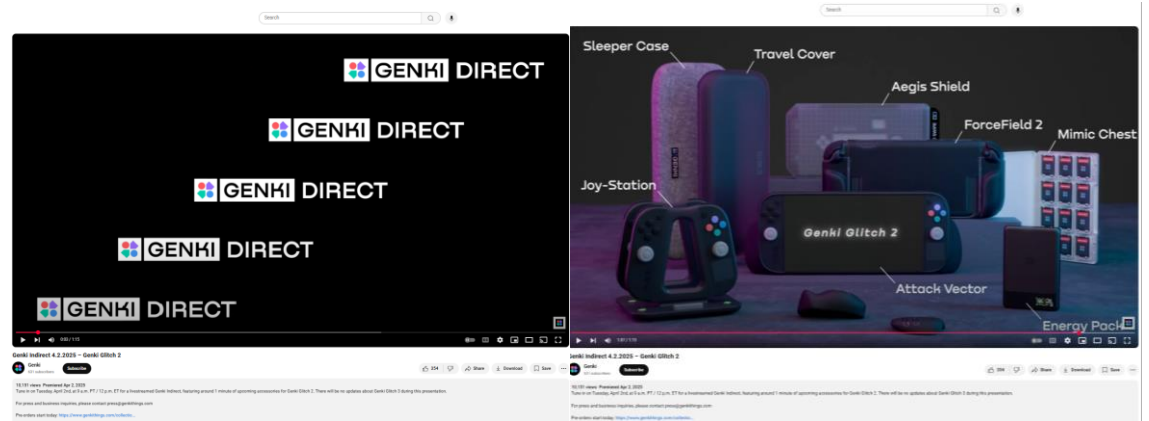
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45. Approximately two hours after Nintendo’s Switch 2 Nintendo Direct presentation concluded, Genki mass-emailed its marketing list reminding them to tune in to its own “Genki Direct” (also titled “Genki Indirect”) on [YouTube](#).



1 46. The “Genki Direct” was streamed and then posted on Genki’s official
 2 YouTube channel, advertising its console accessories that it claimed would be
 3 compatible with the Nintendo Switch 2. Screen captures from the presentation are
 4 reproduced below.



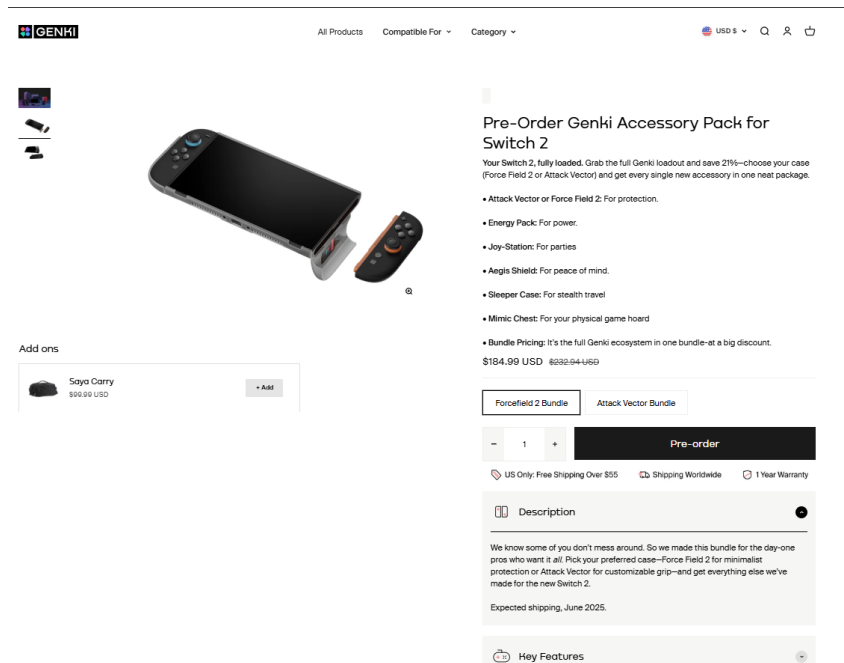
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 23 47. In the presentation, Genki featured a Nintendo Switch 2 render that was
 24 labeled as a “Genki Glitch 2,” an obvious reference to the Nintendo Switch 2. The
 25 “Genki Direct” nevertheless concluded with a statement that “Glitch 2 Accessories
 26 [would be] Compatible with the Switch 2” and would be available for pre-order
 27 starting that day.

