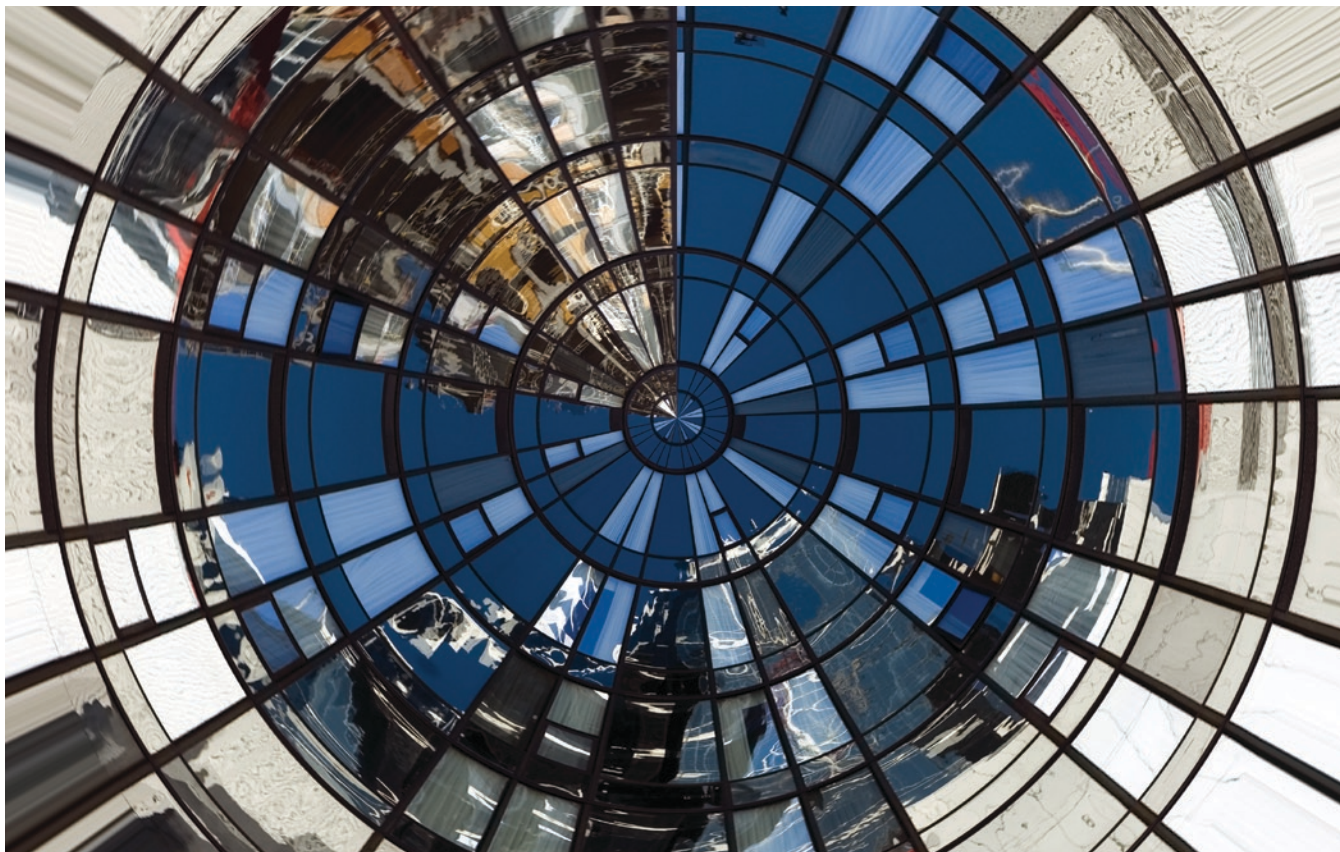


# n | Intellectual Property



## 1. Copyright

Canada is a signatory of the Berne Convention. It has acceded to the principal multilateral treaties seeking to harmonize copyright protection internationally. Accordingly, foreign businesses wishing to do business in Canada will find many similarities between their domestic copyright laws and those governing in Canada.

Nevertheless, Canadian copyright laws do possess certain subtleties that should be noted. In particular, for any work to be exploited in Canada, it is important to ensure that the chain-of-title within Canada has been properly secured in accordance with Canada's *Copyright Act*.

