UPDATED BILL 96 REGULATIONS – IN THE END, STATUS QUO MOSTLY PREVAILS, EXCEPT WHEN IT COMES TO SIZE

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On June 26, 2024, a “Regulation”[1] was published, aiming to clarify and complement certain amendments made to the Charter of the French Language (the “Charter”) under the much-discussed Bill 96[2] and to facilitate the implementation of the Charter as modified by Bill 96.

Building on an earlier draft published in January 2024 (the “Draft Regulations”), the Regulation most notably provides specifics and concessions regarding the regime applicable to the use of trademarks in languages other than French on packaging and signage.

The Regulation is likely to be met with a sigh of relief by many as they include significant concessions with respect to burdensome obligations initially included in Bill 96 and even the Draft Regulations.

Back and Forth on the Trademark Exemption

Prior to Bill 96, the Charter and existing regulations permitted the display of “recognized trademarks” in other languages only in a number of contexts, such as appearing on products, commercial documentation or in public signage, where no French trademark existed. Jurisprudence on the subject had determined that this included both trademarks registered with the Canadian Intellectual Property Office (“CIPO”) and “common law” trademarks created through their use and recognizability, but not necessarily registered[3].

Bill 96 had curtailed the benefit of that exemption to “registered trademarks” only, which was to apply starting on June 1, 2025.

Many stakeholders opposed this change and noted that (i) it would be difficult and unwieldy to register large and previously unregistered trademark portfolios, or that (ii) current delays to obtain a trademark registration at CIPO often extended to multiple years and wondered how they would be able to sell products in Quebec in the meantime.

In a major reversal of the above, the Regulation reintroduces the full recognized trademark exemption (still only to the extent no equivalent French trademark is registered).[4]
As another practical concession, the Regulation provides that a product manufactured before June 1, 2025, and complying with the previous French language rules, can still be distributed, sold at retail, rented, offered for sale or rental or otherwise marketed until June 1, 2027. Considering obvious supply chain, inventory and logistics considerations that arise in conjunction with those rules, the adjustment period is sure to be welcome.

**Generic and Descriptive Wording**

Another rule introduced under Bill 96 was to require that any “generic term or a description of the product” included in a trademark should appear in French on the product or permanently attached to it. The Regulation clarifies those words to mean:

- “a description refers to one or more words describing the characteristics of a product”
- “a generic term refers to one or more words describing the nature of a product”

However, “the name of the enterprise [selling the product] and the name of the product as sold” are not subject to the above translation requirements, even if they are otherwise descriptive or generic. “Designations of origin and distinctive names of a cultural nature” are also carved out.

The Regulation also specifies that “a product” includes its container, wrapping and any other document or object supplied with it.

**Public Signage and Advertising**

Under Bill 96, a requirement was introduced that when trademarks in a language other than French are displayed publicly (i.e. “visible from outside the premises”, such as storefronts or billboards), they should be accompanied by “markedly predominant” French wording.

This represents an incremental step regarding the use of French in the public space. Indeed, since 2016, trademarks in other languages on public signage had to be accompanied by a “sufficient presence” of French (such as a slogan, descriptor of the products or services or generic description of the business).

Under the Regulation, marked predominance is achieved where a French description or generic term concerning the products or services offered has “much greater visual impact” within the same visual field (being an overall view where all components of the public signage or advertising are visible and legible at the same time without having to move).

The French text must also be twice as large in area and have the same legibility and permanent visibility. To be considered permanent, public signage must not be likely to be easily removed or torn off.

Certain items do not count towards meeting the above criteria, such as French inscriptions of business hours,
phone numbers, addresses, numbers, percentages and articles, among others.

**Wait and See**

Finally, the Draft Regulations included certain significant additional new requirements, which have been dropped in the final Regulations, including the following.

- **Inscriptions on products necessary for their use** – Under the Charter and previously existing regulations, where a product is from outside Québec and inscriptions on it are engraved, baked or inlaid in the product itself, riveted or welded to it or embossed on it, in a permanent manner, they may be exclusively in another language (as opposed to the underlying requirement to have equivalent French wording). Under the Draft Regulations, this exemption would no longer have been available for inscriptions “necessary for the use of the product”. As a result, various switches, dials and other instructions would have had to be labelled in French, in addition to any other language. Considering the nature of the targeted inscriptions, the regulatory change would have had significant impacts on manufacturing processes, for instance requiring new molds or significant changes to production lines to accommodate the requirement.[1]

- **Smart Products and Integrated Software** – Software (including pre-installed software and operating systems) is generally not required to be made available in French in order to be sold or distributed in Québec, to the extent no French version exists, i.e. software available in French elsewhere in the world should be offered in Québec as well. However, although it is not textually supported by legislation or case law, the OQLF had in the past taken the view that software enabled products must have their interfaces, screens and displays translated into French, considering those to be analogous to inscriptions on products. The Draft Regulations would have codified this interpretation and specified that wording displayed on a product using “integrated software” would be subject to the same translation requirements as any other physical inscription, instead of benefiting from the software exemption.[2]

This step back is understood to have resulted from significant push back from industry stakeholders and foreign commercial partners. While the Quebec appears to be giving these areas further thought for now, there is a sense that they may revisit these issues and make future incremental regulatory changes. It will be important to continue monitoring these issues in the coming months and years.

[1] Regulation to amend mainly the Regulation respecting the language of commerce and business, O.C. 1000-2024, 19 June 2024. The Regulation respecting the language of commerce and business, as amended by the Regulation, being referred to herein as the “**Amended Regulation**”

The Amendment Process.


[5] Regulation, s. 7.

[6] Amended Regulation, s. 27.2

[7] Ibid.

[8] Amended Regulation, s. 27.1

[9] Amended Regulation, ss. 27.4 and 27.6

[10] Ibid.


[12] Draft Regulations, s. 9 (introducing s 27.2).

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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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