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# Newsletter

## Intellectual Property

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## New French language requirements for public signage

The debate over the use of French on business signs in Quebec has entered a new era with the Quebec government's introduction of draft regulations proposing to amend Quebec's *Charter of the French Language* (the "**Charter**"). The amendments would require businesses using English trade-marks in their public signage in Quebec to include a French-language description or other "sufficient presence of French".

### Background

The current Charter together with its associated *Regulation Respecting the Language of Commerce and Business* (the "**Regulation**") provide that public signs and posters and commercial advertising must be in French or both in French and another language provided that French is markedly predominant. The Regulation includes an exception permitting "a recognized trade-mark" to appear on public signs and posters exclusively in a language other than French where there is no French version registered. In practical terms, the regulatory authorities overseeing the application of the Charter and the Regulation have only ever recognized trade-marks that are registered in Canada as qualifying for purposes of this exception.

The *Office québécois de la langue française* (the "**Office**") began countering the increased use of English trade-marks on public commercial displays by interpreting the trade-mark exception under the Regulation such that

any trade-mark appearing on public signs would be considered the use of a "trade-name" thereby resulting in the application of different provisions of the Charter, which would require the use of a French generic term in association with any trade-mark in a language other than French.

In 2012, in response to this interpretation, a number of retailers including Best Buy, Costco, Gap, Old Navy, Guess and Walmart challenged the Office's position and sought a declaration that their use of non-French trade-marks did not violate the Charter and that the Office's interpretation of the rules on trade-marks and their use as trade-names was incorrect. The retailers were ultimately successful in the Quebec Superior Court and although the case was appealed by the Attorney General of Quebec, the Quebec Court of Appeal, in 2014, affirmed the lower court's decision.

The Court of Appeal held that trade-marks and trade-names are two distinct concepts, each with their own set of rules: Under the Charter and the Regulation, a trade-name, or a business name, must be in French in Quebec, a non-French business name that is not a registered trade-mark must be used with a generic term in French identifying the nature of the business and a business name which is a recognized trade-mark is not subject to the requirement of being used with a generic term in French when it is displayed in public.

### Proposed amendments

The Quebec government's proposed amendments would permit businesses to continue using their English trade-marks to identify their business on public signage (provided that a French version of the trade-mark has not been registered in Canada), but subject to certain new requirements.

Businesses displaying a trade-mark on exterior signage (or "outside an immovable" as the amendments propose) only in a language other than French will be required to include a "sufficient presence" of French accompanying the trade-mark. The requirement of a "sufficient presence of French" can be satisfied by including one of the following: (1) a generic term of a description of the products or services, (2) a slogan or (3) any other term or indication favouring the display of information pertaining

to the products or services. The amendments specify that there is a “sufficient presence of French” where French is given permanent visibility and is legible in the same visual field as the principal signs displaying the trade-mark. As an example, if a sign bearing an English trade-mark is illuminated at night, the French addition must also be illuminated.

Businesses will have three years to comply from the coming into force of the new requirements or face fines ranging from \$1,500 to \$20,000.

It is important to note that these amendments will not impact the other exceptions available in the Regulation that allow for the use of non-French trade-marks exclusively (i.e. where the trade-mark is not used as a trade-name/business name).

The draft regulations proposed by the Quebec government are now open for comment until July 6, 2016. The new requirements will come into force within 15 days of the final regulation's official publication, following the consultation period.

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**The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.**

**Should you have any questions regarding compliance with these new requirements, please do not hesitate to contact:**

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