

FOOD DESIGNATIONS AND TRADE-MARKS THE QUEBEC ACT RESPECTING RESERVED DESIGNATIONS

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The *Quebec Act respecting Reserved Designations* (S.Q. 1996, c. 51) received assent on December 16, 1996 but only came into force on October 15, 1997 with its related Regulation.

The object of this Act is the recognition of designations which are attributed to agricultural and food products as an attestation of their method of production, region of origin or specificity.

It confers upon the Minister of Agriculture, Fisheries and Food the power to recognize designations if it is demonstrated that the designations meet the criteria and requirements determined by regulation, and to reserve the use thereof in Quebec to the members of the accredited certification bodies (basically, those respecting ISO 39, 61 and 65).

Once a designation has been reserved, no person may use it in the advertising, labelling or display of any product, or in commercial documents of any nature relating thereto, unless the product has been certified by an accredited certification body. Stringent penal provisions are set forth in the Act.

As such, this provincial law would appear simple; however, real problems are foreseeable in its application in view, for instance, of some of the provisions of the *Trade-marks Act* which is of federal jurisdiction.

Indeed, nothing prevents a non accredited body from registering, as a trade-mark, a word that will include part of the reserved designation (or be confusingly similar with same). However, under section 19 of the *Trade-marks Act*, the registration of a trade-mark gives its owner the exclusive right to the use of the trade-mark throughout Canada, which includes the province of Quebec.

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Would the recognition of a reserved designation under the Quebec Act impinge upon the right to use a conflicting trade-mark in Quebec (whether registered before or after the recognition of a designation), even if the food product does otherwise respect the relevant provincial and federal legislation in regard of production, health and labelling?

Furthermore, section 25 of the *Trade-marks Act* provides that a certification mark which is descriptive of the place of origin of the goods can nevertheless be registered by a representative of a commercial organization of the area. In such a case, every person of this area is entitled to use the certification mark, whether certified or not. It is therefore doubtful that the accreditation boards would rush to obtain such federal protection which could otherwise erode the provincial exclusivity!

The interaction of the provincial reserved designations with the federal *Trade-marks Act* as well as the other provisions dealing with free interprovincial commerce is to be closely monitored, as interesting clashes are expected.

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