

LOCATION OF SAFETY WARNINGS

On the Product or in the Manual?



An important issue to be considered in trying to meet the duty to warn and instruct is for the manufacturer to decide where to place safety warnings – on the product, in the manual, or on the product and in the manual. Generally speaking, all warning labels on the product should be shown in the manual. But the converse is not true. Not all warnings in the manual need to be placed on the product.

Since our first goal is to communicate the warning to the user, we need to figure out where best to place them to maximize the possibility of that happening. In the event of an accident, the plaintiff will always claim that they did not see the warning and, therefore, the manufacturer may need to present evidence as to why they placed it where they did.

This article will discuss the basic duty to warn and instruct, and then examine the law and standards as they pertain to this issue. Then it will discuss recommendations about how to decide where to place this information and what to say.

BASIC LEGAL DUTY TO WARN AND INSTRUCT

Product sellers must provide “reasonable warnings and instructions” about their product’s risks. The law differentiates between warnings and instructions as follows: “Warnings alert users and consumers to the existence and nature of product risks so that they can prevent harm either by appropriate conduct during use or consumption or by choosing not to use or consume.” Instructions “inform persons how to use and consume products safely.”¹

Therefore, when the law talks about the “duty to warn,” it includes warning labels on products, safety information in instruction manuals, and safety information in other communications such as company websites, social media, advertising, and catalogs.

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By Kenneth Ross

The law says that a manufacturer has a duty to warn where: 1) the product is dangerous; 2) the danger is or should be known by the manufacturer; 3) the danger is present when the product is used in the usual and expected manner, and 4) the danger is not obvious or well known to the user.²

Once the decision has been made to warn, the manufacturer needs to determine whether the content of the warning is adequate. Generally, the adequacy of a warning in a particular situation is a question of fact to be decided by the jury. However, various courts and commentators have described a list of requirements and goals of an adequate warning. One court said:

“If warning of the danger is given and this warning is of a character reasonably calculated to bring home to the reasonably prudent person the nature and extent of the danger, it is sufficient to shift the risk of harm from the manufacturer to the user. To be of such character the warning must embody two characteristics: first, it must be in such form that it could reasonably be expected to catch the attention of the reasonably prudent man in the circumstances of its use; secondly, the content of the warning must be of such a nature as to be comprehensible to the average user and to convey a fair indication of the nature and extent of the danger to the mind of a reasonably prudent person.”³

Other courts have said that an adequate warning does the following:

- Alert the consumer or user to the severity of the hazard (severity being defined as the magnitude of the hazard and the likelihood of it being encountered);
- Clearly state the nature of the hazard;
- Clearly state the consequences of the hazard; and
- Provide instructions on how to avoid the hazard.

And the *Restatement Third, Torts: Products Liability* says that a court must focus on a warning’s “content and comprehensibility, intensity of expression, and the characteristics of expected user groups” to determine its adequacy.

Case law treats the duty to warn and instruct separately. So, including adequate warnings in the manual may not be enough to meet the duty to instruct. And adequate instructions in the manual may not fulfill the duty to warn. There are very few cases that discuss the adequacy of instruction manuals as instructions and not warnings. And the case law is not particularly illuminating. The cases only say that manuals should be “adequate, accurate, and effective,” and “clear, complete, and adequately communicated.”

WARNINGS STANDARDS

On the issue of location, which is certainly related to adequacy, let us first look at what the standards in the U.S. and elsewhere say. Except for some product specific standards, general warning label standards do not talk about when the warning should also be placed in the manual and, more important, when you can just place warnings in the manual and not on the product.

Product specific standards promulgated by ANSI, ASTM, UL, CSA, etc., generally talk about what warnings have to be attached to the product and what information, including warnings, have to go in the manual. But not all product specific standards deal with the content of instructions and some do not deal with warnings or instructions at all. And, of course, compliance with these standards is not a defense. Therefore, manufacturers cannot completely rely on them to answer this question.

INSTRUCTION STANDARDS AND GUIDELINES

There is one general standard that talks about instructions. ANSI Z535.6 is a standard published in

late 2006 dealing with instructions. The purpose of the standard is, in part, to “establish a uniform and consistent visual layout for safety information in collateral materials for a wide variety of products and establish a national uniform system for the recognition of potential personal injury hazards for those persons using products.”

The standard applies to all “collateral material” that accompanies a product but does not deal with safety information communicated through company websites, social media, advertising, and promotional material, or stated in audio/visual material such as safety videos.

This standard says nothing about when a warning is sufficient when placed only in the manual and when it must also be attached to the product. In addition, this standard only deals with safety instructions in a hardcopy format.

