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Etoy Balks at Olive Branch

by Steve Kettmann

BERLIN -- A spokesman for etoy dismissed a peace offer Thursday from toy giant eToys as a "PR move," even as an eToys spokesman said his company was faxing a new, stronger statement.

The statement was expected to include an offer by eToys to pick up etoy's legal expenses for the court battle, which the etoy spokesman, calling himself Zai, puts at more than US\$50,000.

Still in doubt is whether eToys' offer to drop its lawsuit over alleged trademark infringement came with any conditions. Etoy and its attorney, Chris Truax, said it came with a demand that etoy move any sensitive material to other Web sites. Ken Ross, the eToys' spokesman, says that's not right.

"We are sending them a note absolutely clarifying that there is no link," Ross told Wired News. "It's absolutely not a condition and we are clarifying that in a statement."

Meanwhile, Zai said the Zurich-based Internet artists plan to mark the New Year by launching an online game that will mock eToys and the domain-name fight. The game will offer a playful take on the highly public struggle, but will also provide links that could be potentially embarrassing to eToys.

In particular, the game will call attention to several Nazi-themed toys that are now available at the eToys Web site.

"Maybe you heard about this Nazi soldier they sell on their Web site," Zai said, referring to a Waffen-SS doll called "Wilhelm." "It's a little puppet. They also sell one of a Wehrmacht soldier. This is just an example. We don't have time to search the whole eToys universe to see what bad things they are doing. That's what they did to us. They always knew we weren't bad guys, they just thought that too many people were going to our site."

Etoy has received widespread support in its court fight, and it appears now to be entering a phase of newfound confidence, prompting it to strike back at eToys, the top online toy retailer. It's in some ways a playful form of striking back, but could also include further legal action.

"They were totally aggressive, but we could always keep a certain fun in the whole thing," Zai said. "We were laughing a lot. Our attorney was wondering if we couldn't sleep at night, but we never stopped having fun. We said, 'OK, it's totally ugly what you're doing, but you cannot knock us down, we keep walking.'"

To that end, the etoy artists spent as much time as they could in recent weeks on this online game, which will be open only to those invited by etoy or other game participants -- and closed to anyone associated with eToys. "We have received more than 1,000 requests already to enter the game," Zai said.

"It's really very visual, this battlefield on one huge screen. It's basically a community game; it's not a computer game in a PC sense. Everybody has a character and it's a little toy. It's our way to express that what we see as the battlefield isn't just war in the common sense, it's not just aggressive."

Music will also be included. In fact, etoy plans to release a CD in the coming weeks that will both call attention to its fight with eToys and help raise money for a legal defense fund to offset what the group says is more than \$50,000 in legal costs so far.

"For our music project, we asked friends and musicians to produce lullabies," Zai said. "At the moment we have 20 or 30 lullabies. We just finished the first CD. It's called Lullabies for Toywar.com. People will laugh, and it's a good way to collect money."

"Negativland will be on there. They are a real legend. They contributed a very nice song called 'Clowns and Ballerinas,' with a little girl singing about clowns and lollipops. It's just totally insane."

Potentially more controversial will be a game of "spies," conveying information etoy members consider damaging to eToys. EToys does in fact sell toy World War II German soldiers, identified either as "Wehrmacht" or "Waffen-SS" depending on which branch of service it represents.

Their uniforms are notably free of any Nazi insignia, at least based on the picture shown at the Web site. But as etoy well knows, certain topics are guaranteed to generate firestorms of controversy. To imply that selling historically detailed replicas of German soldiers somehow advocates Nazism may be a bit of a stretch, however.

"They cannot avoid something like that, because it is our right to document all these activities," Zai said. "We are very careful that we don't use illegal things. If someone places a link to embarrassing things, that's our right to use that. We can say we will remove the word 'fuck' if you remove your Nazi toys."

He protested eToys' decision to take its case to the media. Ironically, etoy had found success in its own media campaign but had, in recent

days, followed Truax's advice and toned down that aspect of its defense.

"It's obvious that it's a PR move," Zai said. "They saw the damage being done to their company. Before we even really had a chance to think about the things they suggested, they went to the press, and that's not a good way to find an agreement.

"They sent us a statement and at the same time they were calling everyone. This was not a good move. That's the first sign that there is something to hide. In our eyes this is a manipulation, or they would carefully hold back this information from the press and try to find a solution. If they really feel sorry about what they did, they can apologize."