It is noteworthy that a copyright reform bill is currently before the Parliament of Canada. This bill proposes significant amendments to the *Copyright Act* in a wide range of areas.

#### a. What can be protected?

Copyright protection extends in Canada to any original literary, dramatic, musical and artistic work, and these terms are given broad definition (e.g., computer programs fall within the concept of "literary" works). Copyright can also subsist in other subject matter, such as sound recordings, broadcast signals and performers' performances.

Authors of original works also enjoy moral rights that can be asserted to prevent their works from being modified or used to the prejudice of the author's reputation.

#### b. How is copyright protection obtained?

In Canada, copyright arises automatically upon the creation of an original work. An original work is one that has not been copied from another source and that is otherwise produced through the exercise of non-mechanical skill and judgment.

#### c. What rights are conferred?

Copyright in relation to a work means the exclusive right to produce and reproduce the work (or any substantial part thereof) in Canada, and the broad concept of reproduction includes many individual rights depending on the type of work. For example, in the case of a dramatic work, the right of reproduction includes the sole right of converting it into a novel or other non-dramatic work.

An author of an original work enjoys the moral right to be associated with the work and the right to the integrity of the work, meaning that the work cannot be muti-

lated or used without the author's permission in association with causes or institutions.

#### d. How long does copyright protection last?

Generally, copyright protection lasts in Canada for 50 years following the death of the author, though the term of protection may vary depending on the circumstances of creation and publication.

Moral rights in respect of a work subsist for the same term as the copyright in the work.

#### e. Who is the author of the work?

The term "author" is not defined under the *Copyright Act*, but is understood to mean the person or persons from whom the original expression originates. An "author" in Canada must be a person for most works, and this is true even where a work is made pursuant to a contract. The concept of "work made for hire" does not exist in Canada. An employee or contractor will remain the work's author, even if ownership of copyright comes to vest in the employer or contracting party.

#### f. Must copyright be registered?

Registration of copyright is optional in Canada and is not necessary, even to enforce a work in Canadian courts. However, registration does confer certain presumptive benefits in that a registration will be deemed evidence of copyright subsistence and ownership as described in the registration. As well, a defendant will not be permitted to assert a lack of knowledge of copyright subsistence in the case of a registered work, and this increases the monetary remedies available to a plaintiff who establishes infringement.

#### g. Who first owns the copyright?

Generally, the author of a work is the first owner of copyright. An important exception to this principle applies for works created in the course of an employment relationship, where copyright will be first owned by the employer unless the parties agree otherwise. Where a work is created by joint authors, the copyright will be owned jointly as determined by the scheme of

the *Copyright Act*. In Canada, works created under the direction or control of a government department are subject to Crown copyright owned by the government and are not works deemed to be in the public domain.

#### h. How is copyright assigned or licensed?

Copyright can be assigned freely in whole or in part, but no assignment is effective in law unless it is in writing and signed by the copyright owner or its duly authorized agent. The same requirements apply to make an effective exclusive licence. Non-exclusive licences and permissions need not be in writing, although documenting them is highly recommended.

Moral rights of an author cannot be assigned but may be waived. Significantly, assigning the copyright in a work does not in itself constitute a waiver of the moral rights therein.

#### i. How is copyright enforced and what relief is available?

In Canada, copyright can be enforced by way of an action with trial or by a more summary proceeding called an application. An application proceeds on a paper record and does not involve any rights of discovery.

An exclusive licensee may commence proceedings in its own name to enforce its rights, but will generally be required to join the copyright owner as a party unless the court orders otherwise.

Upon proof of infringement, a copyright holder may obtain a broad range of remedies including an award of damages, an accounting of profits, permanent injunctive relief and an order of delivery-up of infringing materials.

A plaintiff can also elect, at any time prior to judgment, to recover “statutory damages” instead of any other compensatory monetary remedies. (The right to seek punitive damages is not affected by the selection of statutory damages.) A maximum award of statutory damages is \$20,000 per work infringed.

The *Copyright Act* also makes certain types of copyright infringement a criminal offence.

#### j. Fair Dealing and other Exceptions

Canada’s *Copyright Act* provides that a number of specific activities do not infringe copyright. Most of these activities are very specific and apply only in particular defined circumstances. In contrast, the concept of “fair dealing” has been defined more broadly as a “user right.”

