

RECENT AMENDMENTS TO QUEBEC'S LEGISLATION AND REGULATION ON LANGUAGE AND THEIR EFFECTS ON USE OF TRADE-MARKS

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The Charter of the French Language (R.S.Q., c. C-11), hereafter referred to as the Charter, often still called Bill 101, came into force in 1977. The Government of Quebec enacted the Charter with the objective of protecting the French language and all that it represented for the French speaking residents of the province who are a minority of approximately 6 million people amidst the much larger population of English and Spanish speaking inhabitants of North America.

The Charter was given a wide ranging scope. Aside from stating that French is the official language of Quebec, the Charter also deals with the issue of language as it relates to the legislature, the courts, civil administration, semi-public agencies, labour relations, education, commerce and business.

It is under this last chapter dedicated to commerce and business that one finds specific references to trade-marks. The Charter regulates the language of trade-marks in two contexts: when they appear as inscriptions on products and when they are used in advertising.

Trade-marks as Inscriptions on Products

Section 51 of the Charter sets out the general principles in matters related to the inscriptions which appear on products or related items. Section 51 reads as follows:

"51. Every inscription on a product, on its container or on its wrapping, or on a leaflet, brochure or card supplied with it, including the directions for use and warranty certificates, must be drafted in French. This rule applies also to menus and wine lists.

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The French inscription may be accompanied with a translation or translations, but no inscription in another language may be given greater prominence than that in French".

Section 53 of the Charter provides that the Government may adopt regulations creating exceptions to the application of section 51. A regulation (R.R.Q., c. C-11, r.9.01) to that effect was adopted and became effective on December 22, 1993. Amongst the numerous exceptions provided by sections 1 to 9 of the regulation, sections 3 and 7 are noteworthy, they respectively read as follows:

"3. An inscription on a product may be exclusively in a language other than French in the following cases:

- 1) the product is intended for a market outside Quebec;
- 2) the inscription appears on a container used in interprovincial or international transportation of merchandise;
- 3) the product is from outside Quebec, has not yet been marketed in Quebec and is being exhibited at a convention, conference or exhibition;
- 4) the product is from outside Quebec, is intended for incorporation into a finished product or for use in a manufacturing, processing or repair operation and is not offered in Quebec for retail sale;
- 5) the product is from outside Quebec and is in limited use in Quebec and no equivalent substitute presented in French is available in Quebec; or
- 6) the product is from outside Quebec and the inscription is engraved, baked or inlaid in the product itself, riveted or welded to it or embossed on it, in a permanent manner. However, inscriptions concerning safety must be written in French and appear on the product or accompany it in a permanent manner.
- 7) the following inscriptions on a product may be exclusively in a language other than French:
 - 1) the firm name of a firm established exclusively outside Quebec;

2) a name of origin, the denomination of an exotic product or foreign speciality, a heraldic motto or any other non-commercial motto;

3) a place name designating a place situated outside Quebec or a place name in such other language as officialized by the Commission de toponymie du Québec, a family name, a given name or the name of a personality or character or a distinctive name of a cultural nature; and

4) a recognized trade-mark within the meaning of the Trade-Marks Act (R.S.C. (1985), c. T-13), unless a French version has been registered".

According to the regulation as it exists presently, if the French version of a trade mark, otherwise recognized by the Trade-Marks Act, has been registered, then the said trade-mark can only appear on the product in a language other than French if it is accompanied by the French version having no less than equal prominence. Since December 22, 1993, the exclusive use of a trade-mark in a language other than French is allowed provided that no French version of the trade-mark has been registered.

The original version of the Regulation (section 16) was more restrictive for it only permitted the exclusive use of a trade mark in a language other than French if the trade mark, prior to August 26, 1993, constituted a recognized trade-mark within the meaning of the Trade-Marks Act. This effectively prohibited the use of new trade-marks exclusively in languages other than French while allowing for such use to continue in regards to existing trade-marks.

The desired effect of the amendment to the Regulation appears to have been to force all registrants to make use of the French versions of their trade marks if they have judged such versions to be worthy of registration. The advantage of the recently amended Regulation is the choice it provides as to the language of new trade-marks. One can avoid having to adopt a French version of a new trade-mark by simply not registering the trade-mark in French. All registrants who proceeded to register their new trade-marks in French since 1977, in order to conform with what was section 16 of the Regulation, have in effect lost the option of making use of their trade-marks solely in a language other than French.

The recent changes to the Charter and its regulations were made within the larger framework of liberalizing the statute as a whole.

Trade-mark Used in Advertising

The language of trade-marks within the context of advertising is regulated by the Charter under section 58.

"58. Public signs and posters and commercial advertising must be in French. They may also be in both French and another language provided that French is markedly predominant".

(...)

While section 58 states the general rule as being that French must, at the very least, be the predominant language when it comes to public signs, posters and commercial advertising, section 25(4) of the Regulation provides an exception as to trade marks which is identical to that provided by section 7(4).

"25. On public signs and posters and in commercial advertising, the following may appear exclusively in a language other than French:

(...)

(4) a recognized trade-mark within the meaning of the Trade Marks Act, unless a French version has been registered".

The same reasoning which applies to section 7(4) also applies to the exception of section 25(4).

There exists one distinction between sections 51 and 58 of the Charter which is relevant any time that French and another language or languages are being used in conjunction with each other. While section 51 states that an inscription in a language other than French appearing on a product cannot be given "greater prominence" than its French equivalent, section 58 takes it one step further by stating that if a language other than French appears on a public sign, poster or commercial advertising, the French portion of such sign, poster or advertising must be "markedly predominant". Although it is beyond the scope of this article to delve into the exact definition of "markedly predominant", let it suffice to mention that there exists a Regulation Defining the Scope of the Expression "Markedly Predominant" for the Purpose of the Charter of the French Language, (R.R.Q., c. C-11, r.10.2) which, as is indicated by the title, deals specifically with this topic.

In general, the Charter has never been overly restrictive in its regulation of trade-mark language and is even less restrictive in its present form. The most that has ever been required as regards trade marks has been the presence of a French

equivalent when inscribed on a product or displayed in various forms of advertising. The Charter now allows for the exclusive use of trade-marks in languages other than French unless a French version of the trade-mark has been registered.

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