28 48. The still image Genki showed on their livestream prior to the “Genki

1 Direct” starting and the thumbnail for Genki’s presentation is a title page designed to
 2 be very similar and almost identical to the styling used by Nintendo for its Nintendo
 3 Direct presentations, as shown below.

Images from the Nintendo Direct	Images from the “Genki Direct”
	

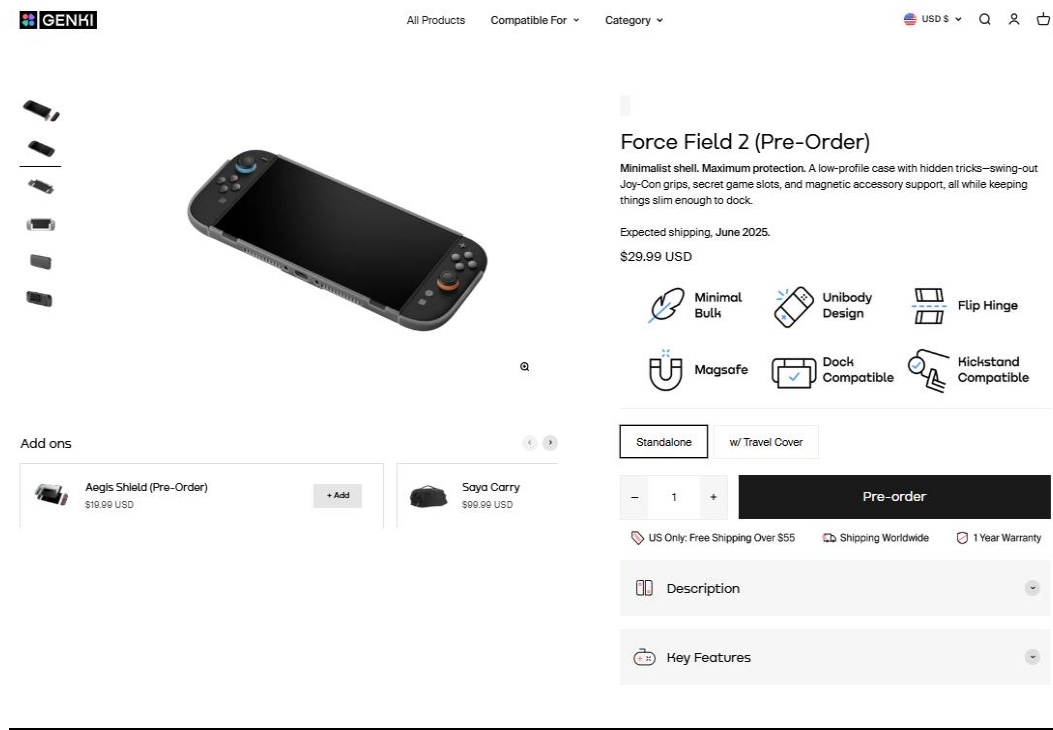
20 49. Following the “Genki Direct,” Genki immediately opened preorders of
 21 its Nintendo Switch 2 accessories, advertising a release date alongside the Nintendo
 22 Switch 2 in June 2025, as shown in the [example below](#):



