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The Fine Art of Compromise

EToys Seeks Peace in Trademark Battle With Artists' Web Site

By Richard Leiby

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After a bruising battle with Internet activists who portrayed it as an enemy of art and free speech, online retailer eToys.com is suing for peace. It offered this week to drop its trademark-protection case against Etoy.com, an award-winning European artists' collective, which lost its Web site because of the toy seller's action.

The case had sparked a boycott against eToys, including anarchist-backed calls for "digital riots" and "virtual sit-ins" aimed at crashing the retailer's computer servers. Though the company reported banner Christmas sales--and no technical problems--a deluge of angry mail and scores of Internet protest sites lambasted eToys as a Scrooge at the height of the holiday shopping season.

"We've received over the last several weeks a lot of e-mails and letters from members of the arts community and Internet community. They've overwhelmingly urged us to find a way to peacefully coexist with the Etoy group, and we've decided to do that," said Ken Ross, an eToys spokesman.

In conciliatory faxes to the artists' attorney, an eToys lawyer pledged to "take all necessary steps" to allow Etoy to reestablish its domain, [www.etoys.com](#), which has been shut down by court order since Nov. 29.

Active since 1994 and now based in Zurich, Etoy's multimedia artists--they call themselves "human Net agents"--oppose the commercialization of the Internet and devote themselves to tweaking corporate culture. They registered their site two years before the Santa Monica, Calif., toy company went online, but they did

not obtain a U.S. trademark.

In Superior Court in Los Angeles, eToys successfully argued that its trademark and brand name were being tarnished by the "unlawful" activities of the artists, whose Web projects sometimes include profanity and nudity. It won a temporary injunction by citing the "danger" to children who might mistakenly log on to the www.etoys.com site by failing to type an "s" in the Web address. EToys also claimed it could lose customers because of such confusion.

Bruce A. Wessel, an attorney for eToys, proposed that both parties drop their legal actions--the Etoy group had filed a counterclaim--so they "may once again coexist as good neighbors on the Internet." EToys offered to pay Etoy up to \$25,000 to cover its attorneys' fees.

The proposed settlement included a polite request--but not a precondition--that the artists consider placing any "profanity, nudity and violence" on another site. Etoy's attorney, Chris Truax, said any effort by the toy seller to dictate Etoy content was out of the question.

"Etoy is a well-respected art group in Europe," he said. "EToys just doesn't get their art. EToys has to accept that Etoy has a valuable social contribution to make, and that they have every right to be online."

An Etoy spokesman in Zurich, 26-year-old "Agent Zai," yesterday called on the Web retailer to apologize and take immediate action to restore the art group's domain registration at Network Solutions Inc. in Herndon.

"Our Web site was down for a month, whole links are gone, about 70 e-mail addresses were unreachable--and they think they can just turn the clock back and say there was a little misunderstanding?" Zai asked. "Our domain is still down, and that's what counts for us." (A temporary domain, www.toywar.com, provides updates on the case.)

The dispute was closely watched by lawyers who work on cyberspace cases, but not necessarily because of its free-speech implications. The ability of a California judge to shut down a global art enterprise raised questions about who has ultimate jurisdiction over the Internet, said Jeff Schwartz, a Washington intellectual-property lawyer. "This ought to be

addressed by a higher authority, to provide more uniformity in the way we're going to deal with the Internet," he said.

Connie Ellerbach, a trademark lawyer in Silicon Valley, said that although eToys had American law on its side, the company lost in the court of public opinion: "They see it as the prudent course of action to back down."

Early in the dispute, eToys offered more than \$500,000 for the www.etoys.com domain, but the artists refused to sell. They later asked for \$1 million and then \$20 million, but the artists insisted money wasn't an important issue. Etoy just wanted respect, Zai said, and equal standing with the e-tail giants that now dominate the Web.

"More important than the court battle was how the community reacted to this fight," he said. "The company lives because these people were fighting for us."

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