

# EXHIBIT 15

**FILED**

07 SEP -7 PM 4:47

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

The Honorable John Erlick

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

1ST TECHNOLOGY LLC,

Plaintiff,

v.

BODOG ENTERTAINMENT GROUP S.A.,  
BODOG.NET, AND BODOG.COM,

Defendants.

Case No. 07-2-25305-0 SEA

**DEFENDANTS' AMENDED  
MOTION FOR RELIEF FROM  
ENFORCEMENT OF  
PLAINTIFF'S WRIT OF  
EXECUTION**

NOTE FOR MOTION CALENDAR:  
September 12, 2007 (10 a.m.)

**I. RELIEF REQUESTED**

This Court issued a writ of execution based upon an invalid default judgment. The plaintiff obtained the judgment without serving process, and without providing notice required by statute of its intent to move for default. Once the defendants learned of this proceeding, they filed a Motion to Set Aside Default in the United States District Court for the District of Nevada where the underlying action is pending. Now, Defendants Bodog Entertainment Group S.A., Bodog.net, and Bodog.com (collectively "Bodog" or "Bodog Entertainment") request this Court grant them relief from the Order Granting Writ of Execution and Sale pending the outcome of their motion in the Nevada federal district court.

Bodog Entertainment Group SA does not itself provide online entertainment services. It merely provided technical services, including domain name management, for

1 various entities, including but not limited to entities that use the BODOG name and  
2 variations thereof to provide various online entertainment services.<sup>1</sup>

3 The relevant domains ("Bodog Domains"), listed on Exhibit A to the Court's Order  
4 Granting Motion for Writ of Execution of Domain Names, are registered through domain  
5 name registrar eNom, Inc., a Washington corporation ("eNom"). Plaintiff 1ST  
6 TECHNOLOGY LLC, a Nevada limited liability company ("1st Technology") obtained  
7 an order from the Court directing eNom to transfer all of the Bodog Domains to Plaintiff  
8 (the "Execution Order"). The Execution Order also provides Plaintiff the right to use the  
9 valuable BODOG service mark.

10 The federal district court in Nevada will ultimately vacate the default judgment  
11 because Bodog was deprived of due process. However, Plaintiff has already caused  
12 eNom to transfer the Bodog Domains away from Bodog and Bodog is suffering  
13 substantial irreparable harm as a result of the goodwill loss to its domain names and  
14 trademark. Bodog is also suffering substantial monetary loss. Although Bodog should be  
15 able to recover from Plaintiff the money damages after the judgment is set aside, it will  
16 never be able to recover from the irreparable damage to its trademark as a result of the  
17 domain name transfer.

18 Bodog respectfully requests that this Court exercise its equitable power and either  
19 provide Bodog relief from the Execution Order, or stay any transfer of the Bodog  
20 Domains until the Nevada federal court resolves the underlying default judgment.  
21 Specifically, the Court should order eNom to transfer all Bodog Domains back to  
22 Bodog's account under the condition Bodog not be permitted to transfer the domain  
23 names out of its account. eNom has the power to "lock" the domain names into Bodog's  
24 account, thereby preventing Bodog from transferring them outside of this jurisdiction. By  
25 granting the relief Bodog seeks, the Court would maintain the *status quo ante*, yet prevent  
26 either Plaintiff or Bodog from absconding with the Bodog Domains until the underlying  
27

28 <sup>1</sup> All defendants believe that there is no personal jurisdiction over them in the State of Washington (or  
anywhere in the U.S.), and they do not waive that contention by specially appearing and filing this motion.

1 default judgment is vacated.

## 2 II. STATEMENT OF FACTS

### 3 A. Plaintiff obtained an invalid order of default and judgment.

4 On August 21, 2007, Bodog Entertainment learned that Plaintiff was attempting to  
5 enforce a federal court default judgment against Bodog Entertainment in King County  
6 Superior Court. However, Bodog never received notice of a case number or hearing.  
7 Shortly thereafter, the Bodog Domains were transferred out of Bodog's domain name  
8 account at eNom. Currently, Bodog can no longer provide services at the Bodog  
9 Domains, and Bodog Entertainment customers can no longer access those services.