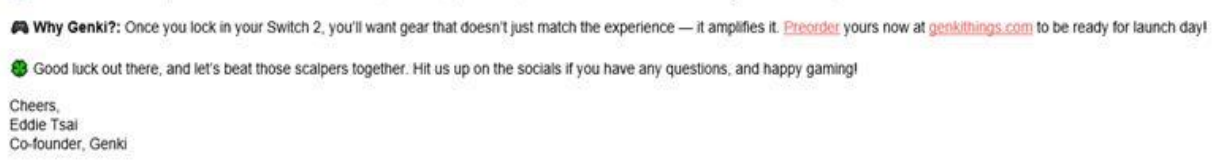
50. Defendant’s preorder accessory listings make multiple explicit claims of compatibility with the unreleased Nintendo Switch 2. For example, Genki claims that its “[Attack Vector](#)” case “[s]lides easily into the dock with no case removal needed” and is “[k]ickstand friendly.” Similarly, Genki claims its “[Force Field 2](#)” case has a “[d]ockable fit” and is “[k]ickstand friendly.” Additionally, Genki claims that Joy-Con 2 controllers just “[s]nap . . . in magnetically” to its “[Joy-Station](#)” charger and grip(s) with “LED lights [that] let you know when each Joy-Con is juiced and ready for action.” Examples of Defendant’s product listings are attached as **Exhibit F**.

51. Defendant’s preorder listings also use Nintendo’s JOY-CON trademark in multiple instances in connection with Genki’s own products (i.e., referring to a feature of its product as “Joy-Con grips”), as shown below:

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52. Through its marketing efforts, Defendant continues to exploit the attention of the media and fan base and usurp and threaten sales of Nintendo’s own accessories. For example, on April 23, 2025, Genki sent a promotional email to consumers boasting its Nintendo Switch 2 accessories “that do[n’t] just match the experience—[but] amplif[y] it.”



53. Genki’s activities have been designed to capitalize on and appropriate the public’s anticipation for the release of Nintendo’s next-generation console.

54. Genki has used Nintendo’s trademarks and trade dress in connection with the marketing of its business and its unauthorized third-party accessories, in violation of Nintendo’s rights in those marks.

55. On information and belief, Genki falsely represented that it had access to an authentic unreleased model of Nintendo’s next-generation console. Genki has

1 since stated through representatives that its claims of access were false.

2 56. Genki's claims of compatibility would be impossible to guarantee
3 without unauthorized, illegal early access to the Nintendo Switch 2. Thus, Genki has
4 misled and is misleading the public as to its ability to guarantee the compatibility of
5 its products with the Nintendo Switch 2.

6 57. Additionally or alternatively, Genki in fact illegally and/or illicitly
7 gained access to a pre-release model of the Nintendo Switch 2, rendering its
8 statements otherwise objectively false.

9 58. Defendant's infringing use of Nintendo's trademarks in its advertising is
10 in direct competition with Nintendo's and its licensee's legitimate marketing of
11 Nintendo's new console and authorized accessories.

12 59. Nintendo has not authorized Defendant to use its marks, including the
13 NINTENDO SWITCH Marks, in connection with Defendant's business or products.

14 60. Defendant had prior knowledge of Plaintiff's NINTENDO SWITCH
15 Marks before using those marks in connection with its marketing and accessories.

16 61. Defendant intentionally reproduced Plaintiff's NINTENDO SWITCH
17 Marks on its fabricated mock-up of Nintendo's next-generation console in order to
18 simulate Plaintiff's well-known brand and exploit and appropriate for itself the public
19 goodwill associated with Plaintiff's NINTENDO SWITCH Marks.

20 62. Defendant's actions are intended to deceive consumers into believing
21 that Defendant is connected to, associated with, or affiliated with Plaintiff through
22 Defendant's (1) use of the NINTENDO SWITCH Marks and (2) claims of special
23 access to a pre-release model of the Nintendo Switch 2.

24 63. Defendant's blatant copying of the NINTENDO SWITCH Marks
25 establishes that Defendant's actions were willful and undertaken in bad faith.

26 64. Defendant has used and promoted the NINTENDO SWITCH Marks in
27 commerce without Plaintiff's authorization. Defendant's use of the NINTENDO
28 SWITCH Marks began long after Plaintiff developed rights in the NINTENDO

1 SWITCH Marks.

2 **EFFECTS OF DEFENDANT’S UNLAWFUL ACTIVITIES**

3 65. Defendant’s unauthorized use of the NINTENDO SWITCH Marks has
4 caused, and is likely to continue to cause, confusion among consumers. Consumers
5 are likely to falsely perceive a connection, association, sponsorship, or affiliation
6 between Defendant and its products and services on the one hand and those of
7 Nintendo and its licensees on the other.

