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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 AFL Telecommunications LLC,
9 Plaintiff,
10
11 v.
12 Fiberoptic Hardware, LLC,
13 Defendant.

No. CV11-01081-PHX-DGC

ORDER

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15 Plaintiff AFL Telecommunications LLC has filed a motion for attorneys' fees and
16 costs. Docs. 65, 66. Defendant has not responded. The Court will exercise its discretion
17 and deny the motion.

18 A district court has discretion to award attorneys' fees to a prevailing party under
19 the Lanham Act, but only in "exceptional cases." *See* 15 U.S.C. § 1117(a); *Gracie v.*
20 *Gracie*, 217 F.3d 1060, 1071 (9th Cir. 2000). The Ninth Circuit construes the "exceptional
21 circumstances" requirement narrowly. *Id.* "Exceptional circumstances can be found when
22 the non-prevailing party's case is groundless, unreasonable, vexatious, or pursued in bad
23 faith." *Id.* (internal quotation marks omitted); *see also Horphag Research Ltd. v.*
24 *Pellegrini*, 337 F.3d 1036, 1040 (9th Cir.2003).

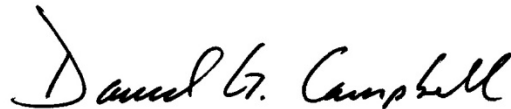
25 The Court entered a default judgment against Defendant and awarded more than
26 \$217,000 in damages when its counsel withdrew from this case. Doc. 63. Defense counsel
27 stated that Defendant no longer could afford to litigate this case and was ceasing
28 operations. Doc. 60.

1 Plaintiff asks the Court to find that Defendant's conduct was willful, malicious, and
2 wanton, and therefore satisfies the "exceptional circumstances" requirement, because
3 Plaintiff's complaint contained those allegations and a default was entered. The Court
4 notes, however, that Defendant denied those allegations in its answer. Doc. 33.

5 The Court cannot conclude that Plaintiff's allegations are correct merely because a
6 default judgment was entered in this case. Where an award of fees is exceptional and the
7 Court's power to grant such an award is construed narrowly, the Court concludes that more
8 than a default is needed for the Court to find that exceptional circumstances exist.

9 **IT IS ORDERED** that Plaintiff's motion for attorneys' fees and costs (Doc. 65) is
10 denied.

11 Dated this 3rd day of December, 2012.

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16 David G. Campbell
17 United States District Judge
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