In Canada, it is not an infringement of copyright to engage in fair dealing with a work for the purposes of research, private study, criticism, review and news reporting (although certain requirements to credit the work’s author and source must be met for the last three of these purposes). These five permitted fair-dealing purposes are exhaustive, and conduct must fall within one of these categories (and also be fair) for fair dealing to apply.

#### k. Are there copyright collectives in Canada?

Canada has a long history of administering copyright protection through copyright collectives, and a well-defined statutory regime governing such collectives is now codified in the *Copyright Act*. There are several copyright collectives operating in Canada, and they address many of the copyright rights conferred under the *Copyright Act*.

#### l. How does technology fit into the mix?

Canada has not yet implemented anti-circumvention laws in application of the World Intellectual Property Organization (WIPO) Copyright Treaty. Such measures are the subject of government legislation currently before Parliament.

Canada does not have express statutory limitations on Internet service provider (ISP) liability, though in some circumstances, an ISP may avail itself of safe-harbour exceptions available to telecommunication carriers. An ISP may be held to have authorized an infringement where it is found to have sanctioned, approved or countenanced the infringing conduct on the host server.

## 2. Patents

Canada enjoys a vibrant economy and a culture of technological innovation in areas such as communication and Internet-related devices and software, clean and renewable technologies, tools and methods used in harvesting and processing of natural resources, and agricultural and pharmaceutical products and practices.

Canada is a signatory of the Paris Convention and has acceded to the principal multilateral treaties seeking to harmonize patent protection internationally. Canada also benefits from intellectual property bilateral agreements with a number of G20 members. Accordingly, foreign businesses wishing to do business in Canada will find many similarities between their domestic patent laws and those governing in Canada.

Patents by their very nature provide an exclusionary right to the invention by the patent owner. It is a natural course of company evolution to put research and development resources toward those technologies that can be retained as exclusive for the company and that can give the company a competitive edge. However, Canadian patent laws and regulatory practices do possess certain subtleties that should be noted. Accordingly, foreign companies need to be aware of unique aspects of Canadian patent law and Canadian Intellectual Property Office (CIPO) practice that can significantly influence the degree of patent protection obtainable in Canada.

In particular, care should be taken to ensure that applicable patent protection for any significant company technologies to be exploited in Canada has been properly secured in view of the unique Canadian patent system offerings, such as different examination acceleration programs, factors affecting patent filing ability and patent examination advantages — any of which may be used to maximize Canadian patent coverage.

### a. Acceptable Subject Matter for Patent Protection

It is important to recognize that most, but not all, technology may be considered patentable in Canada if given careful consideration from a Canadian perspective.

A Canadian patent may be obtained in respect of any new invention, including processes, machines, methods of manufacturing or a composition, or any new and useful improvement to these that is applicable to industry. The key is that there must be at least one new and inventive element to the invention or improvement. That being said, Canadian patents cannot be issued to generically protect a scientific principle or theorem.

Developments in Canadian patent law have confirmed that business methods are currently patentable in Canada, which provides for an increased scope of patent protection in computer-related arts concerning some forms of software and business processes.

Claim format and content can make the difference between acceptance or rejection for certain technologies. For example, methods that provide practical therapeutic benefits to subjects are considered “methods of medical treatment” and are not patentable in Canada per se; however, claims to these treatment methods may be redrafted into allowable “use” formats. Also, higher life forms — such as mice or other mammals, and plants — are not patentable; however, a higher life form may be protected using claims to a cell comprising a patentable nucleic acid.

It is important to note that support for the required claim form or content must be found in the patent application description as filed in Canada. Therefore, consideration should be given to the way in which the subject matter of the Canadian patent application is described in order to best capitalize on Canadian patent protection for the invention.

Another important consideration for Canadian patent protection is innovation associated with professional skill (i.e., those personal skills reflecting learned

behaviours that can be improved with practice and are prone to refinement through personal experience). A Canadian patent application seeking protection for a deemed professional skill will ultimately be rejected by CIPO. The professional skill distinction can have important ramifications for the patentability of a company's innovation, as careful consideration and attention must be paid to the form the patent application takes in order to avoid this prohibition.