8 66. Defendant’s unauthorized use of the NINTENDO SWITCH Marks has
9 caused, and is likely to continue to cause, initial interest confusion among consumers,
10 as they are likely to initially perceive Defendant’s products as authorized by or
11 directly produced by Nintendo or its licensees, especially as Nintendo launches its
12 own preorders for Switch 2 products at the same time. Through its actions, Defendant
13 is taking advantage of the trust and loyalty that Nintendo fans have for the Nintendo
14 brand and mark and causing actionable harm.

15 67. Consumers who unwittingly purchase or pre-order Genki’s products
16 thinking that the products are genuine or endorsed or authorized by Nintendo are
17 likely to impute any shortcomings, defects, or lack of quality in Genki’s products to
18 Nintendo because of Genki’s actions, including Genki’s use of the NINTENDO
19 SWITCH Marks.

20 68. Defendant’s unauthorized use of the NINTENDO SWITCH Marks
21 falsely designates the origin of its products and services and falsely represents
22 circumstances with respect to Defendant, Defendant’s products and services, and
23 Defendant’s relationship with Nintendo.

24 69. Defendant’s unauthorized use of the NINTENDO SWITCH Marks
25 enables Defendant to trade on the goodwill built up at great labor and expense by
26 Nintendo over many years, and to gain acceptance for its goods and services not solely
27 on its own merits, but on the reputation and goodwill of Nintendo, the NINTENDO
28 SWITCH Marks, and Nintendo’s products and services.

1 70. Defendant's unauthorized use of the NINTENDO SWITCH Marks
2 unjustly enriches Defendant at Plaintiff's expense. Defendant has been and continues
3 to be unjustly enriched by obtaining a benefit from Plaintiff by taking undue
4 advantage of Plaintiff and its goodwill. Specifically, Defendant has taken undue
5 advantage of Plaintiff by trading on and profiting from the goodwill in the
6 NINTENDO SWITCH Marks developed and owned by Plaintiff, resulting in
7 Defendant wrongfully obtaining a monetary and reputational benefit for his own
8 business.

9 71. Defendant's unauthorized use of the NINTENDO SWITCH Marks
10 removes from Plaintiff the ability to control the quality of products sold under the
11 NINTENDO SWITCH Marks. This places the valuable reputation and goodwill of
12 Plaintiff in the hands of Defendant, over whom Plaintiff has no control. This
13 vulnerability is especially potent in light of Nintendo's upcoming release of its next-
14 generation console, when Nintendo's fans and the public at-large can be expected to
15 react to and establish the market reputation of Nintendo's newest product.

16 72. Additionally, Defendant's false statements regarding its access to a pre-
17 release console and/or the compatibility of its products with Nintendo's genuine
18 products are material to consumers' decision to purchase or pre-order Defendant's
19 products.

20 73. In particular, because Genki was not authorized by Nintendo to access
21 pre-release models of Nintendo's newest console, it is unlikely that Genki ever had
22 access to an authentic Nintendo Switch 2, belying its representations otherwise to the
23 public. In that case, Defendant misrepresented to Nintendo's fans that it could provide
24 compatible accessories with the Nintendo Switch 2. Because compatibility with the
25 Nintendo Switch 2 is certainly a threshold requirement for consumers seeking to
26 purchase accessories for use with the Nintendo Switch 2, this misrepresentation is
27 material to consumers' purchasing decisions.

28 74. Unless these acts of Defendant are restrained by this Court, they will

1 continue, and they will continue to cause irreparable injury to Plaintiff, to the public,
2 and to Nintendo's consumers for which there is no adequate remedy at law.

3 **COUNT I: FEDERAL TRADEMARK INFRINGEMENT**

4 **(15 U.S.C. § 1114)**

5 75. Plaintiff repeats the allegations above as if fully set forth herein.

6 76. Defendant's acts complained of herein constitute infringement of
7 Plaintiff's federally registered NINTENDO SWITCH Marks in violation of 15 U.S.C.
8 § 1114(1).

