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Victory declared in the toy war

Online retail giant drops lawsuit against artists

*By Iain Aitch**31 January 2000*

Online activists are patting themselves on the back after the success last week in halting legal action taken by the Internet toy retailer eToys against the electronic artists etoy. In what one activist described as a victory for "minds over money", eToys has dropped its case against the Zurich-based artist and agreed to pay their legal costs, which are estimated to around \$50,000.

eToys had launched the case against etoy for trademark infringement, dilution and unfair competition after receiving complaints from customers about the graphic language they were subjected to when mis-typing etoys.com and ending up at the artists' etoy.com domain.

In their defence, etoy stated that there had only been one four-letter word on the site and that they had existed at their domain long before the inception of eToys.

But a California Superior Court judge granted an injunction against the artists on 29 November and etoy.com was shut down. eToys had previously made attempts to settle the case peacefully by offering etoy upwards of \$500,000 in cash and shares for their domain, but the artists felt that it was an integral part of their identity and could not be given up. etoy didn't take the judge's decision lying down and drummed up a huge amount of support and sympathetic media reports, with the aid of established online activists such as the prankster bankrolling service RTMark.

etoy also decided that if electronic commerce wanted to take on electronic art, then it should fight back with art. This led to the creation of toywar.com – a virtual battlefield where potter activists underwent rigorous mental tests before being allowed to assign themselves a combat identity in the shape of Lego characters which represented soldiers, spies, lawyers and even DJs.

The battlefield contained links to information and reports about the case and allowed soldiers to earn points by firing "toybombs" at the enemy. These bombs took the form of e-mail to eToys staff and investors urging them to drop the case.

On 29 December – after a huge amount of adverse media coverage and a 10-day virtual sit-in which prevented many shoppers from accessing their site – eToys stated that it was moving away from the case.

Since the case began, the eToys share price had plummeted from \$67 to \$20 and activists claim this fall was directly linked to the unpopularity of the legal action.

After a period of silence, etoy felt that eToys may have been bluffing about withdrawing the case just to put a halt to the publicity and so decided to fire an electronic shot across the bows. On 24 January they ordered the assembled toy army "fire" and activists sent over 1,500 "toybombs" to eToys employees. The case was formally dropped the next day after etoy had sent a cheekily-worded e-mail advising eToys that this was their "last chance to avoid toy.harbortm".

etoy has celebrated the end of this domain-name war by erecting a monument on the electronic battlefield. Toywar soldiers will also be rewarded with etoy shares. "Before the Toywar action we had about 150 shareholders," says etoy spokesman Zai. "Now we have 1,400 more because we will reward all the Toywar agents with etoy shares. Ten per cent of the whole etoy corporation will be owned by the Toywar soldiers."

Even after dropping the case, eToys cannot be sure that the trouble is all over. As a company that trades exclusively online it will no doubt be dogged by potential customers stumbling upon unfavourable reports about it in a search string, or ending up at its next-door neighbour by mistake.

"We are still their closest neighbours," says Zai. "We will not be more friendly than we were before, so we may have to provoke a little bit more. We will at least have to celebrate the victory. About 20,000 people a day who forget to type the 's' end up on the wrong site and they will see what the company they are looking for was doing."



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