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A Tale of Two eToys

By Lev Grossman

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

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, 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

Here is what people are saying:

At 12:59 PM Mads Ny Larsen said:

I am as many of the people who read this article or followed the trial, very very happy in the out come.

It's awful to see all these big companies take over commands which they never should have happened, I mean the big companies with all their money and lack of moral, come a bye the smaller companies out or force them to quiet.... Then suddenly etoy.com show their face and stand up to the bullies, nice.... I have been a good year, but not for eToys and Microsoft, + all the other "bad" companies.

We shall stand up to there on moral attacks and fight back, it's us that control the net, us people NOT the companies, the net have never been attended to be commercial wrack hole, it's so hard to find real content in the net today, so we need to stand aside.....

At 12:54 PM m bank said:

Didn't Etoys.com go out of business. Serves them right!

At 2:21 AM c fife said:

No etoys did not go out of business. I think it is a good sign that some of the "Big corporations" are starting to use their moral comman sence. It shows that at least someone has opened their eyes and maybe more will follow.

At 2:18 AM Rusty said:

I pray for the financial ruin of All Corporations who exist on GREED, and exploitation. I will never buy anything from eToys, and will boycott them actively everywhere possible...!

Redemption for pure corporate greed is not possible, just exinction...! Peace... :-)