9 77. Defendant's unauthorized use of the NINTENDO SWITCH Marks is
10 likely to cause confusion, or to cause mistake, or to deceive consumers in violation of
11 15 U.S.C. § 1114(1).

12 78. Plaintiff has been damaged by Defendant's infringement of its registered
13 marks.

14 79. Defendant's acts complained of herein have been deliberate, willful,
15 intentional, or in bad faith, with full knowledge and conscious disregard of Plaintiff's
16 rights in the NINTENDO SWITCH Marks, and with intent to cause confusion and to
17 trade on Plaintiff's vast goodwill in the NINTENDO SWITCH Marks. In view of the
18 egregious nature of Defendant's infringement, this is an exceptional case within the
19 meaning of 15 U.S.C. § 1117(a).

20 **COUNT II: FEDERAL UNFAIR COMPETITION**

21 **(15 U.S.C. § 1125(a))**

22 80. Plaintiff repeats the allegations above as if fully set forth herein.

23 81. The acts of Defendant complained of herein constitute trademark
24 infringement, false designation of origin, and unfair competition in violation of
25 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

26 82. Defendant's use of Plaintiff's trademarks is likely to cause confusion, or
27 to cause mistake, or to deceive as to the affiliation, connection, or association between
28 Plaintiff and Defendant, or as to the origin, sponsorship, or approval of Defendant's

1 goods, services, or commercial activities, in violation of 15 U.S.C. § 1125(a)(1)(A).

2 83. Plaintiff has been damaged by Defendant's acts of trademark
3 infringement, false designation of origin, and unfair competition.

4 **COUNT III: FEDERAL FALSE ADVERTISING**

5 **(15 U.S.C. § 1125(a))**

6 84. Plaintiff repeats the allegations above as if fully set forth herein.

7 85. The acts of Defendant complained of herein constitute false or
8 misleading descriptions or representations of fact in violation of Section 43(a) of the
9 Lanham Act, 15 U.S.C. § 1125(a).

10 86. Defendant's statements that it obtained a pre-release model of the
11 Nintendo Switch 2 before the console's release are admitted by Defendant to be false,
12 demonstrating Defendant's knowledge of their falsity.

13 87. Defendant's statements that it developed compatible accessories for the
14 Nintendo Switch 2 cannot be made with certainty without access to a console, which
15 Defendant denies it has had.

16 88. Defendant's statements regarding its access to a pre-release console
17 and/or the compatibility of its products with Nintendo's genuine products are material
18 to consumers' decision to purchase or pre-order Defendant's products.

19 89. Defendant's statements have a tendency to deceive—and are believed to
20 have deceived—a substantial segment of its audience.

21 90. Defendant's false representations are material to the purchasing
22 decisions of consumers.

23 91. Defendant caused its false statements to enter interstate commerce, in
24 making them at public exhibitions and posting them on social media and in its
25 advertising.

26 92. Defendant's false representations in the marketing of its accessories
27 misrepresents the nature, characteristics or qualities of its goods, constituting false
28 advertising under 15 U.S.C. § 1125(a).

1 93. Plaintiff has been damaged by Defendant’s false or misleading
2 descriptions or representations of fact.

3 **COUNT IV: CALIFORNIA COMMON LAW TRADEMARK**
4 **INFRINGEMENT & UNFAIR COMPETITION**

5 94. Plaintiff repeats the allegations above as if fully set forth herein.

6 95. Defendant’s use of Plaintiff’s trademarks is likely to cause confusion, or
7 to cause mistake, or to deceive as to the affiliation, connection, or association between
8 Plaintiff and Defendant, or as to the origin, sponsorship, or approval of Defendant’s
9 goods, services, or commercial activities.

10 96. Plaintiff has been damaged and will continue to be damaged by
11 Defendant’s acts of trademark infringement, false designation of origin, and unfair
12 competition.

13 97. The acts of Defendant complained of herein constitute common law
14 trademark infringement and unfair competition in violation of the common law of the
15 State of California.

