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Amendments to English Signage Requirements in Québec

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On November 24, 2016, the *Regulation to amend the Regulation respecting the language of commerce and business* (Rules) came into force. The Rules come in the wake of *Québec (Procureure générale) v Magasins Best Buy ltée*. In *Best Buy*, the Québec Court of Appeal ruled that the practice of exclusively using non-French-language trademarks on public signage outside businesses, when French versions of such trademarks have not been registered and without including French content, complied with the *Charter of the French language* and the *Regulation respecting the language of commerce and business*. The Rules appear to be the Québec government's response to that decision.

The Rules provide that where a non-French-language trademark is displayed outside or is attached to a building or premises, "sufficient presence of French" must be ensured at the same site. This requirement applies equally to signs inside an establishment intended to be seen from the outside, signs on independent structures and signs outside premises, stands or counters that are located inside larger commercial centres. According to the guide on public displays, trademarks and business names published by the Office québécois de la langue française (Guide), the purpose of the change is to ensure the presence of French in the linguistic landscape of Québec. However, the Rules do not require that businesses translate non-French-language trademarks.

Presence of French

The Rules provide that "sufficient presence of French" occurs when the non-French-language trademark is accompanied by the following elements in French:

- a generic or descriptive term;
- a description of the products or services offered;
- a slogan or
- any other term or indication that provides information related to the products or services targeted at the persons frequenting the site.

The Guide seems to suggest that the presence of only one such element will suffice.

However, the following are not to be taken into account when evaluating compliance with the Rules:

- business hours and coordinates;
- numbers and percentages;
- definite, indefinite and partitive articles (such as "le", "un" or "des" in front of a non-French-language trademark) and
- terms that are legible only at less than 1 metre, except if the trademark is also only legible at such distance.

Sufficient Presence of French

The Rules provide that "sufficient presence of French" is achieved when:

- a sign gives French permanent visibility in a manner similar to that of the non-French-language trademark and

- a sign ensures its legibility in the same visual field as that of the non-French-language trademark.

Further, the Rules state that the “sufficient presence” requirement is met if the display of the French element is designed, lit and situated so as to make it easy to read when the non-French-language trademark is itself legible. The French element will need to be lit only if the non-French-language trademark is lit. However, the Rules do not require that the French element be displayed in the same place, be the same size or be made of the same material as the non-French-language trademark.

Finally, signs of a precarious nature, such as signs likely to be easily removed or torn off, are not considered to ensure permanent visibility of French (as per the first criterion), unless measures for guaranteeing the presence or replacement of the sign are put in place and, therefore, will generally not be sufficient to comply with the law. The burden of proof in this regard lies with the business.

Exempt Structures

Certain types of non-French-language trademark signs are exempt from the Rules described above. Signs appearing on a post or other independent structure, including a totem-type structure, near the business are exempt if there is another compliant sign outside the premises that bears the same trademark. Signs on totem-type structures are also exempt if more than two trademarks appear on them.

Further, temporary and seasonal facilities are also exempt.

Coming into Force

The Rules came into force on November 24, 2016, and all new signs displaying a non-French-language trademark (or replacements of existing signs) outside a building or premises must comply with the changes provided for in the Rules. Signs existing on November 24, 2016, signs that were in the process of receiving governmental or municipal approval in the six months preceding the coming into force of the Rules and signs used in multiple Québec locations, as part of a franchise system or otherwise, benefit from a three-year transition period that will terminate on November 24, 2019.

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