

You cannot trademark your way out of French

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Quebec's Bill 96, (an act respecting French, the official and common language of Quebec) has significantly amended Quebec's Charter of The French Language. Amendments to the *Regulation respecting the language of commerce and business* were introduced on January 10, 2024. Final regulations were promulgated on June 26, 2024.

The changes under Bill 96 impact the use of languages other than French in the Province of Quebec as it relates to government services, businesses and workplaces. It includes business signage and product labels.

Under federal language rules, the *Food and Drug Regulations* (*FDR*) and the *Safe Food for Canadians Regulations* (*SFCR*), only prescribed information is required to appear in both the official languages of English and French on prepackaged food products. The presentation of English and French does not necessarily need to be in equal prominence. Federal food labelling rules also provide some relief from official language requirements in specific cases, such as local foods, specialty food as defined in *FDR*, and certain terms associated with alcoholic beverages.

Prepackaged foods not sold at retail are, for the most part, only required to be labelled in one of the official languages under federal language rules. Non consumer prepackaged, low-acidic foods must include storage statements (*e.g.* 'keep refrigerated', 'keep frozen'), as applicable, in both English and French. In the case of eggs and maple syrup, certain prescribed label statements need to be in English and French, despite not being sold to consumers.

Exceptions

For decades, language requirements have been unique for products sold in Quebec. French must appear as prominently as other languages on packaged foods. The rule extends to all the information accompanying a product, such as inner packages, inserts, and tags. It should be noted that the language rules for packaged products is unique and different from other commercial scenarios in Quebec. For example, French must be predominant in store signages.

Nevertheless, there are exceptions to Quebec's language rules. Section 3 of Quebec's *Regulation respecting the language of commerce and business* permits certain products to be exclusively marked in a language other than French. Among other things, products from outside of Quebec that are intended for incorporation into a finished product or for use in manufacturing or processing and will not be sold in Quebec-based retail outlets would be excused from French labelling requirements. However, it is advisable for businesses to consult with their distribution partners and retailers in Quebec, as they may have specific language requirements or expectations.

For decades, a staple exemption related to packaged products was that a trademark would be excused from Quebec's French language requirements. Since trademarks are not prescribed under federal food labelling rules, they are not required to meet official language requirements. Trademarks could be in any language. However, under Section 51.1 of the amended (due to Bill 96) Charter of the French Language, registered trademarks aren't exempt from the French language requirement when including a 'generic term' or 'description,' which must be in French. The proposed amendments to the *Regulation respecting the language of commerce and business* limited the scope of exemption to registered trademarks. But, the final regulation of June 26, 2024, exempted trademarks recognized under the *Trademarks Act* (federal). However, 'generic terms' and 'descriptions' are not exempt.

Description refers to one or more words describing the product's characteristics. Generic terms refer to one or more words describing the nature of a product. In both cases the name of the enterprise and product name as sold are excluded. The definitions leave plenty of room for interpretation. In the absence of precedence and clear guidance, who knows how the Office québécois de la langue française will interpret the rules. It is possible that a trademark could include words other than French. The core of a trademark is not the target here. Consider Wonder Bread. The term, 'bread,' describes the product's nature but since it is the name of the product as sold, it need not be in French. If the trademark included 'Since 1921,' then that would likely need to be in French.

The rules come into force June 1, 2025. Products manufactured before June 1, 2025, have until June 1, 2027, to comply. Products subject to the new federal front of package (FOP) nutrition labelling rules have until December 31, 2025, to comply.

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