

## EToys vs. Etoy: A Clash of Commerce and Art

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In the frantic battle for holiday shopping dollars, the upstart Web retailer eToys.com has emerged as one of the winners of the Santa Wars. But in an equally fractious corner of cyberspace, the company is facing a boycott by critics who portray it as a Scrooge whose lawyers forced a small, Internet-based artists' collective to shut down its award-winning Web site.

EToys, which has a nearly \$6 billion stock market valuation, went to court in Los Angeles last month after failing to persuade Etoy, a European group that has created anti-corporate art projects since 1994, to sell its Internet domain name — despite an offer of more than \$500,000 in cash and stock. The toy company's lawyers described the [www.etoys.com](http://www.etoys.com) site as not only pornographic and profane but confusing to customers who mistakenly logged on there while trying to visit [www.etoys.com](http://www.etoys.com) during "the peak of the holiday shopping season."

To the toy company, the case wasn't a matter of free speech, but of protecting a trademark. "Our intent is not to debate artistic merit here. Our intent is to mitigate the confusion in the marketplace," said Ken Ross, an eToys.com spokesman.

On Nov. 29, Superior Court Judge John B. Shook issued a preliminary injunction shutting down the artists' site. The disappearance of the [www.etoys.com](http://www.etoys.com) site has provoked a furor on the Web, where anarchists, agents provocateurs and other foes of commercialization are often at full boil anyway.

Some fans of the Etoy site have organized a boycott of the toy seller. As of yesterday, about 20 anti-eToys sites had been put up on the Web, and hundreds of angry e-mails had been fired off to executives of the Santa Monica, Calif.-based company.

"I will not shop with eToys, will sell any mutual funds I own which invest in eToys, and will urge my family and friends to do likewise, until you drop your lawsuit," fumed one typical e-mailer, Richard Zach, a graduate student at the University of California at Berkeley. A devoted online shopper, Zach, 29, said in an interview that he had intended to spend about \$100 on Christmas gifts at eToys until he heard about the injunction.

"The Etoy injunction is a travesty, and the folks at eToys ought to be ashamed of themselves for misusing the law like this," said Shari Steele, a spokeswoman for the Electronic Frontier Foundation, a cyberspace civil liberties group. "The artists at Etoy were not competing with eToys and had their domain name registered years before eToys registered their own."

No one disputes that. Unlike other high-profile Internet legal cases, the Etoy artists are not being portrayed as "cybersquatters" — people who snap up valuable domain names with no intention but to turn a quick profit. Etoy registered its site in 1995; eToys got its site in 1997.

But the toy e-tailer also got its U.S. trademark that year, and that forms the basis of its legal argument. EToys, which ranks in the top four e-commerce sites on the Web, contends that Etoy's site is "confusingly similar" and therefore harms its trademark.

Etoy's lawyers have appealed the injunction, saying the artists have first claim to the trademark because they were using it first, even though they didn't formally seek a trademark until later. A hearing is set for Dec. 27. Ross said his company tried to "amicably resolve" the domain dispute and is open to further negotiation.

Officials at eToys will not directly comment on the boycott. "We are 100 percent focused 24 hours a day, seven days a week on delivering a great holiday experience for our customers," Ross said.

He faxed a reporter copies of what he called "upsetting" pages from an old Etoy site, saying some eToys customers had complained about seeing images that included a nude man in sadomasochism garb dangling below the slogan "Stop Censorship" and a photo of the Oklahoma City bomb site accompanied by the headline "Such work needs a lot of training."

"It's not our intent in any way, shape or form to comment on what's art and what's not art, but I really believe that if the general public were to see this stuff the vast majority would find it offensive," Ross said.

An Etoy spokesman who gave his name as "Agent Zai," based in Zurich, said the images were out of context. "This is a smear campaign against culture!" Zai declared.

He and other members of the collective travel from country to country, living in 40-foot-long, 10-ton freight containers and planning their next multimedia project. They once described themselves on their site as "7 human net-agents exploring high pressure teamwork in uncontrollable environments, permanently processing borderline information."

In 1996, the group's "Hijack Project" – which commandeered and trapped unsuspecting users on its Web site – won the Prix Arts Electronica, an Austrian award worth \$7,375. Etoy also was briefly investigated by the CIA – a badge of honor for Etoy representatives.

Right now, Etoy's avant garde presentations can be sampled at <http://146.228.204.72:8080> – a substitute for the [www.etoys.com](http://www.etoys.com) site – or at sympathetic sites such as [www.toywar.com](http://www.toywar.com) or [www.eviltoy.com](http://www.eviltoy.com).

As part of its mission to parody the increasingly corporate culture of the Internet, Etoy offered itself as a public company last year, selling "shares" of its Internet art. Among its advisers is performance artist Laurie Anderson; among its "investors" are U.S. art galleries. But Etoy is not registered with the U.S. Securities and Exchange Commission, a fact noted by Judge Shook, who also ordered Etoy to stop selling "stock" in the United States.

Karin Spaink of Amsterdam, who helped judge the '96 art competition that honored Etoy, called Shook's order troubling in its reach. "It does make you wonder about the influence of U.S. courts and how many other domains might be closed down, even though they might be legitimate," she said.

Those who have participated in the Etoy art experience are being asked to vote on its future. Agent Zai said the board of Etoy is seeking at least \$1 million for its domain name, but any sale would have to be approved by the 130 shareholders.

Zai believes the controversy has increased the value of Etoy's shares. "The lawsuit has turned into a huge project," he said. "It's a continuation of the art. Before, no one was interested in voting on Etoy projects, but now that someone is offering a lot of money, everyone is interested."