#### b. Process to Obtain Patent Protection

The granting of Canadian patents is within the exclusive jurisdiction of the Canadian federal government, under the control of CIPO, and is governed by the *Canadian Patent Act*, the Patent Rules and the various international treaties and regulations.

Patent protection is requested by filing with CIPO a formally prepared application including background, description, drawings and claims, such that aspects of the invention and its operation are described in sufficient detail for a notional person skilled in the art to carry out the claimed invention. Also included in the filing are the requisite CIPO patent application fees and details concerning the inventor(s) of the invention.

Once filed, the claims of the patent application are examined by an assigned patent examiner for novel, inventive and industry-applicable considerations, in view of pertinent technology publically available before the filing date of the patent application, as well as any format considerations. Once deemed allowable by the patent examiner, the patent application issues after payment of the patent issue fee.

#### c. Patent Rights and Term Conferred by Patent Issuance

Enforcement of issued Canadian patents is provided through the Canadian federal courts and the Canadian provincial courts.

A Canadian patent is a monopoly granted by the Canadian government that affords the holder of the Canadian patent an exclusive right to manufacture, sell or use an invention throughout Canada for a period of 20

years from the date of the application in Canada. The holder of a patent may bring a court action against someone who infringes on the holder's Canadian monopoly over the invention contained in the patent.

#### d. Ownership of a Canadian Patent

Generally, the individual inventor that contributed to the invention claimed in the patent also first owns the patent. Where an invention is created by joint inventors, the patent would be owned jointly by the inventors. An important exception to these principles applies for inventions created in the course of an employment relationship, wherein the owner would be the employer unless the parties agree otherwise.

#### e. Transferring of Patent Ownership Through Assignment or Licence

Patents can be assigned freely in whole or in part, but no assignment is effective in law unless it is in writing and signed by the current patent owner or owners. It is also recognized that, in the case of joint ownership, assignment by one party cannot dilute the existing patent ownership rights of the other party, unless there is an agreement by the parties to the contrary. The same requirements apply to make an effective exclusive patent licence. Non-exclusive licences and permissions need not be in writing, although documenting them is highly recommended.

#### f. Cost Reduction Through Deferred or Reduced Patent Fees

Patenting of inventions in multiple jurisdictions can significantly add to the bottom-line cost for the technology. It is important to be aware of what patent costs can be streamlined, as well as how the cash flow of the company will be affected by seeking and obtaining patent protection in Canada.

In Canada, the examination of a patent application is not automatic upon filing. An applicant can delay the examination of a patent application for five years from the Canadian application filing date, during which time the applicant can further assess the best manner in

which the patent application should be pursued without incurring significant costs. One advantage to delayed examination is that examination results from corresponding patent applications in other countries can be made of benefit in order to streamline patent examination cost and duration.

An advantage to help maximize patent coverage for a Canadian patent is that there is no limit to the total number of claims or the number of independent claims included in a patent application. There are also no restrictions on the use of multiple dependent claims (i.e., those claims that reference more than one claim) and no excess claim number or multiple dependent claim surcharges. The only surcharge that may impact the number or content of claims is a nominal excess-page printing fee for those patent applications exceeding 100 pages in length.

Furthermore, Canada has a “small entity” designation that allows businesses employing 50 or fewer employees and universities to pay reduced patent application-filing, examination and annual-maintenance fees.

#### g. Accelerated Examination Program For Designated Green and Clean Technology Patents

Depending on the circumstances, it sometimes makes sense to obtain a patent on critical company technology as quickly as possible, especially for those emerging technologies in the clean or green space.

Examination of a Canadian patent application based on clean or green technology may be accelerated, thereby reducing the examination timeline, if the applicant files a declaration indicating that the application relates to commercial technology that would help to resolve or mitigate environmental impacts or conserve the natural environment and resources. Accordingly, companies involved in clean or green technologies should use this program, when deemed necessary, to obtain accelerated Canadian patent protection. Advantages to this program are the streamlined application procedure as well as minimal declaration costs.

#### h. Accelerated Examination Programs under Patent Prosecution Highway (PPH) Initiatives

Another instance in which Canadian patent protection may be accelerated is where patent protection has already been obtained in other jurisdictions.

