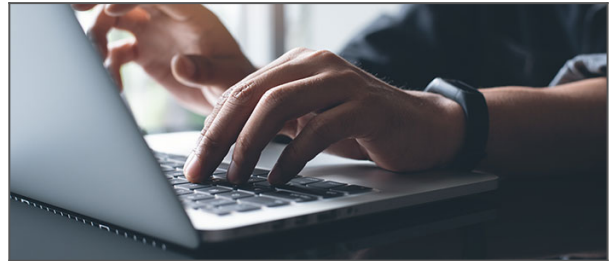


En français, s'il vous plaît!: How Quebec's French Language Requirements Affect Trademark Owners

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The Quebec provincial government adopted a new language law on May 24, 2022 called *Bill 96, An Act respecting French, the official and common language of Québec* ("Bill 96"). The purpose of Bill 96 is to strengthen the Charter of the French Language in Quebec (the "French Language Charter"), to further recognize French as the official language of Quebec, and to reinforce the use of the French language in daily life.



Bill 96 introduces provisions that may affect businesses and persons using trademarks in Quebec. The provisions affecting trademarks, sections 51.1 and 58.1, are fixed to come into force on June 1, 2025.

Changes Affecting Trademark Owners

When the provisions regarding trademarks in Bill 96 come into force, there are three major changes that will affect trademark owners:

1. The recognized trademark exception will change to the registered trademark exception;
2. The requirement for a "sufficient presence" of French will change to a requirement for a "markedly predominant" presence of French; and
3. Generic and descriptive terms will need to be translated.

The Recognized Trademark Exception will change to the Registered Trademark Exception

In Quebec, there is a translation requirement set out in the French Language Charter that states that all inscriptions on products and accompanying documentation — commercial publications, public signs, public posters, and commercial advertising — must be translated into French. This requirement even applies to things like flyers, websites, contracts, and employee uniforms.

Currently, there is an exception to the translation requirement for trademarks. The exception is found in the Regulation respecting the language of commerce and business (the

“Regulation”) and states that a “recognized trademark” may be in a language other than French, unless a French version of the mark has been registered. A “recognized trademark” is a mark that is registered in Canada, applied for in Canada, or is a common law mark. This recognized trademark exception means that a registered or common law trademark can be displayed in English (or any language other than French) on products sold in Quebec without being translated to French.

Bill 96 changes the application of the trademark exception. It introduces section 58.1 which provides that a trademark may be displayed in a language other than French in public signs, posters and commercial advertising, only if the trademark is registered and there is no corresponding French version in the Trademark Register. Accordingly, Bill 96 will modify the trademark exception from applying to “recognized marks” to only applying to “registered marks”. In other words, when this provision comes into force, the trademark exception will no longer apply to common law trademarks or trademarks with pending applications, and those trademarks will need to be translated into French.

“Sufficient presence” to “markedly predominant” presence of French

Section 58.1 further states that French must be markedly predominant where such a trademark appears in a language other than French on public signs and posters visible from outside premises.

Currently, even with the recognized trademark exception, French must have a “sufficient presence” when advertising is visible outside a premise. A “sufficient presence” means giving a prominent display to the French accompanying the mark.

When this provision of Bill 96 comes into force, the current “sufficient presence” requirement will change to a higher standard of a “markedly predominant” presence of French on public signs and posters visible from outside premises, if there is a non-French trademark.

Generic and descriptive terms will need to be translated

Bill 96 introduces section 51.1 which provides that if a registered trademark contains generic or descriptive terms in a language other than French, those terms must be translated and must appear in French on the product or on a medium permanently attached to the product. Thus, as of June 1, 2025, even if a trademark is registered in Canada, companies will have to include, somewhere on the product, a translation of any generic and descriptive terms contained in the trademark.

Still, if your trademark is made up of a shorthand or acronym it may fall into a grey area when it comes to what is defined as a term “in a language other than French” for the purposes of the French Language Charter and its regulations. Where elements of a trademark can readily be defined as “expressions formed by the artificial combination of letters” then

those elements need not be translated. The French Language Charter's section 67, which is not amended by Bill 96, states that, "[f]amily names, place names, expressions formed by the artificial combination of letters, syllables or figures, and expressions taken from other languages may appear in the names of enterprises to specify them." In addition, paragraphs 9, 14, and 26 of the Regulation specifically do not preclude the use of any artificial combination of letters, syllables or figures.

Consequences of Non-Compliance

The Office québécois de la langue française (OQLF) is the entity that oversees the application of the French Language Charter and its regulations. Bill 96 gives the OQLF new powers. If the OQLF becomes aware of a failure to comply with the Charter or a regulation, it may issue an order to the offender either to comply with the French Language Charter, or to cease contravening it.

In addition, civil sanctions, administrative sanctions, and penal sanctions may be applicable where there is non-compliance with the French Language Charter or its regulations. Civil sanctions include that the court may, on an application by the OQLF, order the removal or destruction of any poster, sign, advertisement, billboard or illuminated sign that contravenes the French Language Charter, at the expense of the offender. Administrative sanctions include that the Minister of the French Language will have the power to suspend or revoke a permit delivered by another authority in Quebec. Penal sanctions include fines for contravening the French Language Charter, which now range between \$700 and \$7,000 for individuals, and between \$3,000 and \$30,000 in other cases. Fines are applied for each day that the offence continues. Further, these amounts are doubled for a second offence and tripled for any additional offence.

Finally, even if the maximum fine has been imposed, the judge may impose on the offender a further fine not exceeding the financial benefit realized by the offender as a result of the offence, in addition to any other penalty.

What You Can Do

The provisions regarding trademarks in Bill 96 are set to come into effect on June 1, 2025 to give businesses sufficient time to comply. One way to ensure your trademark is in compliance with Bill 96 is to register it. If you or your business intend to start advertising and selling goods and/or services in Quebec on or after June 1, 2025, you will not be able to benefit from the trademark exception unless your trademark is registered. Currently, the Canadian Intellectual Property Office may take up to three years to examine (consider) a trademark application.

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you are interested in registering a trademark or would like to discuss other intellectual property legal needs, **please contact Deborah Yeboah through her bio page.**

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