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About Face: EToys Seeks Peaceful Co-existence

By Miguel Helft

Online toy retailer drops suit, says Swiss artists can keep domain name. In an apparent victory for artists and Internet free-speech advocates, online retailer eToys said Wednesday it offered to drop a trademark lawsuit that had forced a European group of conceptual artists to forego the usage of etoy.com, the group's Web site-cum-artwork.

The suit had sparked a flurry of online and offline protests from enraged artist groups and free speech advocates who deluged eToys, the Santa Monica, Calif.-based toy retailer, with complaints. The protests in support of etoy included a virtual sit-in, as well as press conferences at New York's Museum of Modern Art and on the footsteps of a Los Angeles courthouse.

"The e-mails we got overwhelmingly urged us to find a way to co-exist," said Ken Ross, a spokesman for eToys. "The opinions from the art community and from Internet devotees were heartfelt. We have taken those sentiments to heart."

Ross said eToys faxed a letter to Chris Truax, etoy's San Diego-based lawyer, offering to drop the suit. EToys had received a "substantial" number of e-mails and calls to protest its action, Ross said.

Truax said the fax from eToys was encouraging, but that not all details of the settlement proposal were clear. "If they want to drop the suit without any preconditions, I would applaud that as a good step," Truax said.

Ross said the letter contained no preconditions, but included a "request" that etoy move some of the material that was considered "inappropriate" for kids to some of its other Web sites. "This is a request," Ross said. "It is part of our good faith efforts to be good neighbors."

Initially, eToys said it had filed the suit after several customers said they stumbled upon the etoy site and were offended by some of its material, which included pictures of a woman's breast pierced with dozens of needles and a naked man tied upside down.

One of the issues that infuriated Internet activists is the fact that etoy artists had been displaying their cyber-works at etoy.com since 1995, more than a year before eToys launched its online store. However,

eToys bought the right to the eToys trademark from a company that owned the name since 1990. On Nov. 29, a Los Angeles County Superior Court Judge granted eToys a preliminary injunction that barred the artists group from continuing to use their site.

The artists' group complained that the site was their artwork. Part of the group's intent is to use their site as cyber-art that lampoons the corporate landscape. The group found itself embroiled in the very world it sought to parody: The site includes an Etoy share offered for sale as a piece of art, which EToys' legal filing describes as "an effort to hype the sale of shares of Etoy stock."

A representative of etoy who identified himself as Zai said he hoped the about-face from eToys would be a good lesson for other companies. "They didn't do enough research to find out that we can resist," Zai said, in a telephone interview from Switzerland.

Truax suggested he would ask that eToys reimburse etoy for the costs incurred in the litigation.