There are some product specific standards that have detailed requirements about the safety information that need to go in the manual and on a label placed on the product. Such standards do answer the question on where this information goes. Unfortunately, as stated above, compliance with such standards is not a defense in a product liability case. Therefore, an injured party can still argue that the warning should have been placed on a label on the product and not just in the manual.

On this question, Steve Hall of Applied Safety and Ergonomics and current chair of the ANSI Z535 committee said to me in an email dated August 2, 2012:

“There is no hard and fast rule, but generally you want to try to provide messages in a way that gives people a reasonable chance to read them at an appropriate time. So, for tasks that are expected to involve referring to the manual (e.g., assembly, troubleshooting, maintenance, etc.), it is generally reasonable to provide safety messages in the relevant part of the manual, and not on a label. Conversely, for scenarios where the target audience is not reasonably expected to have access to a manual, a label may be more appropriate.”

In addition, there are a few governmental guidelines or guidances on instructions, but these generally provide no rules on where to place safety information. One of these is the U.S. Consumer Product Safety Commission’s *Manufacturer’s Guide to Developing*

Consumer Product Instructions.⁴ In the European Union, there are product specific directives that discuss labels and instructions. For example, the Guide to the European Union’s Machinery Directive (2006/42/EC) says:

“The manufacturer is not expected to mark on the machinery all the information for safe use provided in the instructions. However information concerning essential aspects of safe use must be marked on the machinery, such as, for example, the maximum dimensions of workpieces, the maximum dimensions of the tools to be used, the maximum slope on which the machinery is stable, the maximum wind speed and so on. The information to be marked on the machinery is usually specified in the relevant harmonized standards”⁵

In addition, the International Organization for Standardization (ISO) has issued several standards on instructions.

COMMON LAW ON WARNING LOCATION

On the issue of the location of the warning on the product, case law requires the warning be in a position so that it can be seen before the user encounters the hazard. This is also required in ANSI Z535.4. There are also a few cases where a warning was deemed inadequate because it was in the wrong location on the product, and a few cases where the warning was only in the manual and not on the product.

On the issue of how to analyze whether to place a warning only in the manual, Professor David Owen, in his products liability hornbook, says:

“Whether adequacy requires in any given case that warnings be placed directly on the product involves a balance of the significance of the hazard, the user’s need for the information, the availability of a feasible means to place the warnings on the product, and other factors in the calculus of risk.”

If feasible, reason normally suggests that important warnings of serious hazards be placed on the product itself rather than in a pamphlet, booklet, or information sheet that can be damaged, lost, discarded, destroyed or stuffed in a drawer. Depending on the circumstances, however, a warning may still be adequate even if it is provided off the product in a manual or other writing.⁶

Professor Owen cited just a few cases for the above proposition. One of the cases, *Broussard v. Continental Oil Co.*⁷ illustrates one basis for putting warnings in the manual and not on the product – a lack of space on the product.

Black & Decker sold a hand drill with one warning on the product, “CAUTION: For Safe Operation See Owner’s Manual.” In the manual, there was a section devoted to safety. And item #18 in that section dealt with a safety precaution that was not followed and resulted in injury to the plaintiff.

The court dealt specifically with the question of whether Black & Decker met its duty to warn by placing the warning in the manual and not on the product. Plaintiff’s counsel submitted a proposed warning label for the hand drill that included 10 of the 18 warning messages in the manual. The court felt that the proposed language concerning the hazard involved in this accident was inadequate. In addition, the proposed warning showed how difficult it is to adequately warn of multiple hazards in a small space.

The court felt that putting even 10 warning messages on the drill decreased the effectiveness of all the warnings and that, given the clutter, a consumer might not read any of them. Thus, the court held that Black & Decker met its duty to warn by including a warning referring to the manual on the product and including the specific warning which was deemed adequate in content in the manual.

Another case from Louisiana held that a warning in the manual was sufficient because a warning on the product would not have been readable given the corrosion and wear to which the product and label would be subjected.⁸

In another case cited by Professor Owen involving a snowmobile, the court said of the instruction manual:

“However, among a list of fifty warnings, the manual contained warnings against standing behind the snowmobile while the engine was running and against lifting the rear of the snowmobile while the engine was running. The machine itself contained a printed sticker, near the front windshield, warning users to read the owner’s manual before using the machine and offering other advice. But the sticker did not warn against

standing behind the machine or lifting it while the engine was running.”

