TRADEMARKS AND THE FRENCH LANGUAGE ISSUE IN QUEBEC

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Businesses distributing or marketing products or services in Quebec must be mindful of the impact of the province's recent change of policy concerning the regulation of French language requirements in labeling and advertising. The revised guidelines of the **Office Québécois de Ia langue française** (the "**Office**") signal a change to a stricter interpretation of the regulation under the Charter of the French Language (the "Charter").

The Charter provides that every marking on a product or on a document or object supplied with it, along with catalogues, brochures and similar publications, must be drafted in the French language. While the inscription may be accompanied by a translation, no inscription in another language may be given greater prominence than the French version. Public signs, posters and commercial advertising may be both in French and in another language, provided that French is markedly predominant.

The Regulation respecting the language of commerce in business (the "Regulation") creates exceptions to the above with respect to the language of trademarks. A "recognized trademark" may be exclusively in a language other than French unless the French version has been registered. Until recently, the Office had adopted the accepted legal view that "recognized trademarks" under the Trademarks Act included both registered and unregistered trademarks.

According to the most recent Office guidelines however, a "recognized trademark" pursuant to the Regulation is a registered trademark. The Office is now taking the view that the trademark exception provided by the Regulation is not applicable unless the mark is registered under the Trademarks Act. Previously, the accepted interpretation of the Regulation was that the exception applied to unregistered trademarks and trademarks that were the subject of pending applications before the Canadian Intellectual Property Office.

It is important to note that neither the legislation nor its regulations have been amended. In the past, the courts have interpreted the Regulation as allowing the use of unregistered trademarks where the courts were satisfied on the evidence that the marks constituted "recognized trademarks" within the meaning of the Trademarks Act. In practice, the Office is now taking the view that it is not in a position to assess whether a trademark is exempt from French language requirements unless it is registered.

The adoption of the revised guidelines suggests that the Office will become more proactive in its enforcement of the Charter requirements. Businesses should be aware that trademarks that are composed of elements that are descriptive of the wares or services are most likely to be challenged.

Given the Office's change of policy, businesses who wish to avail themselves of the trademark exception are well advised to seek registration of trademarks particularly where the mark contains descriptive terms. When selecting a trademark, the choice of coined terms which do not consist of dictionary words in any language are less likely to be problematic.

The Office also invites trademark owners to adopt French versions of their trademarks for use in the Province of

Quebec. However, bear in mind that the recognized trademark exception only applies where no registered French version of the trademark exists.