16 **COUNT V: STATUTORY UNFAIR COMPETITION UNDER CALIFORNIA**
17 **LAW**

18 98. Plaintiff repeats the allegations above as if fully set forth herein.

19 99. Defendant’s conduct complained of herein constitutes unlawful, unfair,
20 or fraudulent business acts or unfair, deceptive, untrue, or misleading advertising.

21 100. Defendant’s conduct is unlawful, as it constitutes trademark
22 infringement, unfair competition, and false advertising, as alleged above. Defendant’s
23 conduct is unfair and fraudulent for the same reason.

24 101. Members of the public are likely to have been deceived by Defendant’s
25 statements regarding its access to Nintendo’s unreleased hardware.

26 102. As a direct and proximate result of Defendant’s acts, Plaintiff has been
27 damaged and will continue to be damaged in an amount to be determined at trial.

28 103. Plaintiff is entitled to all available relief, including an accounting and

1 disgorgement of all illicit profits Defendant made on account of its deceptive, unfair,
2 and fraudulent business practices.

3 104. Unless restrained and enjoined by this Court, Defendant will continue
4 the acts herein complained of. Because Plaintiff has no adequate remedy at law for
5 Defendant's ongoing willful conduct, Plaintiff is entitled to injunctive relief
6 prohibiting Defendant from continuing its unfair business practices.

7 105. The acts of Defendant complained of herein therefore constitute unfair
8 competition under California Business and Professions Code § 17200.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff requests that:

11 (a) Defendant, its officers, agents, servants, employees, and attorneys,
12 and other persons who are in active concert or participation with any of them, be
13 permanently enjoined and restrained from designing, displaying, advertising, offering
14 for sale, manufacturing, shipping, delivering, selling, or promoting any product that
15 incorporates or is marketed in conjunction with Plaintiff's NINTENDO SWITCH
16 Marks and/or any other mark, name, or design confusingly similar to those marks,
17 names, or designs, and from any attempt to retain any part of the goodwill
18 misappropriated from Plaintiff;

19 (b) Defendant, its officers, agents, servants, employees, and attorneys,
20 and other persons who are in active concert or participation with any of them, be
21 enjoined from making false representations or statements in the marketing of its
22 accessories regarding the nature, characteristics or qualities of its goods as they relate
23 to their compatibility or integration with Plaintiff's Nintendo Switch 2 and
24 NINTENDO SWITCH Marks;

25 (c) Defendant, its officers, agents, servants, employees, and attorneys,
26 and other persons who are in active concert or participation with any of them, be
27 required to deliver up and destroy all products, packaging, signage, advertisements,
28 internet postings and advertisements, and any other materials bearing or using

1 Plaintiff's NINTENDO SWITCH Marks and/or any other mark, name, or design that
2 is confusingly similar to those marks, names, or designs;

3 (d) Defendant be ordered to file with this Court and to serve upon
4 Plaintiff, within thirty (30) days after the entry and service on Defendant of an
5 injunction, a report in writing and under oath setting forth in detail the manner and
6 form in which Defendant has complied with the injunction;

7 (e) Plaintiff recover all damages it has sustained as a result of
8 Defendant's infringement, unfair competition, and false advertising, and that said
9 damages be trebled;

10 (f) An accounting be directed to determine Defendant's profits
11 resulting from Defendant's activities, and that such profits be disgorged from
12 Defendant and paid over to Plaintiff;

13 (g) all other equitable relief, including injunctive relief and corrective
14 advertising, to which Plaintiff shows itself entitled;

15 (h) Plaintiff recover its reasonable attorneys' fees;

16 (i) Plaintiff recover its costs of this action and prejudgment and post-
17 judgment interest; and

18 (j) Plaintiff recover such other relief as the Court may find
19 appropriate.

20 **JURY DEMAND**

21 Plaintiff demands a jury trial on all issues triable by jury under Federal Rule
22 of Civil Procedure 38.

23
24 Dated: May 2, 2025

RUTAN & TUCKER, LLP
RONALD P. OINES
SARAH VAN BUITEN

25
26 By: 
27 Ronald P. Oines
28 Attorneys for Plaintiff
NINTENDO OF AMERICA INC.

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