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**NOTE: CHANGES MADE BY THE COURT**

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11 Attorneys for Plaintiff  
12 Nintendo of America Inc.

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15  
16 NINTENDO OF AMERICA INC., a  
17 Washington corporation,  
18 Plaintiff,

Case No. CV 09-4203 JFW (PLAx  
ORDER GRANTING PRELIMINARY  
INJUNCTION

19 v.

Hon. John F. Walter

20 DANIEL MAN TIK CHAN, an  
individual, d/b/a www.dselite.com,  
21 www.thedsdeals.com,  
www.inspiretech.com, Inspire  
22 Technologies, and Inspiretech  
Electronics; and INSPIRE  
23 ELECTRONICS, INC.;  
24 Defendants.

25  
26 1. Plaintiff Nintendo of America Inc. ("NOA") moved for a preliminary  
27 injunction pursuant to Federal Rule of Civil Procedure 65 and 17 U.S.C. §§ 1203  
28 and 502, to enjoin Defendants from importing, marketing, or trafficking in products

1 or devices that are primarily designed, and have only limited commercially  
2 significant purpose other than, to circumvent the technological security measures in  
3 Nintendo's DS video game systems (which include the Nintendo DS, Nintendo DS  
4 Lite, and Nintendo DSi) (collectively, the "Nintendo DS"). The accused devices  
5 are also marketed for use in circumventing the technological security measures of  
6 the Nintendo DS, and include products that are marketed and sold under the brand  
7 names AceKard, AceKard 2 for DSi, DSTT, DSTTi, DS Xtreme, Edge DS, EZ  
8 Flash, EZ Flash Vi, iTouch DS, M3 DS Real, N5 Revolution, ND1 Revolution, R4  
9 DS Revolution, R4DS SDHC, R4i SDHC, and SuperCard DS One. The accused  
10 devices are collectively referred to herein as "Game Copiers."

11 The Court, having considered NOA's Motion and supporting Memorandum  
12 and Declarations, the Complaint, and the other records on file in this matter, and  
13 good cause appearing therefore, hereby **GRANTS** NOA's Motion for Preliminary  
14 Injunction. NOA is likely to succeed in showing that Defendants' importation,  
15 marketing, and sale of Game Copiers infringes NOA's intellectual property rights  
16 and violates the Digital Millennium Copyright Act, 17 U.S.C. §1201 *et seq.*  
17 ("DMCA"). It appears to the Court that the following Preliminary Injunction is  
18 necessary to ensure that NOA does not suffer irreparable harm pending trial of this  
19 action.

## 20 **BACKGROUND**

21 2. NOA is a Washington corporation headquartered in Redmond,  
22 Washington. NOA is a wholly-owned subsidiary of Nintendo Co. Ltd. ("NCL"), a  
23 Japanese company headquartered in Kyoto, Japan (collectively, NOA and NCL are  
24 referred to herein as "Nintendo").

25 3. Defendant Daniel Man Tik Chan (aka Morjn Chan or Morgan Chan) is  
26 an individual who resides in this District. Defendant Chan owns or serves as  
27 President or CEO of Defendant Inspire Electronics, Inc. Defendant Chan also does  
28 business as Inspire Technologies, Inspiretech Electronics, [www.dselite.com](http://www.dselite.com),

1 [www.thedsdeals.com](http://www.thedsdeals.com), and [www.inspiretech.com](http://www.inspiretech.com). Defendant Chan is engaged in  
2 the business of importing, marketing, and trafficking in Game Copiers, and  
3 personally benefits from those sales.

4 4. Defendant Inspire Electronics, Inc. ("Inspire Electronics") is a  
5 corporation with an address of 20819 Currier Rd., Suite 200, Walnut, California.  
6 Inspire Electronics does business in this District and on the Internet as  
7 [www.inspiretech.com](http://www.inspiretech.com), [www.dselite.com](http://www.dselite.com), and [www.thedsdeals.com](http://www.thedsdeals.com), and is engaged  
8 in the business of importing, marketing, and trafficking in, among other things,  
9 Game Copiers.

10 5. The Defendants presently market and traffic in Game Copiers,  
11 including without limitation AceKard, AceKard 2 for DSi, DSTT, DSTTi, Edge  
12 DS, EZ Flash, EZ Flash Vi, iTouch DS, M3 DS Real, N5 Revolution, ND1  
13 Revolution, R4 DS Revolution, R4DS SDHC, R4i SDHC, and SuperCard DS One.

14 6. Each of the Defendants is an agent of the other.

15 7. Defendant Inspire Electronics is the alter ego of Defendant Chan.

16 8. Defendant Chan owns, operates, or otherwise controls Defendant  
17 Inspire Electronics, personally participated in or had the right and ability to direct  
18 and control the wrongful conduct alleged in this Complaint, and derived direct  
19 financial benefit from that wrongful conduct.

20 9. NOA is likely to succeed in showing the following.

