

## Decision for dispute CAC-UDRP-103936

Case number CAC-UDRP-103936

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Domain names conad.mobi

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### Case administrator

Organization Denisa Bilík (CAC) (Case admin)

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### Complainant

Organization CONAD - CONSORZIO NAZIONALE DETTAGLIANTI - SOCIETA' COOPERATIVA IN SIGLA CONAD

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### Complainant representative

Organization Convey srl

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### Respondent

Name Milen Radumilo

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#### OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

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#### IDENTIFICATION OF RIGHTS

In these proceedings, the Complainant relies on the following trademarks:

- CONAD (word), EU Trade Mark Registration No. 004689584, registered as of October 28, 2005, in the name of CONAD – CONSORZIO NAZIONALE DETTAGLIANTI – SOCIETA COOPERATIVA IN SIGLA CONAD (the Complainant), duly renewed; and
- CONAD (device), EU Trade Mark Registration No. 017430893, registered as of November 3, 2017, in the name of CONAD – CONSORZIO NAZIONALE DETTAGLIANTI – SOCIETA COOPERATIVA IN SIGLA CONAD (the Complainant), also duly renewed.

The Complainant has also invoked EUTM No. 016309619, IR Nos. 811005 and 1544224, as well as Albanian Trademark No. AL/T/2006/000150.

The Complainant owns hundreds of other trademarks containing “CONAD” in various countries, which have not been mentioned in the Complaint. In any case, it is noted that Romania (the country of the Respondent) is covered by the registrations invoked.

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#### FACTUAL BACKGROUND

The Complainant is a large Italian cooperative supermarket chain, created in 1962. Ever since, it has become well-known in the national marketplace and in social media. It has thousands of employees in hundreds of establishments, all over Italy, and has initiated many programs and projects, which have gained awards that are presented in the Complaint.

The Complainant owns a large-sized portfolio of trademarks including the wording "CONAD" in many countries, among which an EU registration dating back to 2005. It also owns dozens of domain names, notably <conad.it> and <conad.com> since 1996 and 1997, respectively.

The disputed domain name <conad.mobi> was registered on October 18, 2020 by the Respondent.

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#### PARTIES CONTENTIONS

##### PARTIES' CONTENTIONS:

##### COMPLAINANT:

The Complainant contends that the disputed domain name is identical to its "CONAD" trademark, as it wholly incorporates this trademark. This last element is sufficient to support the finding that the disputed domain name is confusingly similar to the Complainant's trademark. As to the gTLD ".mobi", the Complainant suggests that it should be disregarded, as per usual practice.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name because the Respondent is neither known by the disputed domain name nor has it used in connection with a bona fide offering of goods or services, the Complainant is neither affiliated with nor has it ever authorised the Respondent to register its trademark as a domain name and the Complainant has no business with the Respondent.

According to the Complainant, given the distinctiveness and reputation of the "CONAD" trademark, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark in an intentionally designed way with the aim to create a likelihood of confusion with the Complainant's trademarks and domain names, and this is evidence of the fact that the disputed domain name was registered in bad faith.

With respect to use in bad faith, the Complainant points out that the Respondent has used the disputed domain name in order to deceive the Complainant's customers and attract them for commercial gain at a sponsored pay-per-click website directing to Complainant's competitors, a fact that -in combination with the incorporation of a well-known trademark in a domain name- proves use in bad faith. As further arguments, Complainant has highlighted the Respondent's pattern of behaviour in securing domain names for selling them at high price and the fact that Respondent did not reply to his cease and desist letters. Last but not least, the Complainant mentioned that the Respondent registered the disputed domain name, just after the Complainant failed to renew it in his name.

For all these reasons, the Complainant concludes that the Respondent registered and used the disputed domain name in bad faith.

##### RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

The disputed domain name consists of the Complainant's whole trademark (CONAD).

As far as the gTLD ".mobi" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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#### NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

Since proving a negative fact is almost impossible, Panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the CONAD trademark in a domain name, and that it had never licensed its trademark to the Respondent.

Furthermore, the Respondent has not demonstrated any use of the disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore, the Panel is satisfied that also the second requirement under the Policy is met.

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#### BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

As far as registration in bad faith is concerned, given the reputation of the Complainant's trademark and the fact that the disputed domain name fully incorporates this trademark, it is evident that, at the time of the registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark. The registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third party amounts to registration in bad faith. What is more, the Respondent registered the disputed domain name, as soon as the Complainant's registration of the same domain name expired.

With respect to use in bad faith, the disputed domain name resolves to a pay-per-click website, with links that direct consumers to competitors of the Complainant. This fact is to be combined with the full incorporation of the Complainant's known trademark in the disputed domain name. For this Panel, same as for many previous panels, such misleading behaviour clearly amounts to use in bad faith. Therefore, it is impossible to conceive any plausible active use of the disputed domain name that would be legitimate.

Further, the Respondent did not reply to the Complainant's cease and desist letters, while he also tried to sell the disputed domain name for a high price. It is rather obvious from previous UDRP cases that the Respondent has had a pattern of similar conduct.

Therefore, the Panel finds it clear that the disputed domain name was used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

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PRINCIPAL REASONS FOR THE DECISION

The disputed domain name wholly incorporates the Complainant's trademark. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademarks to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with full knowledge of the Complainant's reputable trademark. His use of the disputed domain name is in bad faith as there is no conceivable use of the disputed domain name that could amount to a legitimate use.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **CONAD.MOBI**: Transferred
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**PANELLISTS**

Name	<b>Sozos-Christos Theodoulou</b>
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DATE OF PANEL DECISION 2021-08-25

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Publish the Decision

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