

# Updated changes to packaging, signage and advertising under Québec's Bill 96

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Amendments to Bill 96 have added product packaging to the list of marketing assets that will not receive the “recognized trademark” exception to French language rules once the Bill’s provisions come into force. [First introduced in May 2021](#), Bill 96 ups the ante for businesses operating in Québec—which must already meet French language requirements for their marketing assets. The new rules for packaging are one of several revisions proposed during the committee’s clause-by-clause review process. This bulletin consolidates all the proposed changes to date on packaging and signage in Bill 96.

## What you need to know

- **Key Bill 96 changes.** Bill 96 proposes the following key changes for packaging, signage and commercial advertising:
  - The “recognized trademark” exception will be replaced by a “registered trademark” exception. Registered trademarks will be allowed to appear only in a language other than French as long as no corresponding French version has been registered. This differs from the recognized trademark exception, which also applied to non-registered common law trademarks.
  - Moreover, if a non-French registered trademark used on product packaging includes a generic phrase or a description of the product, the generic/descriptive phrase will have to appear in French on the product or on a medium that is permanently attached to the product. Businesses may still provide information in other languages, as long as French appears at least as prominently. Bill 96 adds that information in other languages cannot “be available on more favourable terms” than the information provided in French.
  - Despite the registered trademark exception, French will have to be “markedly predominant” on signs visible from outside premises.
- **In force dates.** Proposed changes to the recognized trademark exception and the predominance of French on signage will come into force three years after the Bill receives Royal Assent. The requirement that packaging information in any other language must not be available on “more favourable terms” than French will come into force on the date of Royal Assent.

- **Getting ahead of Bill 96.** Companies with business in Québec will want to use the lead time ahead of Bill 96's enactment to assess their complete suite of intellectual property as well as packaging, marketing and advertising assets for compliance.

## *Charter of the French Language*

Québec's *Charter of the French Language* generally requires that product packaging and public signage be in French. In some cases, packaging and signage must be in French only; in others, French must appear at least prominently; in some others, French need not be predominant; and in still others, French is not necessary at all. If passed, Bill 96, *An Act respecting French, the official and common language of Québec*, will amend the *Charter of the French Language* and impose additional French language requirements on businesses.

## Overview of the changes proposed in revised Bill 96

[Bill 96 was first introduced](#) in the National Assembly of Québec in May 2021. At that time, the Bill already included plans to replace the “recognized trademark” exception for signage and commercial advertising with a “registered trademark” exception, and provided that French must be “markedly predominant” on signage visible from outdoors. It also included the requirement that any packaging information in a language other than French must not “be available on more favourable terms” than information provided in French.

Since then, the Bill has undergone several revisions as part of the clause-by-clause review process undertaken by the Committee on Culture and Education. In February 2022, the committee introduced an amendment that would also do away with the “recognized trademark” exception for packaging.

We have provided a consolidated overview of the changes to the law on packaging and signage proposed under the most recent version of Bill 96, which includes the committee's amendment.

### Packaging

#### *Recognized trademark exception*

Currently, a “recognized trademark” may appear exclusively in a language other than French on packaging if a French version of the trademark has not been registered<sup>1</sup>. The term “recognized trademark” is not defined, but courts have interpreted it to include both registered and common law marks. Although the original version of Bill 96 did not affect the “recognized trademark” exception for packaging, amendments introduced by the committee in February 2022 do.

Under the most recent version of Bill 96, only registered trademarks may be displayed on packaging in a language other than French, provided that a corresponding French version of the trademark does not appear in the trademark register (this includes registered marks and may include marks where a trademark application has been filed)<sup>2</sup>. If a generic phrase or a description of the product is included in the non-French registered mark, the generic/descriptive language must appear in French on the product or on a medium that is permanently attached to the product.

The proposed change means brands will no longer be able to include generic/descriptive English text in registered trademarks to avoid translating the text into French. During the committee process, examples for how the amendment is intended to operate were provided<sup>3</sup>. A registered trademark like “Beauty Shop” could continue to be exhibited on packaging in English. However, a registered trademark like “Soft Soap, Lavender and Shea Butter, washes away bacteria, deeply moisturizes to hydrate skin” could not. Brands will likely need to translate “Lavender and Shea Butter, washes away bacteria, deeply moisturizes to hydrate skin” into French to comply with the new rules.

#### *General packaging*

Bill 96 clarifies that packaging information provided in other languages must not “be available on more favourable terms” than information provided in French<sup>4</sup>. This amendment was included in the initial draft of the Bill. At present, packaging may include other languages, provided that French appears at least as prominently<sup>5</sup>.

## Signage and commercial advertising

### *Recognized trademark exception*

Bill 96 eliminates the “recognized trademark” exception for public signage. This change was included in the initial draft of the Bill.

Currently, a “recognized trademark” may appear exclusively in a language other than French on signage and commercial advertising if a French version of the trademark has not been registered<sup>6</sup>. The mark may be displayed outside a building (or on signs intended to be seen from outside) if there is a sufficient presence of French, subject to certain additional requirements.

Under Bill 96, the “recognized trademark” exception will no longer apply to public signage. A trademark registered in Canada may continue to be displayed exclusively in a language other than French, unless a corresponding French version of the trademark appears in the trademark register (this includes registered marks and may include marks where a trademark application has been filed)<sup>7</sup>.

French must also be “markedly predominant” on all signs and posters “visible from outside premises” that include the non-French trademark. “Markedly predominant” means that the French text has a “much greater visual impact” than the non-French text<sup>8</sup>. French text is deemed to have a “much greater visual impact” if:

1. the space allotted to the French text is at least twice as large;
2. the characters used in the French text are at least twice as large; and
3. the other characteristics of the sign or poster do not reduce the visual impact of the French text.

### *Enterprise names*

Bill 96 increases the amount of French that must accompany enterprise names on signage visible from outside. This change was included in the initial draft of the Bill.

Currently, an enterprise name may be accompanied by a non-French version provided that the French version of the name appears at least as prominently, subject to certain exceptions<sup>9</sup>.

Under Bill 96, French must be “markedly predominant” if the sign bears an enterprise name that includes an expression taken from a language other than French<sup>10</sup>.

## What's next

While Bill 96 is expected to pass by the end of May, it remains subject to further changes. Based on the current draft of the Bill, proposed changes to the recognized trademark exception and the predominance of French on public signage will come into force three years after the Bill receives Royal Assent<sup>11</sup>. The requirement that packaging information in any other language not be available on “more favourable terms” than French will come into force on the date of Assent.

In the meantime, businesses should prepare to pivot their branding strategy:

- Existing packaging and advertising that relies on the recognized trademark exception should be identified. Companies should consider taking steps to register trademarks that are currently unregistered.
- Any trademarks appearing on packaging should be carefully examined to determine whether a French translation will be required for generic or descriptive phrases.
- Signage visible from outdoors will need to be revamped to include a “markedly predominant” amount of French, even if the signage includes a registered trademark.

## FOOTNOTES

*To discuss these issues, please contact the author(s).*

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