

Québec Publishes Final Regulations Under Québec's Charter of French Language, Broadening the Translation Exemptions for Trademarks – What Brand Owners Need to Know

On June 26, 2024, the Province of Québec released the long-awaited final amendments to the *Regulation respecting the language of commerce and business* (Regulation), which amend multiple French-language requirements, including trademark use provisions set out in the *Charter of The French Language (The Charter)* and its corresponding Regulation. The amendments to the Regulation attempt to clarify many uncertainties following the announcement and passage of Bill 96 on June 1, 2022, which introduced significant changes governing how both registered, and common law non-French-language trademarks could be used in Québec on product packaging and inscriptions, signage, advertising, websites, commercial directories and publications, as well as many other changes beyond intellectual property considerations.

This article summarizes the key highlights of the amended Regulation and its implications for brand owners, and follows the authors' previous article "Amendments to the Québec Charter of French Language – What Brand Owners Need to Know."

Brand owners, businesses operating in Québec, and their counsel have eagerly awaited the final amendments to the Regulation, which are the result of significant lobbying efforts by many industries, trade organizations, and brand owners. These brand owners will breathe a sigh of relief as the amendments clarify that a recognized trademark – which now explicitly includes unregistered trademarks for which no application for registration is pending – is exempt from the French language translation requirements for product packaging, signage, posters, and catalogs, directories, and commercial publications, including websites. This exemption significantly broadens the limited exemptions originally mandated by Bill 96, most of which applied only to registered trademarks.

Background and Status of the Charter

As explored in *What Brand Owners Need to Know*, Bill 96 aims to strengthen the quality and status of the French language in Québec. While Bill 96 received royal assent on June 1, 2022, the coming-into-force dates of various provisions are staggered up to June 1, 2025. These include significant amendments governing the use and prominence of non-French language trademarks and other indicia on store signage, product packaging, and advertising and increased penalties for non-compliance.

The Bill's vague language and strict approach exempting only registered trademarks from translation prompted requests for clarification, consultation meetings, and significant lobbying by trade organizations and global brand owners doing business in Québec.

Brand owners with a physical presence in Québec, any enterprise or employer carrying on activities in Québec, and anyone who distributes, sells at retail, rents, offers for sale or rental, or otherwise markets for consideration or free of charge, or who even possesses any non-compliant product, should be aware of these important amendments and changes to the Charter, all of which are summarized below.

Product Packaging

Perhaps the most significant changes and clarifications introduced by the amended Regulation relate to the translation requirements for product packaging. The amendments make clear that a recognized – and not only registered – trademark under the *Trademarks Act* need not be



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translated. This represents a significant change from the language of Bill 96, introduced and enacted in 2022 (although not taking effect until June 1, 2025), which required that only registered trademarks be exempt from translation, and proposed draft amendments to the Regulation released in January 2024 for consultation, which would have permitted only registered trademarks and trademarks covered by a pending application to be exempt from translation.

The amended Regulation repeals the trademark exception set out in Bill 96, clarifying that a recognized trademark may appear (even partially) on product packaging without being translated into French, so long as a French-language version of that trademark does not appear on the Trademarks Register.

The amendments also make clear that provisions governing product inscriptions also apply to a product's container or wrapping or on a leaflet, brochure, or card supplied with it, including the directions for use and warranty certificates.

The Regulation includes additional exceptions to the translation requirements for product inscriptions where:

- products are intended for outside of Québec;
- products appear on a container used in interprovincial or international transportation of merchandise;
- products are from outside of Québec, have not been marketed in Québec, and are intended for use at a convention, exhibition, conference, or fair;
- products are from outside Québec and in limited use in Québec, and no equivalent substitute presented in French is available in Québec; or
- products are from outside Québec, the inscription is permanently affixed to the product by way of engraving, embossing, riveted or welding. Inscriptions concerning safety must be written in French and appear on the product or accompany it permanently; and/or
- identifying the name of a firm established outside of Québec;
- a name of origin, the denomination of an exotic product or foreign specialty, a heraldic motto or non-commercial motto;
- a place name designating a place outside of Québec, a family name, a given name or the name of a personality or character, or a distinctive name of a cultural nature.

Inscriptions on perishable food wrapping from outside Québec may also be in a language other than French so long as the food itself is not offered for retail sale in that wrapping.

There are additional translation exceptions for products and their containers for medical, pharmaceutical or scientific use, and the regulations confirm that the translation requirements do not preempt the requirements for cosmetics specified under the *Federal Cosmetics Regulations*.

Signage and Posters

The amended Regulation makes clear that commercial signage and posters must be in French, with limited exceptions. Recognized trademarks are, however, exempt from the translation requirements for signage, posters, and commercial advertising.¹

The Regulation maintains that where a trademark is displayed outside an immovable object² only in a language other than French, a sufficient presence of French must be ensured.³ A sufficient presence of French means signs or posters giving French permanent visibility, similar to the trademarks displayed, and ensure legibility in the same visual field as that covered by the trademark signs or posters.⁴ The presence of French under this provision refers to signs or posters with:

1. generic terms or descriptions of products or services;
2. slogans; and
3. any other terms or indications displaying information related to the products or services of consumers visiting the site.⁵

Signs and posters that are designed, lighted, and situated so that they are easy to read, both at the same time and at times when the trademark is legible, meet these requirements *without* requiring that the signs or posters are present in the same place, in the same number, in the same materials, or in the same size. The amended Regulation also provides guidance on how the legibility of a sign or poster in French is to be evaluated, including the perspective and location of the viewer.⁶

Signage, advertising, and posters which are 16m² or more and visible from any public highway or appear on public transportation and accesses thereto must be in French.

