



THE PRESENCE OF FRENCH ON PUBLIC SIGNAGE IN QUEBEC

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In the spring of 2015, the Court of Appeal of Quebec confirmed that the Charter of the French Language and the Regulation respecting the language of commerce and business allow to display publicly, on signs, posters and commercial advertising, trade-marks in a language other than French, including trade-marks displayed outside a commercial building.

At the time, the Quebec government immediately promised to adopt certain amendments to the Regulation to ensure a sufficient presence of French on public signs. One year later, a draft Regulation modifying the Regulation respecting the language of commerce and business (“Draft Regulation”) was published, essentially aiming to ensure the predominance of the French language on exterior signage rather than francizing trade-marks.

The proposed amendments to the Regulation are inserted after the provisions allowing for public signs and commercial advertising in a language other than French, as it is the case for trade-marks recognized under the Trade-marks Act. These new provisions will therefore require that the use of non-French trade-marks, displayed outside a building, must respect a sufficient presence of French, through the use of (Section 25.1 of the Draft Regulation) :

1. a generic term or a description of the products or services concerned;
2. a slogan; or
3. any other term or indication, favoring the display of information pertaining to the products or services to the benefit of consumers.

The Draft Regulation aims to broadly cover all trade-marks displayed outside a building, whether this building has an exterior storefront or is located within another building, such as a shopping mall, and whether the signage related to this building or premises appears, inter alia, on the roof of the building, on a projecting or perpendicular sign, or on a marker post or other independent structure. There are exceptions in the case of certain types of signage, including instances where a trade-mark appears in more than one place. It is also worth noting that temporary or

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seasonal installations do not need to comply with the new requirements. (Section 25.2 of the Draft Regulation)

Aside from providing where and to whom these requirements apply, the legislator's main challenge was undoubtedly to find clear terms setting the parameters for the obviously subjective nature of the "attributes" of such public display complying with the objective of the sufficient presence of French. In this regard, the Draft Regulation states that the public sign must (Section 25.3 of the Draft Regulation) :

1. be permanently visible, similar to that of the trade-mark displayed; and
2. be legible in the same visual field as that of the non-French trade-mark on signs or posters.

The item in French, more specifically a generic term, a description or a slogan, must therefore be visible and legible in a similar manner to that of the trade-mark. This requires that the information in French, in relation to the non-French trade-mark, must be designed, lit and located in such a way that both components can be easily read at the same time, whether the trade-mark and the information in French are displayed in the same location or not. For example, the generic term "Restaurant Mexicain" (Mexican restaurant) might be displayed close to a restaurant's Spanish name on its exterior sign, or, alternatively, details of the menu could appear in clear French elsewhere on the front of the restaurant, provided that the sign and menu are exposed in the same visual field of the consumers.

Examples of French signage requirements have been published on the Ministry of Culture and Communications website (in French only) <<https://www.mcc.gouv.qc.ca/index.php?id=5836>>.

The Draft Regulation provides many other clarifications and exceptions in order to better frame the new requirements and foster a more accessible application of the provisions with respect to both freedom of commerce and the presence of the French language on public signs in Quebec. Only time will tell whether these new provisions will achieve the desired effect and how they will be applied by businesses. According to the Government, the Draft Regulation targets only a limited number of businesses, several having already chosen to add French indications to their signage. The others will have three years, after the entry into force of the Draft Regulation, to comply.

Finally, as a corollary of this Draft Regulation, the Government also proposed an amendment to the Regulation defining the scope of the expression "markedly predominant" for the purposes of the Charter of the French language in order to endorse the current scope of the exceptions provided by the Regulation and to make certain clarifications with respect to the visual impact of public signs.

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