

Signs with registered English only trademarks in Québec? Not a problem if you have sufficient and visible French somewhere close by

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On Wednesday May 4, 2016, the Québec Minister of Culture and Communications and Minister Responsible for the Protection and Promotion of the French Language, Hélène David, [introduced draft amendments](#) (the "**Proposed Amendments**") to certain regulations under the [Charter of the French Language](#) (the "**Charter**") to ensure the presence of French where commercial signs and posters display trademarks exclusively in a language other than French. This article provides some background relating to the Proposed Amendments as well as a summary of some of the key provisions.

Background

The Charter requires the language on commercial signs to be predominantly in French and the [Regulation defining the scope of the expression "markedly predominant" for the purposes of the Charter of the French language](#) defines what this means. However, the [Regulation respecting the language of commerce and business](#) provides an exception for recognized trademarks under the [Trade Marks Act](#). Such trademarks may appear on commercial signs exclusively in a language other than French unless a French version of the trademark has also been registered.

In 2010, the *Office québécois de la langue française* (the "**OQLF**"), the body that administers the Charter, started requiring businesses to add a generic identifier in French (e.g. *Les cafés* Second Cup) to public signs consisting of non-French only trademarks. The OQLF's view was that when a trademark is used on public signs as the company/store identifier, it was really the use of a "trade name" and not of a "trademark". Trade names must have French components and do not qualify for the trade-mark exception. In response, several major retailers [sought and obtained](#) a declaratory judgment from the Quebec Superior Court holding that their use of English-only trademarks on their signs was indeed compliant with the Charter and no French-language generic identifier was required under the current rules. The Quebec Court of Appeal [upheld](#) this judgment. The Quebec government decided not to appeal the decision to the Supreme Court of Canada, and instead announced its intention to modify the relevant regulations to ensure a more visible presence of French when a non-French trademark is used on a public sign in Quebec.

Over the next months, the Quebec government met with major Quebec retailers from the Retail Council of Canada to work out a legislative solution that would permit businesses to preserve the integrity of their non-French trademarks while satisfying the need for more French on signs without undue expense. The resulting solution is the Proposed Amendments.

The Proposed Amendments

Trademark integrity is preserved

The Proposed Amendments do **not** require that non-French trademarks be translated into French or be otherwise modified to include a French-language generic identifier. As such the integrity of trademarks, which are under federal jurisdiction, is preserved. Instead, the Proposed Amendments, if they come into force as currently drafted, will require a "sufficient presence of French" on the sign or nearby.

Scope is important: More than just signs on buildings

The scope of the Proposed Amendments is broad. The Proposed Amendments apply to non-French only trademarks on (i) signs and posters attached to the outside of a building, including its roof, and projecting and perpendicular signs, (ii) signs outside of premises that are situated inside a mall, a shopping centre or another property complex, and (iii) signs inside a building or premises if they are intended to be seen from outside. They also apply to non-French only trademark signs and posters on a bollard, totem or other independent structure near the building if

there is no other outside sign or poster containing the non-French trademark. They do not apply to (i) totem-type structures that include multiple trademarks (such as a totem at the entrance to a mall listing the businesses in the mall), (ii) temporary or seasonal facilities, or (iii) signs on vehicles etc.

Guidance on what constitutes a "presence of French" on the site

The Proposed Amendments do not require existing trademark signs to be changed. The presence of French requirement can be fulfilled by adding a sign or poster that includes (i) a French generic term or a description of the products or services concerned; (ii) a French slogan; or (iii) other information in French about the products or services offered to consumers or persons frequenting the business (excluding such things as business hours and addresses). For example, a hardware store could use the word "*Quincaillerie*" in its signs, a grocery store, a slogan such as "*Aliments frais et locaux*" (fresh local food), and a restaurant could display its menu and daily specials in French in an adjacent window.

Guidance on when the presence of French will be considered "sufficient"

The Proposed Amendments do not require the additional French on signs to be "markedly predominant" over the sign with the non-French trademark, or even that it be the same size. However, the French signs must have permanent visibility, similar to that of the trademark displayed, and must be legible in the same visual field as that mainly covered by the trademark signs or posters. The French signs must therefore be located and lighted so it can be easily readable at the same time as the signs containing the non-French trademark, without necessarily being the same size, in the same number or materials or using the same lighting. French signs or posters that can easily be removed or destroyed will likely not be considered to have the requisite permanent visibility.

In term of legibility, the French sign must be legible (i) from the sidewalk along the façade on which the trademark appears, in the case of a sign or poster outside a building on a street bordered by a sidewalk, (ii) from the centre of the corridor or the space facing the premises, in the case of a sign or poster outside premises situated inside a building (such as a mall), or (iii) from the highway, in the case of a trademark visible from a highway.

Rules regarding compliance

The Proposed Amendments are subject to a 45-day comment period, but are expected to be brought into force in 2016 with few amendments, given the previous consultations. Once the Proposed Amendments come into force, businesses will have three years to bring existing signs or posters into compliance. All new signs installed as of the date of its coming into force (including the replacement of existing signs and posters) will have to comply immediately. However, the three-year period will also apply if the same non-French trademark is being used on signs or posters elsewhere in Quebec as part of a franchise system.

Non-compliance with the Proposed Amendments may result in businesses being fined from \$1,500 to \$20,000, with fines doubling for subsequent offences. Other penal provision may also apply.

Comments

There is useful [guidance provided to businesses](#) on the site of the Ministry of Culture and Communications including examples of what constitutes (or does not constitute) compliance.

However, as with any major change, there are some aspects of the Proposed Amendments that will require further clarification as businesses begin to change their current signs or add new signs to bring themselves into compliance. For instance, the concepts of "legibility in the same visual field" and "permanent visibility" may leave room for interpretation. We will provide further updates as new information becomes available.