10 Bodog has since learned that Plaintiff 1st Technology filed a lawsuit against  
11 Bodog in late 2006 in the United States District Court for the District of Nevada alleging  
12 infringement of an Internet-related method patent. First Technology LLC v. Rational  
13 Enterprises LTD et al., Dist.Nv. Case No. 2:06-cv-1110-RLH-GWF (the "Nevada Case").  
14 Plaintiff moved for default judgment in the Nevada Case and on June 13, 2007, the court  
15 entered a default judgment against Bodog Entertainment for nearly fifty million dollars  
16 (\$50,000,000). Nevada Case, Order Granting Plaintiff 1st Technology LLC's Application  
17 for Default and Entry of Default Judgment ("Default Judgment") (Dkt. #33), Declaration  
18 of Randall Moeller in Support of Motion for Relief from Enforcement of Plaintiff's Writ  
19 of Execution ("Moeller Decl."), ¶ 2, Exhibit A.

20 On August 21, 2007, without notice to Bodog, 1st Technology obtained a writ of  
21 execution in King County Superior Court ordering eNom to transfer nearly 3,000 Bodog  
22 Domains to Plaintiff's domain account. (Order Granting Motion for Writ of Execution  
23 Re Domain Names (the "Execution Order") (Moeller Decl., ¶ 3, Exhibit B)). The  
24 Execution Order also granted Plaintiff the right to use Bodog Entertainment's trademarks.  
25 (Execution Order at ¶ 6.)

26 Immediately after learning of the Default Judgment and the Execution Order,  
27 Bodog Entertainment filed a Motion to Set Aside Default Judgment in the Nevada federal  
28 district court. Nevada Case, Motion of Specially Appearing Defendant Bodog

1 Entertainment Group S.A. and Erroneously Named Specially Appearing Defendants  
2 Bodog.net and Bodog.com to Set Aside Default Judgment (“Motion to Set Aside”)  
3 (Moeller Decl., ¶ 4, Exhibit C). Bodog Entertainment’s Motion to Set Aside requests that  
4 the Nevada Court vacate the Default Judgment on the grounds that 1) Plaintiff never  
5 served Bodog as required by the Federal Rules of Civil Procedure, and 2) Plaintiff’s  
6 counsel failed to notify Bodog as required by the Nevada Rules of Professional Conduct.

7  
8 **B. The default judgment is null and void *ab initio* because Plaintiff never served bodog in the Nevada Case.**

9 Plaintiff never served Bodog with process in the Nevada Case. A plaintiff in  
10 federal court must serve a corporate defendant by delivering a copy of the summons and  
11 complaint to “an officer, managing or general agent, or to any other agent authorized by  
12 appointment or by law to receive service of process.” Fed. R. Civ. P. 4(h)(1). If a  
13 plaintiff fails to properly serve a corporate defendant, the court lacks jurisdiction and any  
14 entry of default is void. Veeck v. Commidity Enters., Inc., 487 F.2d 423 (9<sup>th</sup> Cir. 1973).  
15 In the Nevada Case, 1st Technology allegedly served Bodog by leaving a copy of the  
16 Summons and Complaint with Victoria Mora, an administrative assistant at Bodog  
17 Entertainment. However, Ms. Mora is not an officer, a managing or general agent, or any  
18 other agent authorized to accept service of process on Bodog’s behalf. Nevada Case,  
19 Declaration of Gerardo Umana [in support of Motion to Set Aside] (“Umana Decl.”), at ¶  
20 2. (Moeller Decl., ¶ 5, Exhibit D.) Bodog never received notice of the action. Since  
21 Bodog was never served with process as required by federal law, the default judgment is  
22 void and should be set aside.

23  
24 **C. The default judgment is void because counsel for Plaintiff failed to notify Bodog’s counsel as required by Nevada rule.**

25 The default judgment is also void because Plaintiffs’ counsel did not notify Bodog  
26 before seeking the order of default. The Nevada Rules of Professional Conduct direct  
27 lawyers who know the identity of counsel for an opposing party to contact that lawyer  
28 prior to seeking default. Nev. Rules of Prof’l Conduct R. 3.5A. Under settled Nevada law,

1 failure to notify an opposing party requires a district court to vacate a default judgment.  
2 Cen Val Leasing Corp. v. Bockman, 99 Nev. 612, 668 P.2d 1074 (1983); Estes v. S. Nev.  
3 Adult Mental Health, 2006 U.S. Dist. LEXIS 81550 (D.Nev. 2006). Plaintiffs' counsel,  
4 L. Kristopher Rah, had previously corresponded with Diane E. Tucker, general counsel  
5 for various Bodog entities concerning Plaintiff's claims. Nevada Case, Declaration of  
6 Diane E. Tucker [in support of Motion to Set Aside] ("Tucker Decl."), at ¶ 2. (Moeller  
7 Decl., ¶ 6, Exhibit E.) Nonetheless, Plaintiff's counsel failed to notify Tucker prior to  
8 seeking an entry of default in the Nevada Case. (*Id.* at ¶ 3.)

