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DOLLARS AND SCENTS: Jacquelyn Tran, president of PerfumeBay.com, recently fought off a suit by eBay, which was trying to force her to change the name of her company. Judge ruled that she must change her Internet address, and she's disputing that.

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Huntington Beach perfume seller at odds with eBay

Family-run business wages legal fight with Internet giant over name.

By GREG HARDESTY
The Orange County Register

HUNTINGTON BEACH – Jacquelyn Tran walks through her huge, odoriferous warehouse, scanning the shelves filled with perfumes and colognes from just about everywhere in the world.

A selection in Aisle 121 catches her eye: Sean John's Unforgivable.

Tran chuckles. "Unforgivable" would be a perfect "gift" for the guys at eBay – her legal nemesis for the last three years.

Tran, 30, is founder and president of online retailer Perfume Bay.

Name ring a bell?

EBay thinks so. The online auction behemoth sued Tran and her company in 2004, claiming trademark infringement, among other alleged misdeeds.

Long story short: Tran's company prevailed, with one hugely significant exception: She could continue using the "Perfume Bay" name, but only as two words. The judge ordered Tran to insert a space or underscore in her company's URL, perfumebay.com.

Tran thought: That stinks!

Internet regulations do not allow a URL to be registered with a space or an underscore. A simple dash connecting the two words won't do, the judge ruled.

Tran appealed. A decision could come any day.

If Tran wins her appeal, all is good in her business of making people smell good.

If she loses, Tran will be forced to change her company's URL – a costly move that would damage brand equity the company has been developing since its founding in 1999.

Tran recently went public with her legal battle with eBay in a blog she titles *Makes no Scents*.

She believes eBay Inc., based in San Jose, is unfairly trying to destroy her comparatively miniscule business in a classic David-vs.-Goliath business dispute.

eBay, in court papers, says it's trying to protect its trademark from being diluted. The company does not comment on pending litigation.

"eBay does vigorously defend its brand and intellectual property rights," a spokeswoman said.

On a recent weekday, as Tran strolled through the 16,000-square-foot warehouse from which Perfume Bay's online orders are shipped worldwide, she looked relaxed and professional as forklifts moved around large loads of scented goods.

That day, Tran happened to be wearing Paris by Yves Saint Laurent, a scent she described as "uplifting" – an adjective she hopes will apply to the coming ruling by the 9th U.S. Court of Appeal in San Francisco.

"My passion is running this company," said Tran, who at age 22, at the height of the dot-com boom, transformed her parents' Los Angeles-based cosmetics firm into an Internet retailer that today has annual sales of about \$17 million.

eBay, by comparison, has annual sales of more than \$6 billion.

"I just want to run my business," Tran said.

INSPIRATION

When Tran was thinking of the perfect name for her company, back when she was a student at UC Irvine and in the process of taking over the family business full time, she swears she wasn't trying to ride on the coattails of eBay.

In 1999, eBay was in the process of becoming one of the most recognized Internet brands in the world. In promotional materials that now sound quaint, the company boasted that year about being mentioned on "The Simpsons" and "The Tonight Show."

Tran's parents, David and Kimberly, who immigrated to the United States from Vietnam with their son, Quoc (now 28) and daughter in 1980, had built up a successful retail and wholesale cologne business in L.A.'s fashion district.

Tran, who between classes had been helping her parents with their business for years, knew that the perfumes and colognes they sold came from around the world.

She envisioned ships steaming into ports, carrying crates of the stuff.

Tran felt that "Bay" sounded more romantic than "port." So she renamed the company Perfume Bay. She later added a starfish logo separating the two words.

Things smelled like roses through 2003, when the company relocated to Huntington Beach, where Tran lives. Annual sales in 2003 had grown to about \$5 million.

Then eBay's lawyers came calling in 2004.

Until recently, Tran had remained quiet about the legal dispute, believing it wouldn't help her business. Plus, she remained consumed with building a company that today has more than 300,000 customers and, on a typical day, ships out 800 packages.

Saying "the time was just right," Tran launched her blog Aug. 26, and lashed out at eBay.

Her first posting begins, "My name is David. My opponent's name is Goliath."

Tran, in the blog (www.makesnoscents.com/), summarizes her company's legal battle with eBay, and provides links to legal documents.

In a ruling in November 2005, a court found that her company did not infringe on or dilute eBay's trademark, and said she could register Perfume Bay with the U.S. Patent and Trademark Office, which she subsequently did.

But Tran and her attorney, Thomas T. Chan, of Los Angeles, decided to appeal the judge's ruling that Perfume Bay separate its name on the Internet to avoid confusion with eBay's URL.

Tran said her company has spent hundreds of thousands of dollars on the appeal.

Chan said he expects a decision on the appeal, which deals with some other issues, to be issued by the end of October.

He said as Perfume Bay grew its online presence, it declined offers by eBay to open an online store on eBay's site.

"We didn't want to marry them," Chan said, "so they decided to kidnap us."

More than 100 readers have responded to the two postings Tran has written so far. Overwhelmingly, the comments are in support of her legal fight.

One reader wrote, "It's sad that eBay does not seem to remember where and when it started."

Another wrote, "Don't they (eBay) have enough business?"

Of course, any company – regardless of size – has the right to protect its name.

But as Tran writes in her blog, her fight is about nothing less than "the principal of American entrepreneurship."

Her family, she says, worked hard building up their business, and has suffered financially defending itself against what it perceives as legal bullying.

Tran said that regardless of the ruling, Perfume Bay will stay in business. The company plans to

expand next year into a warehouse in Fountain Valley, doubling its size. Next revenue goal: \$50 million.

"Perfume, really, is like a dream," Tran said, taking her mind off her nightmare business dispute and back in the realm of Bulgari, Armani and Christian Dior – where things definitely smell sweeter.

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