21  
22 **NINTENDO AND ITS PRODUCTS**

23 10. Nintendo video game systems (such as the Nintendo DS, Nintendo DS  
24 Lite, Nintendo DSi, Game Boy, and Wii) and Nintendo games and characters (such  
25 as Super Mario Bros., Mario Kart, Pokémon, Donkey Kong, and Zelda) are well-  
26 known and popular.

27 11. The Nintendo DS video game systems are proprietary dual-screen  
28 handheld portable video game systems featuring a clamshell design with two LCD

1 screens inside, the bottom one a touchscreen. Every version of the Nintendo DS  
2 has enjoyed immense popularity. A user plays a video game on the Nintendo DS  
3 by inserting an authorized game card into the Nintendo DS for game play. NOA  
4 does not authorize the copying or downloading of Nintendo DS Games onto  
5 devices, such as Game Copiers, that mimic authorized Nintendo DS Game Cards  
6 and bypass the security measures that protect the Nintendo DS. NOA does not  
7 authorize Nintendo DS Games to be copied onto personal computers or to be  
8 downloaded from personal computers to devices like Game Copiers.

9 12. Nintendo and its authorized licensees have created and published many  
10 popular video games specifically and exclusively for play on Nintendo video game  
11 systems (software games created by Nintendo and its authorized licensees for the  
12 Nintendo DS are collectively referred to herein as "Nintendo DS Games").  
13 Nintendo DS Games can take years and millions of dollars to develop. NOA holds  
14 copyrights in and to Nintendo video game systems and many Nintendo DS Games.

15 **NINTENDO'S EFFORTS TO PROTECT**  
16 **ITS INTELLECTUAL PROPERTY RIGHTS**

17 13. The popularity of the Nintendo DS has made Nintendo the victim of  
18 intellectual property pirates, who benefit from Nintendo's innovation and  
19 investment by making unauthorized copies of Nintendo DS Games, or by creating  
20 (and profiting from) the means by which others can play pirated Nintendo DS  
21 Games on Nintendo video game systems. Game Copiers are one of the most  
22 popular ways to play pirated Nintendo DS Games on the Nintendo DS.

23 14. Illegal copying of video game software is an international problem of  
24 enormous proportion and great financial consequence for Nintendo. Nintendo has  
25 taken many steps to halt the illegal copying, marketing, sale, and distribution of  
26 Nintendo DS Games, including registration of the intellectual property rights in and  
27 to its video game systems and software, legal actions to stop individuals and  
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1 companies from trafficking in Game Copiers, and security measures built into the  
2 video game systems themselves.

3 15. As to the Nintendo DS, the security employed by Nintendo includes  
4 both design-based and technological measures. Nintendo designed the Nintendo  
5 DS so that it will play only game cards that have a particular shape, with unique  
6 external geometry and electrical connections. The technological measures  
7 contained in the Nintendo DS implement a process by which commands and data  
8 are exchanged between the Nintendo DS and the game card that is inserted into the  
9 Nintendo DS for play. During the operation of the Nintendo DS security system  
10 and the game play that occurs if the security measures are passed, multiple  
11 copyrighted programs are repeatedly accessed and copied.

12 16. The technological measures of the Nintendo DS ensure that even if a  
13 user inserts into the Nintendo DS a game card that fits perfectly into the uniquely-  
14 shaped Nintendo DS card slot, unless the game card also has the software necessary  
15 to pass (or to circumvent) the Nintendo DS technological security measures, the  
16 game card cannot be played on the DS.

17  
18 **DEFENDANTS' INFRINGING ACTIVITIES**

19 17. The Game Copiers that Defendants market and traffic in enable those  
20 who use them to download games to portable memory storage devices and to  
21 circumvent the technological measures employed by Nintendo to control access to  
22 its copyrighted works and to protect its rights as a copyright owner.

23 18. Game Copiers typically employ (1) a game card (referred to herein as  
24 the "Game Copier Card") that is substantially the same shape, and has substantially  
25 the same electrical connection configuration, as Nintendo's proprietary Nintendo  
26 DS Game Cards, so that a Game Copier Card fits perfectly in the Nintendo DS and  
27 resembles an authorized Nintendo DS Game Card; and (2) a memory device that  
28

1 can hold multiple pirated Nintendo DS Games and that is inserted into the Game  
2 Copier Card for game play.

3 19. When Game Copiers are used as Defendants instruct, they bypass  
4 Nintendo's technological security measures and gain the same access to the  
5 Nintendo DS, and to certain of NOA's copyrighted programs, as an authorized  
6 Nintendo DS Game Card would have.

7 20. Because Game Copier cards are specifically designed to accommodate  
8 portable memory devices that hold enormous amounts of data, hundreds of pirated  
9 games may be downloaded onto just one Game Copier card, enabling the user to  
10 play any of these pirated games on a Nintendo DS.

11 21. Nintendo has never authorized any Game Copiers, and the specific  
12 brands of Game Copiers sold by Defendants were not authorized by Nintendo or on  
13 its behalf.

#### 14 **CONCLUSIONS OF LAW**

15 22. This Court has subject matter jurisdiction over the claims in this action  
16 and personal jurisdiction over the parties, and venue is proper in this Court.

