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Public display of trade marks in a language other than French

May 13, 2016

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In 2014[1], major retailers Best Buy Canada Ltd., Costco Wholesale Canada Ltd., Gap (Canada) Inc., Old Navy (Canada) Inc., Guess? Canada Corporation, Wal-Mart Canada Corp., Toys “R” Us Canada Ltd. and Curves International Inc. had filed a motion for declaratory judgment before the Superior Court for determining the issue of whether a trade mark in the English language, without a registered French version, used for public display and in commercial advertising was required to be accompanied by a descriptive (generic) term in the French language in order to comply with the *Charter of the French Language* (“Charter”) and the *Regulation respecting the language of commerce and business* (“Regulation”).

Mr. Justice Michel Yergeau of the Superior Court had come to the conclusion that the public display of trade marks in a language other than French complied with the Charter and the Regulation provided that no French version of the trade mark was registered. The Attorney General had appealed the decision. On April 27, 2015, the Court of Appeal of Quebec[2] had dismissed from the bench the appeal of the Attorney General of Quebec.

Minister Hélène David reacted following the Court of Appeal verdict, by promising the adoption of a regulation to ensure the presence of French language on the storefront of businesses.

On May 4, 2016, a draft regulation amending the R*egulation to amend the Regulation respecting the language of commerce and business* was published in the *Gazette Officielle du Québec*. The Minister responsible for the Protection and Promotion of the French Language, Luc Fortin, describes the draft regulation as a solution which “preserves the integrity of trade marks”. The proposed amendments consist in the addition of the new sections 25.1 to 25.5 to the Regulation, which aim to ensure the presence of French when a trade mark in a language other than French is displayed outside a business, such as currently allowed under paragraph 25.4 of the Regulation.

However, holders of trade marks will neither be required to translate their marks nor to insert a generic term in the French language such as “store” or “café” in them, although some have already done it on a voluntary basis. Under the new section 25.1 of the Regulation, merchants will

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henceforth be required to ensure “sufficient presence of French” on the site. This may consist in a slogan, a generic term, a description of their products and services or any other term or indication.

Without the additional display being required to be present on the same place as the trade mark, it will however be required to give French permanent visibility, similar to that of the trade mark and be legible “in the same visual field” as that covered by the trade mark. It is however to be noted that since the Regulation does not specify a precise size for the French items which are required to be added, such items will not be required to be predominant relative to the mark.

Businesses whose current display does not comply with the new requirements under the Regulation will be required to comply within three years from the date the new provisions come into force. However, any installation of a new display or replacement of the display of a trade mark from the date on which the amended Regulation comes into force will be required to comply with the new requirements.

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1. *Magasins Best Buy ltée* c. *Québec (Procureur général)*, 2014 QCCS 1427 (CanLII).
2. *Québec (Procureure générale)* c. *Magasins Best Buy ltée*, 2015 QCCA 747 (CanLII).

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