Public signage on certain transport vehicles, health and safety signs, and signage for museums, gardens, zoos, scientific exhibitions, and international events can be bilingual as long as French appears at least as prominently.

Catalogs, Commercial Directories, Brochures

Pursuant to Section 52 of the Charter, regardless of the medium used, catalogs, brochures, folders, commercial directories, order forms, and any other documents of the same nature that are available to the public must be drawn up in French. During consultations, the province confirmed that this provision applies to information published on websites and social media pages.⁷ Such catalogs, brochures, commercial directories, and similar publications may be in two separate versions – one exclusively in French and one exclusively in another language. Importantly, recognized trademarks are exempt from the translation requirements, and non-French language trademarks may be used in a French-language catalog, commercial directory, or brochure so long as no equivalent French-language trademark is registered.

Similarly, catalogs, brochures, folders, and commercial directories for cultural or educational products and conventions, conferences, fairs, and exhibitions may be exclusively in a language other than French so long as the activity is also exclusively held in that non-French language.

Summary of Trademark Exceptions

The Regulation clarifies the scope of trademark-based exemptions to the existing French-language requirements imposed by the Charter:

1. **Exemption for Product Inscriptions:** Recognized trademarks (which include unregistered trademarks that are not covered by a pending application for registration) will not need to be translated for product inscriptions, provided there is no corresponding registered French version of the trademark.
2. **Exemptions for Public Signs:** Again, recognized trademarks are exempt from translation requirements. Public signs and posters of a trademark or enterprise's name visible from outside premises must also translate generic terms, descriptions of the goods or services, or any slogan.
3. **Exemption for catalogs, brochures, folders, commercial directories, and any**

similar publications: Recognized trademarks will also be exempt from translation, provided no French-language version of that trademark is registered in Canada.

Grace Period for Non-Compliant Products

Non-compliant products may still be distributed, sold, rented, offered for sale or rent, or otherwise marketed until June 1, 2027, provided that they were manufactured no later than June 1, 2025, and that no French-language version of the mark was registered as of June 26, 2024. Products manufactured after June 1, 2025, can still take advantage of this grace period provided that they are also required to comply with the *Regulations Amending the Food and Drug Regulations (Nutrition Symbols, Other Labelling Provisions, Vitamin D and Hydrogenated Fats or Oils)* or the *Regulations Amending the Food and Drug Regulations and the Cannabis Regulations (Supplemented Foods)*.

General Terms and Descriptors

Bill 96 includes the requirement to translate generic terms or descriptions of goods included in product inscriptions, including if the terms are *in a* registered trademark. When the Bill received Royal Assent, many stakeholders were left confused as to what would constitute a generic or descriptive term or whether descriptive terms that acquired distinctiveness would be encompassed. By expanding the translation exemption to include recognized – and not only registered – trademarks, the confusion regarding the translation requirements for generic and descriptive terms has diminished in importance. The previous draft amendments to the Regulation, released in January, broadly defined description as “one or more words describing the characteristic of a product;” and generic term to refer to “one or more words describing the nature of a product.”⁸

The Regulation now states that names of enterprises and the names of products as sold are not descriptive or generic, nor are designations of origin and distinctive names of a cultural nature. This means that the names of products need not be translated into French, even if those product names contain descriptive or generic text.



The amended Regulation does not specify whether the exemption applies if there is more than one product name, and it is unclear how secondary marks may be treated on product packaging and if such marks must be translated. Provisions in the previously published draft amendments to the Regulation requiring that non-French language generic or descriptive terms within a registered trademark be translated are not addressed in the final amendments, and it is unclear whether the markedly predominant or sufficient presence tests imposed for signage might be required, or some other test.

Conclusion

The amendments to the Regulation are a welcomed step towards providing clarity and guidance to the Charter’s amendments. However, several uncertainties and interpretational challenges remain, such as how the Office québécois de la langue française (OQLF) will practically apply the amendments and the extent to which translation of generic terms on products may be required for secondary marks.

The Cozen Canadian Intellectual Property team is closely monitoring implementation of Bill 96 and its amendments to the Charter. If you have any questions about this article or if you need

assistance navigating the Charter and Regulation, please feel free to contact any member of our Canadian Intellectual Property team.

¹ Regulation at s. 25(4).

² A building and any structure intended to receive at least one person for the carrying on of activities, regardless of the materials used, excluding a temporary or seasonal facility.

³ Regulations at s. 25.1.

⁴ Regulation at s. 25.3.

⁵ This also applies to signage near an immovable if there are no other outdoor signs or posters on which the trademark appears.

⁶ Regulation at s 25.4.

⁷ Draft Regulation at s 27.5.

⁸ Regulation at s 27.3.
