Trademarks in the English language on public signs and posters

April 1, 2014

On April 9 last, the Superior Court of Québec issued its judgement[1] on a motion for a declaratory judgment pertaining to trademarks in the English language on public signs and posters. The applicants, Magasin Best Buy Ltée, Costco Wholesale Canada Ltd, Gap (Canada) Inc., Old Navy (Canada) Inc., Corporation Guess? Canada, la Compagnie Wal Mart du Canada, Toys "R" Us Canada Ltée and Curves International Inc. were seeking to have the Court answer the following question : [TRANSLATION] "are trademarks in the English language, without a registered French version, used on public signs and posters and in commercial advertising, required to be accompanied by a generic descriptive term in the French language to comply with the *Charter of the French Language* ("Charter") and the *Regulation respecting the language of commerce and business* ("Regulation")?" This motion for a declaratory judgment was made in the context of a recent change of policy of the Office de la langue française ("Office") as to the interpretation of the Regulation, which was putting the applicants at risk of becoming the subject of penal proceedings and having their francization certificates withdrawn if they did not use their trademarks in the English language in conjunction with a generic descriptive term in the French language. The Attorney General of Québec was inviting the Court to answer the question in the affirmative.

The Superior Court answered the question in the negative, ruling in favour of the applicants. Firstly, the Court noted the distinction between the legal concepts of a business name and a trademark. The Court concluded that it was with full knowledge that the government had introduced a specific exception to the French language signage requirement to allow trademarks in other languages than French on public signs and posters. The scheme of the Act could not then be invoked to run against an exception created by the legislator with full knowledge.

Secondly, the Court noted that the Office had consistently applied section 25(4) of the Regulation since it came into force in 1993, allowing trademarks registered in languages other than French on public signs and posters without them being accompanied by generic terms. This interpretation was thus continuous and could be considered as an interpretative custom allowing the applicants to believe that their signage practices complied with the Charter. The interpretation proposed by the Attorney General would have resulted in depriving this derogation specifically provided for under section 25(4) of the Regulation of any practical application.

The Superior Court concluded by stating that it is not for the courts to modify clear legislative and regulatory texts supported by an interpretative custom which has been consistently applied for 20 years. It is rather for the legislator, if it so wishes, to intervene and impose the solutions it deems adequate as to the language to be used by businesses on public signs and posters.

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