Canada cooperates with a number of other partner countries to allow an applicant, if at least one patent claim has been found allowable by one partner office in one jurisdiction, to have the corresponding patent application advanced out of turn for examination in the other partner office of the other jurisdiction. This provides for patent results obtained in other countries to be streamlined in the corresponding Canadian patent application or, alternatively, allows for the patent results obtained in the Canadian patent application to be streamlined in the corresponding patent application(s) in the other country or countries.

Canada currently has PPH programs with Denmark, Finland, Germany, Japan, Korea, Spain and the United States.

#### i. Acceptable Delays for Patent Application Filing in Canada

In Canada, as in most other countries, a patent is issued to the inventor who first files a patent application, meaning that entitlement may be determined by a race to the patent office. It is important that the Canadian patent application be made in the correct form, with sufficient enabling description about the invention, to get a Canadian patent granted and to help avoid technical challenges in Canadian courts on the issued Canadian patent. It is also recommended that an applicant not disclose the subject matter of the invention to the public until the Canadian patent application has been filed.

Once the decision has been made to file a patent application, it is recognized that patent systems around the world have strict patent application filing timelines that must be adhered to correctly, whereby failure to take the appropriate action in trying to follow these time-

lines may result in abandonment of potential patent protection in the jurisdiction(s).

On the other hand, the Canadian patent system offers a few acceptable delays for Canadian patent application filing, such as a 12-month grace period, 12-month late international Patent Cooperation Treaty (PCT) filing and no on-sale bar.

In terms of the grace period, any enabled disclosure to the public by the applicant made less than one year prior to filing the Canadian patent application will not act as a bar to entitlement to file the Canadian patent application. Accordingly, the Canadian patent system offers filing flexibility in providing this 12-month grace period, measured from the time of the public disclosure of the applicant to when the formal patent application is filed in Canada. It should be noted, however, that a provisional patent application filed in Canada or elsewhere does not negate the requirement to have the Canadian patent application filed within the 12-month period, measured from the time of the public disclosure.

Concerning international PCT patent applications, an applicant can enter into Canada as a national entry of the PCT patent application up to 42 months after the PCT priority date, simply by filing a late national entry request and paying a nominal fee. This late national entry provision allows the applicant an additional 12 months after the standard 30-month PCT national phase entry deadline.

Some jurisdictions of the world, such as the United States, may bar the filing of patent protection on any product that has been on sale for more than 12 months prior to the filing of the patent application in that jurisdiction. However, in Canada, early market entry may not bar entitlement to patent the marketed products, for those products that have been on sale, unless the sale could be deemed an enabling public disclosure of the invention, and the enabling public disclosure was made more than 12 months prior to the filing of the patent application in Canada.

#### j. Streamlined Advanced Examination of Canadian Patent Applications

An additional situation in which an applicant may wish to accelerate patent prosecution for a critical technology is where competitors are considered to be capitalizing on the technology in the marketplace.

Advantageously, if an applicant wishes to accelerate patent prosecution in Canada, the process is relatively straightforward and inexpensive. Advanced or expedited examinations of Canadian patent applications are granted automatically in response to payment of a modest fee and a request containing a broad affirmation that the failure to advance the application for examination is likely to prejudice the applicant's rights. It should be noted, however, that the contents of the Canadian patent application must be open to public inspection (i.e., published on the CIPO website) if advanced examination is desired, whereby a request to that effect must be made along with the advanced examination request if the patent application is within 18 months from its priority date.

One advantage of the advanced examination request is that there is no need to provide any evidence or details to support the affirmation. Currently, an advanced examination procedure typically results in the issuance of a first examination report within three months of the advanced examination request.

#### k. Procedural Flexibility in Obtaining Canadian Patent Protection

There are a number of distinct claim format, number and content advantages for Canadian patent applications that can be used to maximize Canadian patent coverage and to help minimize Canadian patent costs.

For example, voluntary amendments to the claims or other parts of the Canadian patent application may be filed at any time in Canada during examination of the patent application. In terms of final examination reports, which can significantly impact the applicant's timing and cost to gain sufficient patent coverage,

these are not encountered as a matter of course and are only issued when it is clear the examiner and applicant have reached an impasse. This generally reduced occurrence of final examination reports can allow for ample opportunity to negotiate with the examiner and to help ensure that final examination reports are only issued as a last resort. In particular, further amendments to the claims can help avoid final rejection rather than precipitate the final rejection.

