

EXHIBIT 22

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

ADDITIONAL BRIEFING
REGARDING INJUNCTIVE RELIEF
SOUGHT BY 1ST TECHNOLOGY
LLC

I. INTRODUCTION

The Court agreed to receive briefing on the limited issue of whether it was appropriate to enjoin Bodog from registering alternative domain names and directing users to these replacement domain names. 1st Technology sought this relief because of Bodog's conduct taken to frustrate the Court's initial Order – *i.e.*, registering "newbodog.com" and directing its users to the "new Bodog" website. Since the date of the initial hearing, Bodog has actually undertaken the very conduct sought to be prohibited by 1st Technology – Bodog set up an alternative website at "bodoglive.com" and is now directing its users to that site.

1 As set forth herein, an injunction is expressly authorized by Washington Statute.
2 The injunctive relief sought would not violate any jurisdictional or First
3 Amendment principles and would merely preserve the assets which are properly
4 subject to execution by 1st Technology. Absent such injunctive relief, 1st
5 Technology will be left to execute its judgment against domain names which
6 have been sapped of their value.
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8 **II. DISCUSSION**

9 **A. Washington Statutes Authorize the Court to Issue Broad Injunctive Relief**

10 RCW 6.32.120, titled "Transfer of property may be enjoined" broadly
11 authorizes the Court to:
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13 make an injunction order restraining any person or corporation, whether a
14 party or not a party to the special proceeding, from making or suffering
15 any transfer or other disposition of or interference with the property of the
16 judgment debtor or the property or debt concerning which any person is
17 required to attend and be examined, until further direction in the
18 premises. . . . The judge or court may, as a condition of granting an
19 application to vacate or modify the injunction order require the applicant
20 to give security in such sum and in such manner as justice requires.

21 This statute grants the court broad powers to issue an injunction to restrain the
22 transfer of property involved in supplemental proceedings. *Smith v. Weed*, 75
23 Wn. 452, 465, 134 P. 1070 (1913). The statute authorizes the Court to issue an
24 injunction directed at parties as well as non-parties. The statute further allows
25 the Court to enjoin a party from transferring or effecting any "other disposition"
26 or "interference" of or with the property in question. RCW 6.32.120.
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1 As the Court recognized, the Court's initial Order extends to the goodwill
2 in the domain names, not just the letters that make up the domain name. See
3 *Kremen v. Cohen*, 337 F.3d 1024, 1030 (9th Cir. 2003) ("a domain name is a well-
4 defined interest [s]omeone who registers a domain name decides where
5 on the Internet those who invoke that particular name whether by typing it into
6 their web browsers, by following a hyperlink, or by other means are sent"). As
7 such, the Court is authorized by statute to issue injunctive relief preventing
8 "interference" with, or dissipation of, the domain names. Indeed, Plaintiff seeks
9 injunctive relief to prevent a recurrence of what transpired immediately
10 following issuance of the original Order and what occurred again following the
11 hearing. (See *Generally*, Declaration of Venkat Balasubramani.)

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14 **B. Principles of Jurisdiction Do Not Bar the Injunctive Relief**

15 Bodog argues that the Court lacks jurisdiction to issue the sought after
16 injunctive relief. Bodog's arguments are unavailing for several reasons.

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18 1. Both the original and replacement domain names are subject to
19 jurisdiction of the Court.

20 First, the property at issue (the domain names) is located in the State of
21 Washington, and as such, is within the jurisdiction of this Court. *Kremen*, 337 F.3d
22 at 1030 ("domain names . . . are . . . subject to in rem jurisdiction"). The Court
23 may issue an injunction preventing "interference" with this property, including
24 injunctive relief to those outside the state. Bodog's arguments ignore the fact
25 that the domain names at issue – both the original and the replacement
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1 domain names – are registered to a Washington-based registrar, and as such,
2 are located in the State of Washington. In order to set up replacement domain
3 names, Bodog will be taking action – whether physically or virtually – in the State
4 of Washington. At the very least, Bodog's actions will alter the traffic and
5 goodwill in a website accessible through a domain name which is located in
6 Washington. Bodog's logic would allow it to argue that it should not be
7 enjoined from electronically transferring funds outside of a Washington-based
8 bank because Bodog itself is not subject to jurisdiction in the State of
9 Washington. This is untenable.

12 2. Bodog purposefully availed itself of the jurisdiction of this State by
13 registering domain names through a Washington registrar.

