



LANGUAGE REQUIREMENTS IN QUEBEC: A FEW RULES TO KEEP IN MIND

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Businesses operating in Quebec must comply with various French language requirements. As a general rule, product packaging, marketing and promotional materials (including websites), public signs and commercial advertising, as well as corporate names and business names must be in French, subject to some permitted translations in other languages.

One of the most important exceptions to this general rule is the trade-mark exception, which allows the display of a “recognized trade-mark” in a language other than French on product packaging, advertising materials and public signs. While the Quebec Court of Appeal recently confirmed that a business may display its recognized trade-mark on public signs without a French component, the Quebec government has indicated that it intends to restrict this exception.

1. General rule

As French is the official language of the province of Quebec, the Charter of the French Language (the “Charter”) imposes various French language requirements to product packaging, marketing and promotional materials (including websites), public signs and commercial advertising, as well as corporate names and business names used in Quebec. The Charter provides as a general rule that the following must be in French, subject to permitted translations and many other exceptions provided by the Regulation respecting the language of commerce and business (the “Regulation”).

1.1 Products

Inscriptions on a product, its packaging or a document supplied with it (such as directions for use and warranty information) must be drafted in French. However, translations in languages other than French are permitted as long as they are not more prominent than the French inscription.

1.2 Commercial publications

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Catalogues, brochures, folders, commercial directories and any similar publications, including websites, must be drawn up in French. However, a version exclusively in a language other than French may exist, provided that the French version “is available under no less favourable conditions of accessibility and quality than the version in the other language”.

1.3 Public signs and commercial advertising

Public signs, posters and commercial advertising must be in French. However, they may be both in French and another language as long as French is “markedly predominant”, which means that French must have “a much greater visual impact than the text in the other language”.

1.4 Corporate names and business names

The Charter provides that the name of a business must be in French. This requirement may be satisfied by adding a generic French component to an expression in another language. For example, “Magasins Best Buy Ltée” combines the generic French component “Magasins” (“stores”) with an English expression. These requirements apply to any corporate name or business name. The name of a corporation constituted under the Quebec Business Corporations Act must comply with these requirements. Other corporations that carry on business in Quebec, such as federal corporations, need not change their name but must use and register a French version of their name in Quebec, pursuant to An Act Respecting the Legal Publicity of Enterprises.

2. Trade-mark exception

One of the most important exceptions provided by the Regulation is the trade-mark exception: a recognized trade-mark within the meaning of the Trade-marks Act may be used on product packaging, advertising materials and public signs in Quebec in a language other than French, unless a French version has been registered. Therefore, some businesses choose to not register a French version of their trade-mark in order to continue using the English version.

2.1 Unregistered trade-marks in a language other than French

One issue that has been debated is whether unregistered trade-marks fall within the meaning of “recognized trade-mark”. While the Office québécois de la langue française (the “OQLF”) adopts the position that a trade-mark must be duly registered with the Trade-marks Office in order to be considered as a “recognized trade-mark”, courts have consistently ruled so far that “recognized trade-marks” include

unregistered trade-marks, so long as they are used as a trade-mark (and not, for example, merely as a trade name or to describe goods or services). In the interest of certainty, many enterprises doing business in Quebec have opted to register their trade-marks in a language other than French (most of them in English), without a French version. Needless to say, this approach also facilitates the liaison with the OQLF in case of contestation.

2.2 Use as a trade-mark or trade name

Another important issue that has been debated is whether the display of a “name” on a public sign should be considered as the **use of a trade-mark** (hence covered by the trade-mark exception) or the **use of a trade name** (which does not fall within the exception). Indeed, as discussed above, the Charter also provides that the name of an enterprise must be in French in Quebec. As opposed to the provisions regarding public signs and commercial advertising, there are no exceptions allowing the use of a business name in a language other than French.

Over the past few years, the OQLF has taken a more aggressive stance in requiring businesses to not display their English trade-marks on their public indoor and storefront signs because of this name requirement. In this respect, many businesses received notices from the OQLF asking that, as a minimum, they add a generic French component to their English name on their signs.

A group of large companies challenged the OQLF’s position and the Quebec Court of Appeal sided with them in April 2015 [*Québec (Procureure générale) v Magasins Best Buy Itée*, 2015 QCCA 747 (2015-04-28)], confirming the Superior Court’s ruling that businesses can display their recognized trade-marks on public signs outside their premises without the need to add French generic language.

While the Quebec government decided to not appeal this decision, it has announced that it intends to table new regulations in the fall of 2015 that will restrict the trade-mark exception and require businesses to add a generic French component to their name.

3. Non-legal considerations

Beyond the legal implications of adopting an English trade-mark or corporate name in Quebec, consumer perception of a brand is an aspect that should not be overlooked. The issue of the French language in Quebec is sensitive, political and often generates media coverage. Therefore, adopting an English brand raises issues that go well beyond the regulatory aspects.

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