

Trademarks in Québec: No News Is Not Good News

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It has been six months since Bill 96 received Royal Assent, ushering in amendments to the *Charter of the French Language* (Charter). Some of those amendments, which we have written about here, had immediate force, while others will come into force on June 1, 2025. In a nutshell, in connection with trademarks:

- Non-French trademarks must be registered to be excepted from the requirement to translate the text to French on public signs, commercial advertising and labels.
- If public signs and commercial advertising are visible from outside the premises (i.e., store or window signage), French must be “markedly predominant.”
- Non-French trademarks must be registered to be excepted from the requirement to translate the text to French on “products.”
- Even if registered, if a generic term or a description of a product is included in a trademark, the generic term or description must be translated to French either on the product **or** on a medium **permanently attached** to the product.

There are many unanswered questions about the practical application of these amendments, leaving trademark owners who conduct business in Québec uncertain as to how best to prepare now. The Québec government has promised regulations detailing how to comply with the amendments, but they have yet to be published.

Unanswered Questions Raised by the Legislation

Here are some questions to which there are no clear answers or consensus at present:

1. If a registered non-French trademark appears on a poster or commercial advertising, how is that trademark factored into the analysis of whether French is “markedly predominant”? For example, does the trademark itself have to be combined with French generic text that is twice as large as the trademark text? In other words, using the following fictitious example of a children’s store called Children’s Corner®, must the trademark appear on posters as follows:

LES MAGASINS ENFANT Children’s Corner

or, can “marked predominance” of French be achieved without altering the registered non-French

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trademark or combining it with generic French text?

2. What constitutes “a generic term or a description of the product”? During the hearings on Bill 96, the following example was given of a registered trademark with generic or descriptive text requiring translation to French:

“Softsoap, Lavender and Shea Butter, washes away bacteria, deeply moisturizes to hydrate skin”

There are trademarks that may contain generic or descriptive text that fall short of the above example, including trademarks that include the common name of the associated goods. Where is the Québec government drawing the line on generic or descriptive text needing translation? Here, we note that federal labelling laws already require prescribed information about the product to be in both English and French.

3. What is “a medium permanently attached to the product”? For example, does a hang tag have sufficient permanency?
4. Will the Québec government extend the June 1, 2025, date by the length of time it takes them to publish the regulations? Three years from June 1, 2022, may have seemed like sufficient time, but, without regulations, the transition time is waning. Practically, there may not be enough time left to comply by June 1, 2025, given lead times for labels, the trademark examination backlog at the Canadian Intellectual Property Office, and other business realities.
5. There are bigger questions: what about trademarks that are for seasonal use only or other short-term products or services? Does the Québec government expect businesses to incur the cost of obtaining registrations when use may be over long before a registration is even granted?
6. What about the impact on the food and beverage and cosmetic industries, among others, who relied on the existing trademark exception that applies to both registered and unregistered trademarks for flavour, colour, and scent names?

These are just some of the practical and larger questions posed by the Bill 96 amendments. The list goes on.

Present Advice for Trademark Owners

Although frustrating, the clearest direction to trademark owners for now is to review their labels. If there are examples (like the SOFTSOAP® example) of extensive reliance on the trademark exception to avoid translation to French, then plan for translation to French of those generic or descriptive words on the product’s packaging and labeling, or on material permanently attached to the product (i.e., possibly more than just a removable hang tag).

The other direction is to note that there is sensitivity to the use of languages other than French on public

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signage and commercial advertising that is visible from outside business premises (i.e., the street). When designing these public signs, businesses should ensure that, on a visual impact test, the French content is markedly predominant over any English (or other non-French) content, including any registered non-French trademark.

We are monitoring the regulatory process and will provide an update as soon as regulations are released. In the meantime, the Cassels brand management team remains available to help brand owners navigate their obligations under the new amendments to the Charter.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.