14 Second, Bodog is subject to jurisdiction with respect to 1st Technology's
15 domain name-related execution efforts. The touchstone for purposeful
16 jurisdiction is purposeful availment. *CTVC of Hawaii Co. v. Shinawatra*, 82 Wn.
17 App. 699, 710, 919 P.2d 1243 (1996). The Washington long-arm statute permits
18 the exercise of specific jurisdiction over a foreign corporation that transacts
19 business in this state if three requirements are met: (1) the nonresident
20 corporation must purposefully avail itself of the privilege of conducting business
21 in Washington; (2) the cause of action must arise from or be connected with
22 that transaction; and (3) the assumption of jurisdiction must not offend
23 traditional notions of fair play and substantial justice. *Washington Equip. Mfg.*
24 *Co. v. Concrete Placing Co.*, 85 Wn. App. 240, 242 (Wash. Ct. App. 1997).
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1 Here, the elements of the tests are satisfied with respect to Bodog. Bodog
2 registered the domain names through a Washington-based registrar, and then
3 re-registered replacement domain names through another Washington-based
4 registrar. (See previously submitted materials.) The requested relief relates
5 directly to Bodog's Washington-based transactions. Finally, the assumption of
6 jurisdiction does not offend traditional notions of fair play and substantial justice.
7 Accordingly, Bodog's arguments that it is not subject to jurisdiction in the state of
8 Washington – at least for purposes of 1st Technology's execution efforts on the
9 domain names – are unpersuasive.
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12 3. Bodog cannot ask the Court for affirmative relief and then claim to be
13 beyond its jurisdiction for purposes of the sought after injunctive relief.

14 Finally, Bodog has sought affirmative relief in this Court (staying execution).
15 As such, Bodog has subjected itself to the jurisdiction of the Court, at least for
16 the purposes of this particular proceeding. Bodog cannot then turn around and
17 then claim that it is beyond the jurisdiction of the Court for purposes of the
18 injunction.
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20 In any event, the Court is clearly empowered to give Bodog a choice:
21 (1) Bodog can post bond in the amount of the Judgment or (2) Bodog can
22 agree to the injunctive relief sought by 1st Technology. Bodog cannot and does
23 not cite to any law which precludes the Court from taking this step.
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1 **C. Nothing in the First Amendment Bars The Relief Sought**

2 Bodog's First Amendment arguments are a red herring. First, as the Court
3 recognized, corporate speakers enjoy a lesser degree of First Amendment
4 protection than do individual speakers. *Central Hudson Gas & Electric Co. v.*
5 *PSC*, 447 U.S. 557, 566 -68 (1980). Regulating statements made in the
6 commercial context raises far fewer First Amendment concerns than do
7 statements made in other contexts, such as in a political campaign. *Id.*
8 Second, restrictions on speech are permitted for a variety of different reasons
9 and in a variety of different contexts. See, e.g., *Rotunda & Nowak* § 20.36
10 (discussing accommodation between free speech and copyright protection);
11 *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637
12 (1980) (government can prohibit and punish conduct that amounts to
13 fraudulent misrepresentation). There is no First Amendment exception for
14 advertising gambling websites, particularly advertising or expression made to
15 frustrate or defraud creditors.
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19 As relevant to the issues raised by Bodog, courts have held up regulations
20 restricting fraudulent transfers and other regulations involving bankruptcy
21 reorganizations notwithstanding the effect of such regulations on speech. See,
22 e.g., *In re Stonegate Sec. Services, Ltd.*, 56 B.R. 1014 (D. Ill. 1986) (even "public
23 criticism" can be restricted upon finding of "clear and present danger of some
24 significant interference with the debtor's reorganization, or with the functions of
25 the bankruptcy court"). *Stonegate* recognized that speech taken to frustrate a
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1 bankruptcy reorganization may be curtailed, and cases relying on it adopt this
2 approach, notwithstanding purported First Amendment concerns. *See, e.g., In*
3 *re Andrus*, 189 B.R. 413 (D. Ill. 1995) (finding that bankruptcy court properly
4 enjoined speech based on finding that the speech was intended to frustrate the
5 bankruptcy reorganization).

7 In the present case, the sought after injunctive relief is not accompanied
8 by the prospect that Bodog will take action to frustrate the Court's Orders. It is
9 actually accompanied by Bodog's own statements which demonstrate
10 undeniably that Bodog has and will continue to take such action. (See
11 Balasubramani Decl.) Bodog undertook this course of action in response to the
12 initial Court Order – it registered a slew of replacement domain names. When it
13 realized that these replacement domain names were registered through a
14 Washington registrar, equally subject to the jurisdiction of the Court, Bodog
15 registered replacement domain names (bodoglife.com) ostensibly beyond the
16 jurisdiction of the Court and sought to direct its old sites and any users there.
17 Nothing in the First Amendment precludes the Court from enjoining this conduct.

21 V. CONCLUSION

22 The Court agreed to receive briefing on the limited issue of whether it was
23 appropriate to enjoin Bodog from registering alternative domain names and
24 direct users to these replacement domain names. Pending the date of the
25 hearing and the date of submission of this brief in a show of bad faith towards
26 the Court, Bodog already engaged in such conduct. Nothing in any
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1 jurisdictional or First Amendment principles precludes the injunctive relief
2 requested by 1st Technology.

3 Dated this September 19, 2007.

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6 Venkat Balasubramani, WSBA No. 28269
7 Attorneys for 1st Technology LLC

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CERTIFICATE OF SERVICE

I hereby certify and declare that on September 19, 2007, I caused the attached Brief Regarding Scope of Injunctive Relief to be transmitted to counsel for Defendants:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 19, 2007, at Seattle, Washington.



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