



TTAB

06-18-2001

U.S. Patent & TMO/TM Mail Rcpt Dt. #26

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Serial No. 75/929,735

HRL Technology Corporation,  
Opposer,

V.

Jay Mullins DBA ZPRO  
Applicant,

~~X~~  
Opposition No. 122,735

**REPLY BRIEF**

Box TTAB No Fee  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

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MADAM :

In the matter of Application Serial No. 75/929,990 for Registration of the mark "XICAL" in class 5 by Jay Mullins DBA ZPRO, 940 Guerrero Street, Apartment #10, San Francisco, California 94110, which was published in the *Official Gazette* on December 26, 2000, Volume 1241, No. 4 on page TM 198, which has been opposed by HLR Technology Corporation (Opposition No. 122,735) it is urged that HRL Technology Corporation would not be damaged by the Registration of the mark "XICAL" for the services identified in the subject application.

The grounds for denying the Opposer's suit are as follows :

1. Upon information belief Applicant's proposed use of the claimed mark "XICAL" in connection with the goods described in Application Serial No. 75/929,990 is not confusing similar to the Opposer's registered trademark "XENICAL" as used by the Opposer, since the two marks are sufficiently dissimilar to cause confusion.

2. The recognition by consumers of the respective trademarks depends to a substantial extent on the respective pronunciations of each mark, since the sound of the mark makes a substantial impact on potential customers.

3. The pronunciation or sound of the mark is paramount in consumer identification of the two marks in the present Opposition since there are so many Federally Registered uses in health care field of marks containing either the letter "X" or the syllable "CAL", so that the mere presence of the letter "X" and the syllable "CAL" does not in of itself rendered two marks confusing similar.

4. Two marks are substantially dissimilar in that the first syllable of the Opposer's mark is pronounced "ZEEN", a soft, drawn-out sound. In contrast, the first syllable of Applicant's mark is pronounced "EKS", as sharp, short sound, which distinguishes Applicant's mark clearly over that of Opposer.

5. The respective marks do not admit to alternative annunciations that would make them confusing similar. Attempting to derive a different pronunciation with the Registered trademark "XENICAL" would result in an extremely awkward pronunciation that would entail the use of an additional syllable.

6. According to Opposer's own statements, the "XICAL" mark has been widely published, with its preferred annunciation, using the preferred soft "ZEEN" sound.

7. Since the pronunciations of the respective marks are substantially different, consumers pronouncing each mark are unlikely to be confused regarding the marks or their respective owners.

8. The Examiner agrees with the foregoing position that confusion is not likely by virtue of publishing Applicant's "XICAL" mark.

9. By reason of the foregoing, Applicant believes that the Opposer will not be damaged by the Registration of Applicant's published mark "XICAL" mark.

WHEREFORE, Applicant prays that the Registration of the "XICAL" mark be permitted, and that the subject Opposition be canceled.

Respectfully submitted,

LEV INTELLECTUAL PROPERTY CONSULTING  
Attorneys for the Applicant

By  Date : June 18, 2001  
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CERTIFICATE OF EXPRESS MAIL

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Date of Deposit : June 8, 2001

I hereby certify that this Reply Brief is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to BOX TTAB No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

JUN 27 2001

Trademark Trial and  
Appeal Board

Defendant's name  
Coro (Canada) Inc.  
186 Bartley Drive, North York  
Toronto, Ontario, M4A 1E4  
CANADA

Paper No. 2

Reg. No. 1,965,948

Cancellation No. 32,089

QVC, Inc.

v.

Coro (Canada) Inc.

A petition, a copy of which is attached, has been filed to  
cancel the above-identified registration.

Proceedings will be conducted in accordance with the  
Trademark Rules of Practice.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof. (See Patent  
and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday  
or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of  
Practice, set forth in Title 37, part 2, of the Code of Federal  
Regulations. The parties are reminded of the recent amendments to the  
Trademark Rules that became effective October 9, 1998. See Notice of  
Final Rulemaking published in the *Official Gazette* on September 29,  
1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a  
correction notice, were published in the *Official Gazette* on October  
20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the  
Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual  
of Procedure* (TBMP), is available at <http://www.uspto.gov>.

**Discovery and testimony periods are set as follows:**

Discovery period to open:	July 17, 2001
Discovery period to close:	January 13, 2002
30-day testimony period for party in position of plaintiff to close:	April 13, 2002

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