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

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Neon Network, LLC, a New York  
limited liability company,

) No. CV-08-1188-PHX-DGC

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Plaintiff,

) **ORDER AND DEFAULT JUDGMENT**

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vs.

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Aspis Liv Forsakrings, a limited liability  
company organized under the laws of  
Sweden,

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Defendant.

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Plaintiff Neon Network, LLC filed a complaint against Defendant Aspis Liv  
17 Forsakrings seeking a declaratory judgment that Plaintiff is entitled to use the Internet  
18 domain name [www.aspis.com](http://www.aspis.com), that Plaintiff's use of that domain name does not constitute  
19 trademark infringement under the Lanham Act and is not unlawful under the  
20 Anticybersquatting Consumer Protection Act, and that Defendant's alleged mark in the  
21 domain name is invalid and unenforceable. Dkt. #1. Plaintiff has filed a motion for default  
22 judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure. Dkt. #26. For reasons  
23 that follow, the Court will grant the motion.

24

Because Defendant's default has been properly entered under Rule 55(a) (*see* Dkt.  
25 ##14, 17, 18), the Court has discretion to grant default judgment against Defendant pursuant  
26 to Rule 55(b). *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); *Draper v.*  
27 *Coombs*, 792 F.2d 915, 924 (9th Cir. 1986). Factors the Court should consider in deciding  
28 whether to grant default judgment include (1) the possibility of prejudice to Plaintiff, (2) the

1 merits of the claims, (3) the sufficiency of the complaint, (4) the amount of money at stake,  
2 if any, (5) the possibility of a dispute concerning material facts, (6) whether default was due  
3 to excusable neglect, and (7) the policy favoring a decision on the merits. *See Eitel v.*  
4 *McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

5 Having considered Plaintiff's motion and supporting memorandum, which addresses  
6 each of the *Eitel* factors (*see* Dkt. #27), and having reviewed the well-pled factual allegations  
7 of the complaint (*see* Dkt. #1), the Court concludes that default judgment is appropriate.  
8 *See Mann v. AFN Inv., Ltd.*, No. 07cv0083-BEN (CAB), 2007 WL 2177030, at \*2 (S.D. Cal.  
9 July 27, 2007) (declaratory judgment proper with respect to domain name registrant's claim  
10 under the ACPA, 15 U.S.C. § 1114(2)(d)(v)).

11 Plaintiff seeks an award of \$1,547.00, representing Plaintiff's prejudgment taxable  
12 costs. Dkt. #26 ¶ 5. The Court will deny this request without prejudice. Plaintiff may file  
13 a bill of costs pursuant to Rule 54 of the Federal Rules of Civil Procedure and Rule 54.1 of  
14 the Court's Local Rules of Civil Procedure.

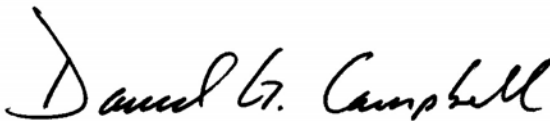
15 **IT IS ORDERED AND ADJUDGED:**

- 16 1. Plaintiff's request for an award of prejudgment taxable costs is **denied** without  
17 prejudice.
- 18 2. Plaintiff's motion for default judgment (Dkt. #26) is **granted**. Default  
19 judgment is entered in favor of Plaintiff and against Defendant on the  
20 declaratory judgment claims asserted in the complaint (Dkt. #1).
- 21 3. Defendant is without right or authority to threaten or maintain suit in the  
22 United States against Plaintiff for alleged infringement of the ASPIS mark.
- 23 4. Plaintiff's use of the domain name [www.aspis.com](http://www.aspis.com) is in compliance with the  
24 Anticybersquatting Consumer Protection Act and Plaintiff is entitled to use the  
25 [www.aspis.com](http://www.aspis.com) domain name.
- 26 5. The ASPIS mark is invalid and/or unenforceable and the mark is not infringed  
27 under the trademark laws of the United States because of the making, selling,  
28 or using of the [www.aspis.com](http://www.aspis.com) domain name.

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6. The Clerk is directed to **terminate** this action.

DATED this 22nd day of June, 2009.



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David G. Campbell  
United States District Judge

