

Trademarks in Quebec: New Regulations Offer Clarity to Brand Owners

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On June 26, 2024, the Quebec government published the much-awaited final regulations (Final Regulations) clarifying the application of the amendments to the Charter of the French Language (Charter) made by Bill 96. Bill 96 made significant changes to the Charter, including in connection with the display of non-French trademarks on products, packaging and labelling, and signage. We have written previously about the potential impact of Bill 96 amendments on brand owners who conduct business in Quebec (see previous articles from [April 19, 2022](#), [May 27, 2022](#), [December 12, 2022](#), and [January 11, 2024](#)).

Draft regulations were published on January 10, 2024, which were followed by a 45-day consultation period. Submissions made by stakeholders, trade associations and other interested parties appear to have resulted in changes to language contemplated by the draft regulations, indicating that the government considered their concerns.

The Final Regulations amend the *Regulation respecting the Language of Commerce and Business* (and revoke the *Regulation defining the scope of the expression “markedly predominant” for the purposes of the Charter of the French language*). The most notable clarifications made by the Final Regulations are discussed below.

The trademark portions of the Final Regulations come into force on June 1, 2025.

The Final Regulations and Products

Non-French trademarks on products no longer need to be registered to be exempt from French translation; rather, they must be “recognized trademarks,” which has always been understood to include unregistered trademarks. Generic terms/descriptions of the product contained within “recognized trademarks” still must be translated to French on the product or medium attached to the product.

Bill 96 amended the Charter by adding section 51.1, which states that:

1. a non-French trademark must be registered or it must be translated to French on products; and
2. even if a non-French trademark is registered, if the trademark contains a “generic term or description of the product,” those terms/descriptions must be translated to French on the product or

on a medium permanently attached to the product.

Regarding 1, non-French trademarks no longer need to be registered (or the subject of a pending application, which was a concession made in the draft regulations). Rather, the Final Regulations revert to the language that was long used in association with the trademark exception to translation on products, packaging, and labelling, namely, non-French trademarks must be “recognized trademarks,” provided there is no French version of the trademark on the Trademarks Register. “Recognized trademarks” have always been understood to include unregistered trademarks. Nevertheless, registrations are advisable because they provide the best evidence that trademarks are “recognized” as such. The evidentiary presumption may well be important given the private right of action that now exists with the Charter amendments brought by Bill 96.

Regarding 2, the Final Regulations require the translation to French of any generic term or description of the product contained within a “recognized trademark.” Stakeholders had hoped for clarity on what constitutes a “generic term” or “description of the product.” The definitions in the Final Regulations are set out below:

“(1) a description refers to one or more words describing the characteristics of a product, excluding the name of the enterprise and the name of the product as sold;

(2) a generic term refers to one or more words describing the nature of a product, excluding the name of the enterprise and the name of the product as sold;”

There are important exclusions. Notably, “the name of the product as sold” is excluded from “description of the product.” This appears to lay rest the concern among brand owners that the new section 51.1 would impact the display of their brand names. With this exclusion, CORN FLAKES does not need to be translated to French in KELLOGG’S CORN FLAKES, for example.

Also excluded from the definitions are “designations of origin and distinctive names of a cultural nature.” This confirms a debate among some as to whether geographic indications were covered by existing exceptions under the *Regulations respecting the language of business and commerce*.

The Final Regulations contain no definition of “medium permanently attached to the product.” The Final Regulations do not stipulate the size or prominence of the French translations of generic/descriptive terms. However, section 51 of the Charter states that inscriptions in other languages may be given no greater prominence than French inscriptions. Presumably then, translations to French of generic/descriptive terms must be at least as prominent as the presentation of the terms in the trademark.

A “product” includes its container – There was some debate on whether the reference to “product” in Section 51.1 was intended to exclude the product’s container, wrapping, and document or object supplied with it. The Final Regulations make it clear that “product” includes its container or wrapping, as well as any

document or object supplied with the product.

Permanent engravings, etc., on products – Under section 3(6) of the *Regulations respecting the language of business and commerce*, there is an important exemption to the requirement to translate inscriptions on products into French. Specifically, if the product originates from outside Quebec, inscriptions “engraved, baked or inlaid in a product itself, riveted or welded to it or embossed on it, in a permanent manner” do not need to be translated unless the inscription concerns safety. The draft regulations attempted to claw-back this exception further by also stipulating that, not only must permanent inscriptions relating to safety be translated, but also information “necessary for use of the product” (e.g., on/off buttons). Compliance would have been expensive as it would have required the retooling of production lines, recasting of moldings, etc. The Final Regulations retreat from the draft regulations and state that information necessary for the use of the product must appear on the product or accompany the product in a permanent manner.

Phase-out for non-compliant products – The Final Regulations provide that products that do not comply with the Charter and the Final Regulations can still be distributed and sold until **June 1, 2027**, as long as they were manufactured before June 1, 2025, and no French-language version of the product’s recognized trademark was registered as of June 16, 2024.

The Final Regulations and Signage

The “recognized trademarks” exception – As with products, non-French trademarks need not be registered to be exempt from French translation; rather they need be “recognized trademarks.” However, unlike products, there is no requirement to translate generic or descriptive portions of the “recognized trademark.”

“Markedly predominant” requirements – the Final Regulations have not changed significantly from the draft regulations. On public signage, French must be markedly predominant. This means that the French text must have a much greater visual impact than the text in the other language. This means that the space allotted to the French text must be at least twice as large as the space allotted to the text in another language and the French text’s legibility and permanent visibility must be equivalent. The French must be in the same visual field as well.

Certain elements are not taken into account when assessing marked predominance. French business hours, telephone numbers, addresses, numbers, percentages or definite, indefinite or partitive articles are not considered, and neither are a family name or a place name.

Importantly, on signage visible from outside the premises, non-French trademarks and enterprise names are considered in the markedly predominant assessment and must be accompanied by French terms such as a

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generic term, a description of the relevant products or services, or a slogan.

Dynamic signage – The Final Regulations specifically address dynamic signage (signage including text in French and in another language displayed in alternation). To be markedly predominant, the French must be visible for at least twice as long. Dynamic signage was not previously addressed under the Charter or draft regulations.

Takeaways

The Final Regulations address many of the concerns raised in relation to the display of non-French trademarks on products and signage since Bill 96 received Royal Assent. The reintroduction of the recognized trademark exceptions in particular should provide some relief to brand owners, as they can continue to rely on their unregistered trademark rights to avoid translation in most cases.

One notable concern that remains outstanding among many is the private right of action now available under the Charter. While any person bringing a claim would need to prove damages, the Regulations do not provide any further information in this respect.

The Cassels [Intellectual Property Group](#) has extensive experience advising brand owners on how to navigate Quebec's updated language requirements. If you have any questions about these requirements and how they might impact your business, please reach out to the authors of this article or any member of the Cassels Intellectual Property Group.

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