17 23. The Nintendo DS security system is a technological measure that  
18 effectively controls access to a copyrighted work under sections 1201(a) and  
19 1201(b) of the DMCA, 17 U.S.C. 1201 et seq. The Nintendo DS security system is  
20 a process that includes repeated transfers of information to gain access to the IPL  
21 and Boot Code programs, and to gain access to any copyrighted Nintendo DS Game  
22 for play on the Nintendo DS. The technological measures in the Nintendo DS  
23 control access to NOA's copyrighted works.

24 24. Game Copiers defeat the control over access to NOA's copyrighted  
25 works that is exercised by these technological measures. Game Copiers are  
26 designed to precisely mimic the shape and electrical connections of an authorized  
27 Nintendo DS Game Card. Game Copiers were designed for the primary purpose of  
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1 bypassing the technological measures of the Nintendo DS, and have only limited  
2 commercially significant purpose other than to achieve such circumvention.

3 25. Absent an injunction NOA will suffer irreparable injury. The DMCA  
4 violations and copyright infringement induced by Defendants' Game Copiers cause  
5 NOA great harm. Just one Game Copier enables the use of portable memory with  
6 storage capacities that allow the Game Copier to act as a vehicle to play hundreds  
7 of copyrighted Nintendo DS games. The sale of just a single Game Copier enables  
8 the user of that device to engage in infringement of NOA's copyrighted software on  
9 a massive scale.

10 26. Game Copiers harm NOA's goodwill, detract from NOA's consumer  
11 base, and enable widespread illegal and undetectable copying. For a variety of  
12 reasons, including the scope and the underground nature of the intellectual property  
13 infringement involved, damages are an inadequate remedy.

14 27. Unless Defendants' infringement is immediately enjoined, others will  
15 be encouraged to import, market, and traffic in Game Copiers, which will accelerate  
16 and exacerbate the harm to Nintendo's intellectual property rights, the damage to  
17 Nintendo's position in the marketplace, and the harm to Nintendo's reputation.

18 28. NOA therefore has shown a combination of probable success on the  
19 merits and the possibility of irreparable injury if relief is not granted; or the  
20 existence of serious questions going to the merits and that the balance of hardships  
21 tips sharply in its favor.

22 **PRELIMINARY INJUNCTION**

23 IT IS HEREBY ORDERED that pending trial in this action, Defendants,  
24 their officers, agents, servants, employees, attorneys, any persons involved in the  
25 operation of the websites <http://www.TheDSDeals.com>, <http://www.DSElite.com>,  
26 and <http://www.inspiretech.com>, and any other persons acting in active concert or  
27 participation with any of them who receive actual notice of this Preliminary  
28 Injunction, be, and hereby are, immediately enjoined and restrained from:



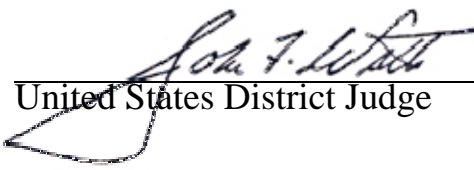
- 1 a) importing, manufacturing, offering to the public, providing, selling,  
2 using, or otherwise trafficking in the following products: AceKard,  
3 AceKard 2 for DSi, DSTT, DSTTi, Edge DS, EZ Flash, EZ Flash Vi,  
4 iTouch DS, M3 DS Real, N5 Revolution, ND1 Revolution, R4 DS  
5 Revolution, R4DS SDHC, R4i SDHC, and SuperCard DS One;
- 6 b) importing, manufacturing, offering to the public, providing, selling  
7 using or otherwise trafficking in any technology, product, service,  
8 device, component or part thereof (including Game Copiers), that (i) is  
9 primarily designed or produced to circumvent a technological measure  
10 that effectively protects NOA's rights as a copyright owner, or controls  
11 access to any work to which NOA holds a registered copyright; or (ii)  
12 is marketed by Defendants or others acting in concert with them for use  
13 in circumventing a technological measure that effectively protects  
14 NOA's rights as a copyright owner, or controls access to any work to  
15 which NOA holds a registered copyright;
- 16 c) exporting, shipping, transferring, returning, destroying, concealing or  
17 otherwise moving, storing or disposing of any Game Copier, and
- 18 d) exporting, transferring, destroying, deleting, modifying, concealing, or  
19 spoliating any Document or record relating to Defendants' importation,  
20 sale, marketing, or other trafficking in Game Copiers ("Document"  
21 includes papers, supplier names and addresses, shipment records,  
22 books of accounts, receipts, specifications, packaging and containers,  
23 and other hard copy business records as well as all electronic records  
24 such as computer tapes, computer disks, emails, and other electronic  
25 data). Defendants must immediately suspend any automated processes  
26 or document retention protocols that would result in the loss or  
27 destruction of any such Document.  
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IT IS HEREBY ORDERED that NOA shall post a bond in the amount of \$50,000 to secure payment of any damages sustained by Defendants if they are later found to have been wrongfully enjoined.

DATED this 21st day of July, 2009.

  
United States District Judge