Furthermore, the courts may not consider any submissions made by the patentee during the prosecution of the application when a patent is subsequently litigated. This is in contrast to other countries, where a patentee may be “estopped” from taking a position with respect to the scope of the claims when the position is contrary to the one taken during prosecution.

#### I. Reduced Relationship Potential between Patent Applications of Opposed Parties

Circumstances can arise in which one Canadian patent application can be affected by another Canadian patent application, such as in situations where both patents are directed toward similar patent coverage. These patent applications may be owned by the same party or by opposing parties.

In Canada, there is limited liability in the opposition of third-party patent applications, as there is no Canadian interference procedure to challenge a competitor’s co-pending patent application.

Furthermore, Canada does not use terminal disclaimers between applications owned by the same party. As a consequence, there is no Canadian continuation application procedure (unlike in other jurisdictions), and Canadian divisional procedure involves examiner input. Therefore, the best practice is to add all desired claims to the Canadian patent application and to let the Canadian examiner decide which invention or inventions are appropriate for the patent application. This practice of examiner input provides the potential to have a broader range of inventions contained within one application.

### 3. Trade-marks

A trade-mark is a word, slogan, symbol or anything else that serves as a distinctive indicator of the source of particular goods or services. In Canada, while trade-marks do not need to be registered to be protected, the scope of rights afforded by registration and the available means of enforcement are generally greater for registered trade-marks.

As such, trade-mark registration is a good investment for any owner who plans to use a trade-mark extensively in Canada. A trade-mark registration in another country with no use or reputation in Canada conveys no protection in Canada.

Canadian trade-mark law shares many similarities with U.S. trade-mark law, but also has its own particularities. Because the process of registering a trade-mark under the federal *Trade-marks Act* (Canada) can be technical, it is advisable to consult a trade-mark lawyer or trade-mark agent to oversee this process and also to provide advice on protecting and licensing trade-marks in Canada.

#### a. Registered and Unregistered Trade-marks

If an unregistered trade-mark has been in use and possesses goodwill, the common law will protect it under the doctrine of passing off. However, the scope of protection for unregistered trade-marks is generally narrower than that for registered trade-marks. Protection for an unregistered trade-mark is strictly limited to the geographic boundaries of its use and established goodwill.

On the other hand, obtaining a registration for a trade-mark confers many advantages, including the exclusive right to use the trade-mark across Canada, without geographic restriction, in relation to the goods or services specified in the registration.

Trade names, corporate names or business names may be registrable if such a name is used as a trade-mark. That is, a trade name may be registered as a trade-

mark if it is used to distinguish a product or service of one company from that of another. If a trade name is not used as a trade-mark, it may nonetheless be protected under the doctrine of passing off, which protects the goodwill of a business rather than the right to the name itself.

It is important to note that there is no concept of a “service mark” as a distinct category of trade-mark in Canada. Registration can be obtained for a trade-mark in relation to wares, services or both. Moreover, unlike in other countries, in Canada, a single trade-mark registration can cover multiple classes of wares or services. A peculiarity of Canadian trade-mark law is that use of a registered mark by a third party in advertising may not constitute infringement of that registered mark unless it is registered in association with services rather than just wares.

In Canada, there is no formal requirement for the use of trade-mark notices such as ® or ™. However, the use of trade-mark notices is generally recommended, especially if the trade-mark is used by a licensee of the owner in which the owner of the trade-mark should be identified as well to avoid loss of distinctiveness under the relevant sections of the *Trade-marks Act*.

#### b. Entitlement, Prosecution and Opposition

There are numerous procedural and substantive requirements for the application, processing and registration of a trade-mark in Canada. Before applying for a trade-mark, it is advisable to conduct a trade-mark search to ensure that the trade-mark is registrable and that the applicant is the party entitled to the registration of the trade-mark.

In Canada, entitlement to the rights to a trade-mark is based on use. There are three possible bases for registration of a trade-mark in Canada: the use of the trade-mark in Canada, the registration and use of the trade-mark abroad, or the proposed use of the trade-mark in Canada. Resolution of competing claims to a trade-mark will likely depend upon which party has first used or made the trade-mark known in Canada, or has been the first to file an application for registration on

the basis of foreign registration or proposed use, depending on the circumstances.