The plaintiff argued that there should have been a warning on the back of the snowmobile and not just in the manual. The court agreed and said:

“Given that the snowmobile had a handle attached to the back to facilitate lifting; the danger posed by lifting up a running snowmobile; Yamaha’s admitted knowledge that “tracks could fail when the rear [of the snowmobile] was lifted and the track was accelerated”; the foreseeability of users engaging in that maneuver; and the expert testimony about the frequency with which consumers fail to read owner’s manuals, it is not surprising that the jury found that Yamaha provided an inadequate warning.”⁹

WHAT TO DO

This issue illustrates the importance of creating or revising instruction manuals and warning labels at the same time. They are inextricably intertwined. They form all or part of a safety communications system and will be viewed as such by the plaintiff and a jury.

With this in mind, I suggest that the manual be developed first, followed by the warning labels. Here are a few suggestions to consider for incorporating safety information into the manual. Some but not all of these suggestions are in ANSI Z535.6.

- The cover of the manual should have a boxed warning saying something like “Read this manual and all warning labels on the product before using this product. Failure to follow these instructions and safety precautions can result in serious injury or death.” It should also say, “Keep this manual nearby in a safe location for future reference.”
- A Safety Section should be placed at the beginning of the manual, before or after the table of contents, that describes the risks involved in the use of the product and how to minimize or avoid them. This section should include definitions of the signal words—such as “danger,” “warning,” and “caution”—that are used on labels and in the manual, as well as reproductions of the labels showing where they are attached to the product. If the product has symbol-only labels, the manual should describe the meaning of all symbols.

- Depending on the length of the Safety Section, it could be separated into subsections to make the precautions easier to read and find. The subsections can be devoted to the type of activity (e.g., assembly, installation, operation, maintenance) or type of hazard (e.g., fire, electrocution, crush) or even type of avoidance procedure (e.g., avoid open flames, wear protective gear, stay away from power lines, keep hands out of moving parts, etc.).
- Not all safety messages in the Safety Section need to be repeated in the text, especially if they are general and apply to many activities. In addition, not all safety messages in the instructional sections need to be repeated in the Safety Section. For example, lower level messages, such as those using “Caution” and “Notice” as signal words, may not need to be in the Safety Section.
- General safety messages should be included at the beginning of a chapter (e.g., maintenance, installation, or operation) or within a chapter. They should include general references to the Safety Section and other safety messages such as “Do not operate equipment without first reading this chapter and the Safety Section at the beginning of this manual” and “Failure to follow safety precautions in this chapter could result in serious injury or death.”
- Embedded safety messages should be contained within a specific procedure. For example, “To prevent burns, wear protective gloves when performing this procedure.” As stated above, not all of these messages need to be in the Safety Section.

As described above, the cover of the manual should tell the user to read the manual before using the product and then to keep the manual nearby for future reference. In addition to that, the manufacturer should include a label on the product saying the same things and telling the user how to get another manual if the original manual is missing or illegible.

With the message on the cover of the manual and this label on the product, the manufacturer can argue that all of the warnings in the manual but not on the product should have been read before using the product and that they can assume this will be done. Basically, that is what won the case for Black & Decker in the *Broussard* case. However, that was not enough for the court in the *Mohr v. Yamaha* case.

Now you need to figure out what safety messages in the manual should also go on the product. Based on the previous quote in this article by Professor Owen, it sounds somewhat like the factors in a negligence test: 1) the level of hazard (considering probability and severity); 2) the “user’s need for the information” on the product and not just in the manual (considering obviousness and the user’s need to see this precaution each time they use the product), and 3) “the availability of a feasible means to place the warnings on the product” (considering available space and the environment in which the label would be placed).

So, the higher the risk, the more the label should be accessible during each product use. And, the easier it is to place a warning on the product, the more likely it is that you should do so. So, for example, lower level hazards, hazards that only exist during unlikely uses, and maintenance hazards where maintenance personnel are professionals are some of the kinds of hazards where a label may not be necessary.

That being said, add the label when in doubt and where there is room. While there is a possibility that over warning could be used to argue that the warnings are inadequate, I think the risk of liability for under warning is far more likely.¹⁰

If making a final decision is problematic or if the manufacturer truly doesn’t know, it is possible for the manufacturer to do a formal or informal focus group study to try to determine what information would be best to place on the product versus the manual. In other words, they can find out from actual product users what information in the manual these users think should be visible to them each time they use the product.

CONCLUSION

No matter what a manufacturer does in the area of warnings and instructions, a plaintiff will argue that the manufacturer should have done something different and that doing so would have prevented the accident. Given the wide variety of options and analyses that can be done and the lack of clear guidance on this issue concerning most products, the manufacturer should use the factors described above and develop a rationale as to why certain messages are on the product and why some are only in the manual.