

eToy Story

eToys.com, the US internet toy retailer sued a Swiss art group with the domain name etoy.com for trade mark infringement. But etoy.com had its domain name first. After a long battle in the courts and on the web, the case has been dropped.

A long running battle between US based eToys, with the domain name etoys.com and the Swiss based etoy, with the domain name etoy.com, appears to have reached a conclusion.

eToys, the on-line toy retailer which is one of the largest e-commerce companies in the world, went to court in the US to force etoy to hand over their domain name to the toy retailer. On the face of it, it may sound like a classic case of cybersquatting, the practice of registering a name in the knowledge that someone else will want it, usually with the intention of holding them to ransom.

However, etoy.com was registered as a domain name some two years before the US company registered its domain name. The Swiss group of a dozen or so members, create what have been described as anti-corporate internet art projects. They once won a prestigious electronic arts award for a work which fooled search engines into sending visitors to their site.

etoy were approached by eToys with offers to sell the name for over \$500,000. etoy declined and eToys took them to court instead. eToys said it was concerned with what it described as "offensive material" at the etoy site which would upset its customers if they entered the incorrect URL. One example pointed to was a photo of the Oklahoma City bomb site accompanied by the headline, 'Such work needs a lot of training.' etoy said this example was out of context – site visitors who understood what etoy represented would not take it seriously.

eToys accused etoy of trade mark infringement, trade mark dilution and unfair competition. The US company had registered a trade mark in the US in 1997. etoy counterclaimed, arguing that etoy, not eToys, should be entitled to have a trade mark in the US and that the eToys mark should be invalid because etoy were using the name first.

On 29th November 1999, a Los Angeles court granted the US company an injunction which ordered etoy to stop using the domain name or risk fines of up to \$10,000 per day. Network Solutions took the side of the US company and blocked e-mail services to etoy, although this was not ordered by the court. In doing so, Network Solutions were running a risk that etoy would sue them if blocking the e-mail could amount to a breach of the contract between etoy and Network Solutions.

Many saw this as commercial bullying of the 'traditional' internet community and an uprising followed, led by a hacker group known as ®tmark, pronounced 'artmark'. The hackers tried to interfere with eToys' traffic count and server operations, numerous other web sites were launched which supported etoy and a public protest was staged in New York, designed to drive down the eToys share price. Many others took the less extreme approach of e-mailing eToys to express their views.

eToys finally dropped the case against the Swiss group and paid them \$40,000 towards legal expenses. Accordingly, eToy dropped the counterclaim. Whether the eToys retreat was due to fears of the counterclaim, bad publicity or hacker damage is unclear. It appears that this very unusual internet case has reached its conclusion. The etoy site is worth visiting to see it's celebrations.

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