Feb. 21, 2024

The Honorable Jean-François Roberge
Minister of the French Language
800, rue D'Youville
13e étage
Québec (Québec)
G1R 3P4

Re: Gazette Officielle Du Québec, Jan. 10, 2024, Vol. 156, No. 2: Draft Regulation, Charter of the French Language (Chapter C-11), Regulation to Amend Mainly the Regulation Respecting the Language of Commerce and Business

Dear Minister Roberge:

The undersigned organizations welcome this opportunity to provide input in response to the Gazette officielle du Québec publication on the *Draft Regulation: Charter of the French Language (Chapter C-11), Regulation to Amend Mainly the Regulation respecting the language of commerce and business*, published in Vol. 156, No. 2 on Jan. 10, 2024.

Our organizations appreciate and respect fully the intent of the Charter of the French Language ("French Charter") to preserve the French language in Québec, and the manufacturers and businesses that we represent want to comply with all relevant laws and regulations in Québec.

However, our organizations have substantial concerns about the recent amendments to the French Charter by Bill 96 ("Bill 96 Changes"), which mandate significant new and problematic labeling and signage changes, including French translations of non-French trademarked terms. The Bill 96 Changes would potentially upend decades of intellectual property law, creating burdens for manufacturers and other businesses and limiting access to the Québec market. Furthermore, the Bill 96 Changes offer any resident of Québec a new cause of action in court, which would likely result in substantial enforcement actions, heavy fines, penalties and lawsuits.

Furthermore, the Jan. 10 draft regulation does not provide sufficient clarity for businesses when it comes to implementing the Bill 96 Changes, with our organizations concerned about a number of key provisions, including:

- Section 3 of the Regulation respecting the language of commerce and business would be amended to add French requirements for any usage instructions which are engraved, baked, or inlaid into a product, which would likely result in spurious and costly enforcement actions, fines, penalties and lawsuits.

- Section 51.1 of the French Charter and proposed section 27.2 of the Regulation respecting the language of commerce and business requires the translation of words that could be considered "generic" or "descriptive," even when part of a federally registered trademark, which conflicts with principles of trademark law, both globally and with respect to Canadian trademark law.

- Section 58.1 of the French Charter and proposed sections 27.7-27.10 of the Regulation respecting the language of commerce and business requires a predominance of French for exterior building signage and posters, which conflicts with principles of trademark law (including trade dress), both globally and with respect to Canadian trademark law.

In addition to upending trademark law in Canada, our organizations are concerned that the Bill 96 Changes are inconsistent with Canada's obligations under the United States-Mexico-Canada Agreement and the World Trade Organization, including the following provisions:

- Under Article 2.2 of the WTO Technical Barriers to Trade (TBT) Agreement, WTO "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade." The scope and meaning of "unnecessary obstacles to international trade" in TBT Article 2.2 is informed by the article's second sentence, which requires that technical regulations "shall not be more trade restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfilment would create. The Bill 96 Changes are a "trade-restrictive" measure and create an unnecessary obstacle for exporting to Canada.

- Under Article 15(1) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), WTO Members can elect to protect unregistered trademarks and Canada has chosen to do so at the federal level. Protection of unregistered trademarks is generally dependent on use. If use of certain (non-French) unregistered trademarks on their own is banned in a province (and has practical spillover effects across the whole country), it amounts to a de facto limitation on the scope of protectable subject-matter in Canada, and as such would be a violation of Article 15(1) of TRIPS.

- Under Article 20.5 of the USMCA, "each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade". The Québec product labeling and signage measures prohibit the use of unregistered non-French language trademarks on their own in the province. Therefore, Canada would fail to offer adequate protection to trademarks under French Charter as amended by Bill 96.

Finally, beyond the concerns detailed above, Québec consumers would be negatively affected by the implementation of the Bill 96 Changes, as they would have reduced choices due to products being removed from the Québec market, face higher prices as compliance costs for products that remain on the market would be passed on by businesses, and encounter increased confusion in the marketplace.

Thank you very much for your consideration and we would be happy to arrange a meeting to discuss this matter in greater detail. We look forward to hearing from you.

Sincerely,

Air-Conditioning, Heating, and Refrigeration Institute
American Apparel & Footwear Association
Association de l'industrie touristique du Canada
Association of Home Appliance Manufacturers
Association canadienne des importateurs et exportateurs
Association canadienne du jouet
Association des hôtels du Canada
Distilled Spirits Council of the United States
Halloween & Costume Association

Institut de la propriété intellectuelle du Canada
Intellectual Property Owners Association
International Trademark Association
Juvenile Products Manufacturers Association
National Association of Manufacturers
The Toy Association