

FRENCH LANGUAGE: THE QUEBEC GOVERNMENT PROPOSES NEW RULES FOR THE PUBLIC DISPLAY OF TRADEMARKS

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On May 1, 2015, the Quebec Court of Appeal [1] confirmed the possibility for merchants to display English-only signage on their premises, provided that the displayed text is a registered trademark, unless a French version thereof has been registered. To that end, paragraph 25(4) of the *Regulation respecting the language of commerce and business* [2] (the "Regulation") enacted pursuant to the *Charter of the French Language* [3] (the "Charter") sets out that "[o]n public signs and posters and in commercial advertising, the following may appear exclusively in a language other than French: [...] a recognized trade-mark within the meaning of the *Trade Marks Act*, unless a French version has been registered." This provision constitutes an exception to the general requirement [4], under the Charter, that signs and posters displayed publicly in Quebec be in French.

For many years, the *Office québécois de la langue française* (the "OQLF") had endorsed an administrative interpretation of the legislation pursuant to which merchants publicly displaying a trademark in a language other than French had to include a generic or descriptive term in the mark (e.g., *Magasins X or Électroniques Y*). In its 2015 decision, the Court of appeal determined that this interpretation had no legal basis (for more details, we invite you to consult a [bulletin](#) analyzing that judgment [5]) and thus, it was possible for the retailers involved to use their trademarks in English without necessarily adding a generic term in French to "francise" them.

A year after that decision (on May 4, 2016), the Government of Quebec published several proposed amendments to the Regulation. [6] The proposed amendments consist in adding new sections 25.1 to 25.5 to the Regulation. These new provisions would impose on organizations displaying trademarks in another language the obligation to ensure a "sufficient presence of French" outside of their premises.

This requirement could be fulfilled in three ways, namely by displaying "(1) a generic term or a description of the products or services concerned; (2) a slogan; [or] (3) any other term or indication, favouring the display of information pertaining to the products or services to the benefit of consumers or persons frequenting the site." [7]

To illustrate these requirements, the Government provided the following fictitious examples for each of the

three options. As such, 1° a sign reading "*Matériaux de construction* Big warehouse" would be considered as fulfilling the requirement to include a generic term or a description of the products or services concerned (in this example, building materials); 2° a sign reading "Costless" joined with the slogan "*L'épicerie bon marché*" (i.e. "The inexpensive grocery store") would also be compliant with the Regulation and, finally, 3° the display of the information "*Vêtements pour enfants jusqu'à 60 % moins cher*" (i.e. "Kids clothes up to 60% off") in a store window with signage reading "Coolkids" would be an acceptable display of information pertaining to the products or services offered to consumers or other persons frequenting the location. [8]

These French displays must be designed, lit and located in such a way that they can be read as easily as the non-French trademark "without the signs or posters being necessarily present in the same place, in the same number, in the same materials or in the same size." [9] The draft regulation also specifies what will be considered as an exterior display that is subject to the new provisions. [10]. The suggested notion of display "outside an immovable" is broad. Display outside of commercial premises located inside an immovable (e.g. a store within a shopping mall) and displays inside an immovable if their installation or characteristics are intended to be seen from the outside are notably included. [11]

Finally, the degree of readability of the French display is also specified, especially regarding the place from which the display must be readable, [12] and certain displays would not be taken into account to fulfill the requirements of the draft regulation, notably business hours, phone numbers, as well as the use of a precarious form of display, or one that can easily be removed or torn off. [13]

While the measures suggested by the Quebec Government impose additional restrictions on the use of non-French trademarks, these restrictions are less rigorous than the interpretation that had previously been adopted and applied by the OQLF. The suggested restrictions only apply to trademarks displayed "outside an immovable" (as defined in the draft regulation). Moreover, rather than solely imposing the presence of a generic French term in the mark itself, the draft regulation creates two new options to comply with the requirement of having a "sufficient presence of French."

In this regard, we highlight the versatile option of displaying a non-French trademark with a message in French, favouring the display of information pertaining to the products or services offered. Furthermore, it is worth noting that such French message does not need to be predominant in comparison with the mark.

The draft regulation will be under public consultation for a period of 45 days, until June 18, 2016. A final version will then be adopted, with or without amendments, following a decision of the Cabinet. Organizations will then have to comply with the new regulation commencing on its effective date. However, there will be a grace period of three years after the entry into force of the regulation in certain circumstances, including where a display already existed or where a trademark is already used outside of Quebec as part of a franchise system.

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1 *Magasins Best Buy Ltée v. Québec (Procureur général)*, 2015 QCCA 747.[ps2id id='1' target='']

2 CQLR, c. C-11, r. 9.[ps2id id='2' target='']

3 CQLR, c. C-11.[ps2id id='3' target='']

4 *Id.*, s. 58.[ps2id id='4' target='']

5 Public Display of English-Language Trade-Marks: Quebec Court of Appeal Confirms the Decision in *Magasins Best Buy Ltée v. Québec (Procureur Général)*.[ps2id id='5' target='']

6 GAZETTE OFFICIELLE DU QUÉBEC, May 4, 2016, Vol. 148, No. 18, pp. 1967-1969 (the "Draft regulation").[ps2id id='6' target='']

7 *Id.*, s. 25.1.[ps2id id='7' target='']

8 https://www.mcc.gouv.qc.ca/fileadmin/documents/grands_dossiers[ps2id id='8' target='']

9 Draft regulation, s. 25.3.[ps2id id='9' target='']

10 *Id.*[ps2id id='10' target='']

11 *Id.*, s. 25.2.[ps2id id='11' target='']

12 *Id.*, s. 25.4.[ps2id id='12' target='']

13 *Id.*, s. 25.5.[ps2id id='13' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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