9  
10 **D. Bodog is suffering and will continue to suffer irreparable harm if the  
domain names are not returned pending the outcome in Nevada.**

11 The Motion to Set Aside Default Judgment may not be decided for several months.  
12 Meanwhile, Bodog is unable to operate its business and, under the terms of the Execution  
13 Order, Plaintiff may "liquidate or otherwise monetize" the Bodog Domains. (Execution  
14 Order, ¶¶ 2-5.) The value of any Internet business, especially one in the consumer  
15 entertainment field like Bodog, is necessarily linked to whether it has a recognizable,  
16 familiar location on the Internet, and whether consumers recognize a trademark as  
17 identifying a single source for services. Bodog has spent years developing its relationship  
18 with online consumers and has accrued a substantial amount of goodwill tied to its  
19 trademark and the Bodog Domains. Consumers know to navigate to the Bodog Domains  
20 to find Bodog's services. If the domain names are not promptly returned to Bodog, then  
21 it will forever lose all of the goodwill established in the Bodog Domains and trademark.

22  
23 **E. Domain name registrars can easily prevent Bodog from transferring  
the Bodog Domains outside this jurisdiction.**

24 Domain name registrars such as eNom, Inc. are capable of placing domain names  
25 in a "locked" status. Declaration of Martin Garthwaite in Support of Motion for Relief  
26 from Enforcement of Plaintiff's Writ of Execution ("Garthwaite Decl."), ¶ 3. By  
27 "locking" domain names, registrars can prevent them from being transferred to other  
28 registrars (such as Network Solutions, LLC), and can also prevent transfer to other

1 registrants. (*Id.*) This Court may prevent Bodog from transferring its Bodog Domains to  
2 registrants or registrars outside this jurisdiction, by requiring the Bodog Domains to be  
3 locked as a condition of transfer.

### 4 III. STATEMENT OF ISSUES

5 Whether the Court should provide Bodog equitable relief from the Execution  
6 Order pending the outcome of the Motion to Set Aside Default Judgment, allow eNom to  
7 transfer the domain names back to Bodog until that motion is decided, and prohibit  
8 Plaintiff from using Bodog's trademark?

### 9 IV. EVIDENCE RELIED UPON

10 Defendants rely on the declaration of Randall Moeller and the exhibits thereto filed  
11 herewith, and the declaration of Martin Garthwaite, along with this Motion and the other  
12 pleadings on file.

### 13 V. ARGUMENT & AUTHORITY

#### 14 A. The Court should exercise its Rule 60 authority to provide Bodog 15 equitable relief from the Execution Order.

16 Rule 60(b) of the Civil Rules allows a court to provide relief from a final judgment  
17 or order. A court may afford such relief where there is a "mistake [...] or irregularity in  
18 obtaining an order," Rule 60(b)(1). One "mistake" that warrants setting aside a default  
19 judgment is the failure to properly serve a defendant. *Allstate Ins. Co. v. Khani*, 75 Wn.  
20 App. 317 (1994) ("a default judgment entered without proper jurisdiction is void"); *see*  
21 *also Schell v. Tri-State Irrigation*, 22 Wn. App. 788 (1979) (a defendant challenging a  
22 default judgment need not offer a meritorious defense if the challenge is based on lack of  
23 personal jurisdiction).

24 A court may also provide relief from a final judgment or order for "[a]ny other  
25 reason justifying relief from the operation of the judgment." Rule 60(b)(11). A trial court  
26 should exercise its authority under Rule 60 "liberally, as well as equitably, to the end that  
27 substantial rights be preserved and justice between the parties be fairly and judiciously  
28 done." *White v. Holm*, 73 Wn.2d 348, 351 (1968). A motion to vacate the operation of a

1 default judgment is “equitable in character and relief is to be afforded in accordance with  
2 equitable principles.” Griggs v. Averbek Realty, 92 Wn.2d 576 (1979). One such  
3 equitable principle is that “the law favors determination of controversies on their merits  
4 and, consequently, default judgments are disfavored.” Lee v. W. Processing Co., 35 Wn.  
5 App. 466 (1983).