Prior to registration, it is possible for a third party to oppose an application for a trade-mark on specific listed grounds, such as confusion or technical defects in the application. In Canada, technical grounds can be fatal to an application with no opportunity to remedy them, further underlining the need for marks to be prosecuted by experienced trade-mark counsel.

#### c. Term of Trade-mark Protection

Registered trade-marks must be renewed every 15 years upon payment of a renewal fee, which is the only requirement to renew a trade-mark registration in Canada. It is not necessary to file a declaration of continued use.

Nevertheless, registered trade-marks are liable to be expunged from the Register after an initial grace period if, after a request to show use by the Registrar or any other interested party, the trade-mark owner cannot show that the trade-mark has been “used” (for the purposes of the *Trade-marks Act*) during the previous three years.

Furthermore, if a trade-mark loses its distinctive character and quality, it ceases to be a protectable trade-mark. Therefore, a trade-mark owner must be careful not to allow a trade-mark to become “genericized” — that is, to become the common name of the goods with which it is associated — or to be usurped by a third party.

#### d. Trade-mark Enforcement: Passing off, Infringement and Depreciation of Goodwill

As noted above, the owner of an unregistered trade-mark may only enforce rights in that trade-mark through an action for passing off. To succeed, the owner of an unregistered trade-mark must show that it has a commercial reputation or goodwill created through the use of its mark, that another person has sold goods or services in a way that misrepresents them as those of the trade-mark owner, and that damage is likely to be suffered to the owner’s reputation or goodwill.

There are additional mechanisms for enforcing a registered trade-mark that provide a greater ambit of protection compared to an unregistered trade-mark. In addition to an action for passing off, the owner of a registered trade-mark may also bring an action for trade-mark infringement or depreciation of goodwill.

The available remedies against a party who infringes a trade-mark or depreciates the value of its goodwill include injunctive relief, monetary damages or profits, as well as an order for the destruction of the infringing articles.

The Canadian *Criminal Code* also makes certain types of trade-mark infringement and counterfeiting criminal offences, punishable by fine or imprisonment.

#### e. Assignment and Licensing of Trade-marks

The *Trade-marks Act* allows registered trade-marks to be assigned. Since trade-mark registrations in Canada can cover multiple wares or services, it is possible to only partially assign a trade-mark with respect to some of the wares or services. Territorial assignments of registered marks are generally not permitted under the *Trade-marks Act*.

It is also possible to license a trade-mark under the *Trade-marks Act*. For a trade-mark licence to be valid, and to avoid the risk of a trade-mark losing its distinctiveness, certain requirements must be met. These include the trade-mark owner retaining control over the character or quality of the wares or services associated with the trade-mark. Satisfying the requirements for “control” will vary from case to case. However, typically a bare assertion of control or mere evidence of corporate control of a subsidiary will be insufficient for the purposes of the *Trade-marks Act*.

#### f. Use of Trade-marks in Québec

It is important for all trade-mark owners to appreciate that special rules apply to the use of trade-marks in Québec, due to the *Charter of the French Language* in that province. The *Charter* provides that every marking on a product or document, as well as public signs,

posters and other commercial advertising, must be drafted in the French language, though they may be accompanied by a translation.

However, a Regulation to the *Charter* creates an exception with respect to trade-marks: a “recognized trade-mark” may be used exclusively in a language other than French unless a French version has been registered. If a French version of the trade-mark has been registered, it must be used.

Previously, both unregistered and registered trade-marks as well as trade-marks that were the subject of pending applications fell under the exception. However, *l’Office québécois de la langue française*, the body that is responsible for enforcing the *Charter*, now takes the view that the “recognized trade-mark” exception is only available for registered trade-marks. Whether this is supportable at law has yet to be tested before the courts, but the commercial reality is that businesses are having to face up to the position of *l’Office* in Québec, including in relation to the packaging of wares that are shipped across Canada and sold in Québec as well as in other provinces.

Trade-marks and other terms composed of descriptive elements may be the most likely to be challenged. Therefore, businesses operating in Québec (or selling wares in Québec) that wish to make use of the exception should seek registration of their trade-marks, especially where the mark contains descriptive terms, and would be well-advised to seek guidance from Canadian trade-mark counsel as to compliance with the terms of the *Charter* and the current position of *l’Office*.

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