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Wed., Jan. 26, 2000

A Tale of Two eToys

What happens when an e-commerce giant takes on a group of Swiss cyber-artists in court? Internet chaos

FROM WEDNESDAY, JANUARY 26, 2000

The holiday spirit is all well and good. When it comes to protecting their trademarks, however, e-commerce companies are prepared to be as Grinch-like as they have to be. That was the lesson we learned this holiday season when toy retailing giant [eToys.com](#) got wind of a site called etoy.com. The lawyers at eToys.com decided etoy.com infringed on their trademark, and they took their complaint to the courts.

Never mind that etoy.com wasn't a competitor but a small, noncommercial site operated by a group of artists in Switzerland. And never mind that etoy.com had their domain first.

In early December the lawyers from eToys filed suit against etoy in Los Angeles Superior Court to ban its use of that domain as a trademark infringement. The court agreed, and they were granted a temporary injunction. Needless to say the members of etoy, whose work is characterized by a witty, anti-corporate subversiveness, were not pleased, especially considering that they've been using the etoy.com domain name since 1995, years before eToys was a twinkle in a venture capitalist's eye. They were forced to take down their web site or face fines of up to \$10,000 a day.

Etoy didn't have a lot of money or lawyers, but they knew how to handle the press: As pop artists, they use the media as their medium. They held a press conference at the Museum of Modern Art in New York to protest the situation. "This case merely demonstrates who has the right to conduct business, operate, express themselves and exist in cyberspace," said etoy's Suzanne Meszoly. The group set up a [temporary web site](#) at a different address. Meanwhile, eToys was becoming [the third most visited e-commerce site on the Web](#), according to Media Metrix, behind only Amazon and eBay.

It was a classic David and Goliath scenario, and public opinion on the Internet heavily favored the former. Internet civil rights activists such as John Perry Barlow rallied to etoy's cause. The anti-corporate mischief-makers [rtmark](#) encouraged surfers to boycott eToys, and even to register other domain names similar to eToys.com. Etoy filed a countersuit, and set up an online game parodying the situation entitled [TOYWAR](#). Meanwhile, eToys offered the artists of etoy as much as \$400,000 for their domain name,

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and possibly significantly more, but they declined to sell. The suit dragged on through December and into January.

Yesterday it ended in victory for etoy, when eToys decided to drop its lawsuit. The company acknowledged that bad publicity and the show of popular support for etoy played a role; eToys has also agreed to pay the group's legal fees, up to \$40,000, and other expenses incurred during the legal struggle. "We are pleased with the outcome," a spokesman for eToys told the New York Times. "We heard from a lot of people and they overwhelmingly urged us to figure out a way to coexist with etoy, and that's what we're going to try to do."

Although this round went to etoy, it's only a partial victory. By settling, eToys doesn't forfeit the right to press its lawsuit again. More importantly, etoy was never given the opportunity to prove its case in court, and a clear legal precedent in such cases has yet to be established. Still, the group feels they've made their point. "Things on the Internet don't go away," said etoy in a statement. "Brick and mortar corporations do this sort of thing and then bury it — but this will always be there when you search for information on eToys."

— LEV GROSSMAN

TALK ABOUT IT

Corey Stamp: In this case I would definately agree with etoy for their efforts to keep their domain name and not give into the "bullying" effect the others have talked about. There have been cases, though, that greedy people take advantage of a similar situation. I read a couple of weeks ago about a wannabe entrepreneur that bought about 100 domain names of popular professional athletes who didn't yet have their own home pages (For example, JoeSchmoe.com). When some of these athletes later tried to create a web page for their fans under their own name, they were denied. One of them contacted this guy and he told the athlete that he would sell him the use of his own name for something like \$10,000. I thought that this was ridiculous and this guy should not have been able to do this, even thoguh it was perfectly legal. What do you think. How can something like this be prevented?

Titina Follero: In response to what I said previously, it has come to my realization that etoy's Web site

was up and running before Etoys had their web-site. Therefore, my whole opinion

changes. The lawsuit on Etoys part was so ridiculous that I can't even find the right

words to explain it. I am with the majority here,

who have commented. I think that I was

hoping for a logical reason to exist for eToys lawsuit against etoy. But the truth of the

matter is that there wasn't one.

Jennifer Mar-Elia: E-toy? E-Toys! Whatever. Our society is so screwed up that something so minor, like a domain name can result in a lawsuit. After reading this article I felt that this lawsuit was for publicity. For exposure, so that people can log on and know the name;E-Toys. Each company serves a different purpose and provides a different service and product. So what is all the fuss about??? To avoid problems like this to occur again, I suggest that maybe domain names should possibly be patented, registered, or whatever needs to be done to not have these feuds over an "s."

Maria Barraza: My opinion about this whole thing is the same as most of the others. This whole lawsuit is a just another example of sue-happy corporate America. Obviously, etoy had nothing to do with jeopardizing the toy company's business, so it would have done no harm. Yet tax-payers' money was still spent on handling this case.

Mike Bifalco:

If I was one of the swedish artists I would have taken the money and stuck with art. Now you don't have the \$400,000 or possibly MORE and all you have is a WEBSITE. YOU MUST BE BLONDES!!!!

Jonathan Jay: this issue is particularly interesting to me because i own xtime.org, and there is a company located in california that owns xtime.com & net!

it sure would be a bummer if they tried to steal xtime.org from me, or press in court to deny me access to my own website (that i had before them!)

i am glad the artists @ etoy.com prevailed.

YOUR NAME:

YOUR COMMENTS: