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Etoy Wants Trademark 'Closure'

Reuters

A European Internet artists group called etoy -- with all lower-case letters -- said on Thursday it has filed a complaint in a U.S. court against online toy retailer eToys Inc. alleging trademark infringement.

The action, filed in the U.S. District Court of Southern California in San Diego, is the latest shot fired between etoy, an international artist's collective whose medium is the Internet, and the U.S.-based online toy retailer.

Etoy insists eToys Inc., which uses a capital T and ends its name in an s, has muscled in onto the collective's turf on the Internet. The retailer actually succeeded in shutting down the artist group's site during the 1999 holiday shopping season.

The complaint, a copy of which was made available to Reuters, alleges eToys, with its similar name, has used a close imitation of the registered 'etoy' mark to sell its products and advertise its services on the Internet.

"Such use is likely to cause consumer confusion, mistake or deception and infringes on etoy Corporation's rights in its registered trademark 'etoy'," said the complaint by the artists' group, whose motto is "leaving reality behind."

Etoy, which may be the world's only artists' collective with a business plan, alleges that because it was around before eToys, the toy retailer should not be allowed to use a similar name that could be confused with its own.

"Etoy Corp was actively online and winning international awards for its work in 1996 before eToys, Inc. was even formed," the complaint alleges.

Etoy's lawyer Chris Truax, who filed the complaint on Wednesday, told Reuters in a telephone interview that "etoy is essentially staking out their territory for everyone to see." Truax, who specializes in intellectual property law, called it a "defensive move. It is not a question of revenge. It is a question of closure," Truax said.

The suit breaks a cease-fire which followed what is known in Internet lore as the "Toywar." In 1999 the retailer briefly succeeded in shutting down the etoy artists' Web site, arguing that its customers might be offended by the site, which contained what the retailer called profane language and pornography.

The artists group currently features moving cargo containers on its Web site www.etoys.com.

After the site was shut down, etoy supporters rallied to the artists' defense, threatening to block the Web retailer's site by bombarding it with bogus orders.

The battle ended in a sort of truce between the artists and the toy retailer. The latest lawsuit breaks that truce, and etoy's filing of legal opposition to eToys trademark registration with the U.S. patent office on Jan. 10.

An artist who calls himself etoy.ZAI, spokesman and "Chief Executive" of the artists' group based in Zurich, said it had "tried to deal with eToys for several months" to no avail before breaking the truce. "We have to resolve this problem once and for all," he told Reuters.

The online retailer (ETYS) is now retrenching its business, with its shares only a fraction of their former value. The shares closed at 5/32 on Thursday, down 1/32 or 9 percent on the day, and sharply below their high of \$86 in October 1999.

A spokesman for the retailer in California said the company had no comment about the lawsuit.

Despite worries about similar names, in the real world it is hard to confuse etoy, whose members sport weird neon orange garb and issue directives in a neo-business jargon, with employees for a retail company.

The artist group's backers include Japanese venture capitalist Joichi Ito, who is also one of the group's "shareholders." Although the shares are not listed on any public exchange and are not backed by any tangible assets, the collective "went public" in 1998. Among its other investors were former Austrian Chancellor Viktor Klima, who bought the ceremonial first share.

"This is a 100 percent, serious lawsuit. Etoy is a real entity, and is highly respected internationally," said Truax.

"They are a real corporation. They are just providing a different product than most corporations. The people participating in it certainly seem to be getting their money's worth. They are getting their entertainment quota," he said.