6 The present dispute began in federal district court where 1st Technology  
7 erroneously obtained a default judgment in a patent dispute. Bodog’s Motion to Set  
8 Aside is currently pending in that forum, and the Nevada federal court is likely to set  
9 aside the judgment. Ultimately, the parties’ dispute will be heard on its merits. In the  
10 interim, this Court should grant relief from the Execution Order so that the irreparable  
11 harm to Bodog’s business can be stopped.

12 **B. Alternatively, the Court should exercise its authority under Rule 62 to**  
13 **stay the sale pending the disposition of Bodog’s motion to set aside.**

14 Rule 62 of the Civil Rules permits a court to “stay the execution of any  
15 proceedings to enforce a judgment pending the disposition of [...] a motion for relief from  
16 a judgment or order made pursuant to rule 60”. A court may do so “[i]n its discretion and  
17 on such conditions for the security of the adverse party as are proper”. Rule 62. Here, the  
18 Court may, in one move, balance the dual concerns of avoiding unnecessary irreparable  
19 harm to Bodog and protecting the security of 1st Technology’s present position. All that  
20 would be required is the issuance of an order instructing eNom to place a hold on all of  
21 the Bodog Domains pending the resolution of the Motion to Set Aside in the Nevada  
22 Case. Those conditions would prevent irreparable harm to Bodog because the Bodog  
23 Domains would not be irretrievably distributed to a multitude of purchasers at an auction  
24 and would safeguard 1st Technology’s present position by preventing Bodog from  
25 transferring the Bodog Domains from eNom to another registrar beyond this court’s  
26 reach. It would also stay a likely defective provision in the Execution Order giving 1<sup>st</sup>  
27 Technology license to use the BODOG trademark, including potential competition with  
28 Bodog – which would be trademark infringement.



1 However, in order to maintain the high present value of the Bodog Domains and  
2 minimize the ongoing damage to Bodog, Bodog should be permitted to use the Bodog  
3 Domains in the interim. By keeping the Bodog Domains in use, the Court would ensure  
4 that their value remains high, because the longer the Bodog Domains lack a functioning  
5 website, the lower their value to any party. Moreover, by ordering eNom to place a  
6 "lock" on the domain names, the Court can grant the relief Bodog requests and prevent  
7 Bodog from transferring the Domains outside the jurisdiction.

8  
9 **VI. CONCLUSION**

10 This Court has the authority to prevent Bodog from further irreparable harm  
11 caused by the sale of the Bodog Domains, while ensuring Bodog the Domains are not  
12 transferred beyond the reach of process. Accordingly, Bodog respectfully requests that  
13 the court either provide Bodog relief from the Execution Order and Sale or that the court  
14 order the Bodog Domains be held by eNom pending the resolution of the Motion to Set  
15 Aside the default entered in the Nevada Case.

16  
17 DATED this 7th day of September, 2007.

18 **NEWMAN & NEWMAN,**  
19 **ATTORNEYS AT LAW, LLP**

20  
21 BY:



22 \_\_\_\_\_  
23 Derek A. Newman, WSBA No. 26967  
24 Randall Moeller, WSBA No. 21094

25 Attorneys for Defendants  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2  
3 The undersigned hereby certifies that on this 7<sup>th</sup> day of September, 2007, I caused the  
4 foregoing **DEFENDANTS' AMENDED MOTION FOR RELIEF FROM ENFORCEMENT**  
5 **OF PLAINTIFF'S WRIT OF EXECUTION, AND CERTIFICATE OF SERVICE** to be  
6 served via the methods listed below on the following party:

7  
8 Via Email to:

9 Venkat Balasubramani, Esq.  
10 Balasubramani Law  
11 8426 - 40<sup>th</sup> Avenue SW  
12 Seattle, WA 98136

13  
14  
15 Email: [venkat@balasubramani.com](mailto:venkat@balasubramani.com)

16 I declare under penalty of perjury under the laws of the United States and the State of  
17 Washington that the forgoing is true and correct and that this declaration was executed on  
18 September 7<sup>th</sup>, 2007, at Seattle, Washington.

19 Diana Au  
20 Diana Au