The Charter of the French Language reviewed by the Court of Québec

March 16, 2015

Author

Isabelle Jomphe

Partner, Lawyer Partner, and Trademark Agent

The Court of Québec has recently examined the application of the *Charter of the French Language* (the "Charter") in the case of Boulangerie Maxie's [1]. This decision provides clarification as to what constitutes a "markedly predominant" use of the French language in advertising and public signs. The Court also confirmed that a trade-mark in a language other than French benefits from an exception whether registered or not. In addition, the Court ruled on the *de minimis* defence which may, in certain cases, be applicable when the alleged violations are minimal.

The "markedly predominant" use of French

Some defendants argued that the use of the French version before the English version (on a same sign), was sufficient to conclude that French was used in a "markedly predominant" manner.

The Court rejected this argument and found that such a use does not meet the criteria of marked predominance. In short, the visual impact of the French version must be more important, and in this respect, the Court recalls the 2-for-1 rule provided for in the regulation which constitutes one of the ways to attain this objective:

> the space allotted to the text in French must be at least twice as large as the space allotted to the text in another language;
> the characters used in the French version must be at least twice as large as those used in the other language;

The trade-marks exception

Some defendants argued that they did not have to translate expressions such as "*Everything inside packed with pride*" and "*Italian fancy leather goods*" used in their advertising because these expressions fall under the "trade-marks" exception.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

The regulations indeed provide that “recognized” trade-marks within the meaning of the *Trade-marks Act* do not need to be translated into French (unless a French version has been registered).

The Court found that the trade-marks exception applies not only to registered trade-marks, but also to unregistered trade-marks, provided that the expression qualifies as a “trade-mark”.

In this respect, the Court was of the opinion that the “*Italian fancy leather goods*” was purely descriptive and did not constitute a trade-mark. This expression must therefore appear in French only or in French and in another language, provided that the French version is markedly predominant.

The Court found however that “*Everything inside packed with pride*” qualified as a trade-mark and did not need to be translated into the French language on public signs and in advertising.

This conclusion does not constitute new law. In fact, the courts have already in the past decided that an unregistered trade-mark constitutes a “recognized” trade-mark with the meaning of the Act. The Office de la Langue Française has however not amended its practice to conform to these decisions. It will therefore be interesting to see whether the Office de la Langue Française will follow the Court’s conclusions.

The *de minimis* defence

To avoid liability, the defendants raised several defences. Apart from the arguments challenging the constitutionality of the Charter, which were rejected, the defendants pleaded that the alleged offences were minimal and did not justify legal action. This defence was rejected.

According to the Court, the following facts do not qualify as minor offences justifying the application of the *de minimis*defence:

posting a bilingual version of same size when the Charter provides that the French version must be markedly predominant
providing product packaging in English only
internet website in English language, without a French translation

The Court stresses however that the following facts may possibly justify a *de minimis* defence:

a sign on which a couple of millimeters are missing to decide that the French version is markedly predominant
a catalogue of hundreds of pages with equivalent French and English versions, except for a missing word or phrase
bilingual packaging or instruction manuals where a word or two in French are missing

In conclusion, the Charter and its regulations establish different rules concerning the use of a language other than French (see the table below). Note that several exceptions are applicable depending for example on the nature of the products and the activities, the origin or the destination of the products. Should you have any questions, please contact a member of our firm.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

Inscription	Principle	Exception
product, container, wrapping, document supplied with product (ex: directions for use, warranty certificate), menu, wine lists.	• French or • French + another language (equal or inferior to French)	• trade-mark* *can be in a language other than French **if the French version has not been registered**
Catalogues, brochures, folders, commercial directories and any similar publications (including websites)	• French or • separate version : French + another language* * French version must be available under no less favourable conditions of accessibility and quality than the other version	• trade-mark* * can be in a language other than French **if the French version has not been registered**
Public signs and posters Commercial advertising	• French or • French and another language* * French must be markedly predominant	• trade-mark* * can be in a language other than French **if the French version has not been registered** If a trade-mark has been registered in a French version, the French version must be markedly predominant

1. *Quebec (Attorney General)* v. *156158 Canada Inc. (Boulangerie Maxie's)*, 2015 QCCQ 354

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.