



FRASER MILNER CASGRAIN

*Intellectual Property and Related Rights  
and Quebec's New Civil Code*



- **The new Civil Code does not purport to create substantive intellectual property rights**
- **However, intellectual property rights are considered as movable property**



- **Conventional hypothec (assimilable to a chattel mortgage) may be granted on intellectual property (Art. 2684)**
- **It is still unclear if Art. 2684 encompasses copyright industrial designs, pending applications, and unregistered trademarks**



- **Article 1612 expressly allows to claim damages including lost profits for wrongfully disclosed trade secrets**
- **However, Article 1472 exonerates from liability in case of a disclosure made in consideration of general interest and for reasons of public health or safety**



- **Personality rights are inalienable according to Article 3 but may be licensed**
- **Personality rights encompass the use of a person's name, image, likeness or voice for a purpose other than the legitimate information of the public**



# Relation Between the Charter of the French Language and Trademarks

- **Labelling and related matters**
  - **Every inscription on a product must be in French**
  - **Other languages may be used but shall not be given greater prominence than in French**



# Relation Between the Charter of the French Language and Trademarks

## – Relevant exceptions

- **Products intended for incorporation into a finished product**
- **Products originating outside of Quebec and the inscription is engraved on the product**
- **Denomination of an exotic product**
- **A recognized trademark unless a French version has been registered in Canada**



# Relation Between the Charter of the French Language and Trademarks

- **Advertising**
  - **Promotional and advertising material shall be in French and French must be markedly predominant**
  - **Exceptions**
    - **A recognized trademark unless a French version has been registered**





# Information Technology and the Charter of French Language

- **Advertising through a Web site**
  - Shall be in French if the company operating the Web site has a place of business in Quebec
  - This rule does not apply if the company has not a place of business in Quebec, but is using and Internet service provider located in Quebec
- **Software**
  - If existing, the French version of a software shall be made available to the public



# License Agreements and the New Civil Code of Quebec

- **Most license agreements are likely to be considered as contracts of adhesion**
- **Therefore, external clauses must be expressly brought to the attention of the licensee**
- **The presumption of nullity of incomprehensible clauses**
- **Abusive clauses excessively detrimental to the licensee**



# License Agreements and the New Civil Code of Quebec

- **Exclusion or limitation of liability**
- **Warranty provisions**
- **Forum selection clauses**
- **Arbitration clauses**
- **Electronic signature**



# License Agreements and the New Civil Code of Quebec

- **The concept of good faith in license agreements**
  - **Application of Emporium Drug Mart (AAA decision rendered on September 2, 2000) in view of a decision of the Court of Appeal in Provigo Distribution vs. Supermarché A.R.G.**
  - **The doctrine of reasonable expectation of a licensee**



- **Cookies and Article 36 of the *Civil Code of Quebec*: « keeping one's private life under observation by any means »**
- ***An Act Respecting the Protection of Personal Information in the Private Sector***
- **Personal information includes all information which allows to identify a person**



- **Obligation to inform the person concerned of the collection of information**
- **Communication to a third party is not allowed without consent**
- **Exception: nominative lists**



- **Jurisdiction of Quebec Court and the concept of damages suffered in Quebec**
- **Liability issue still uncertain**





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