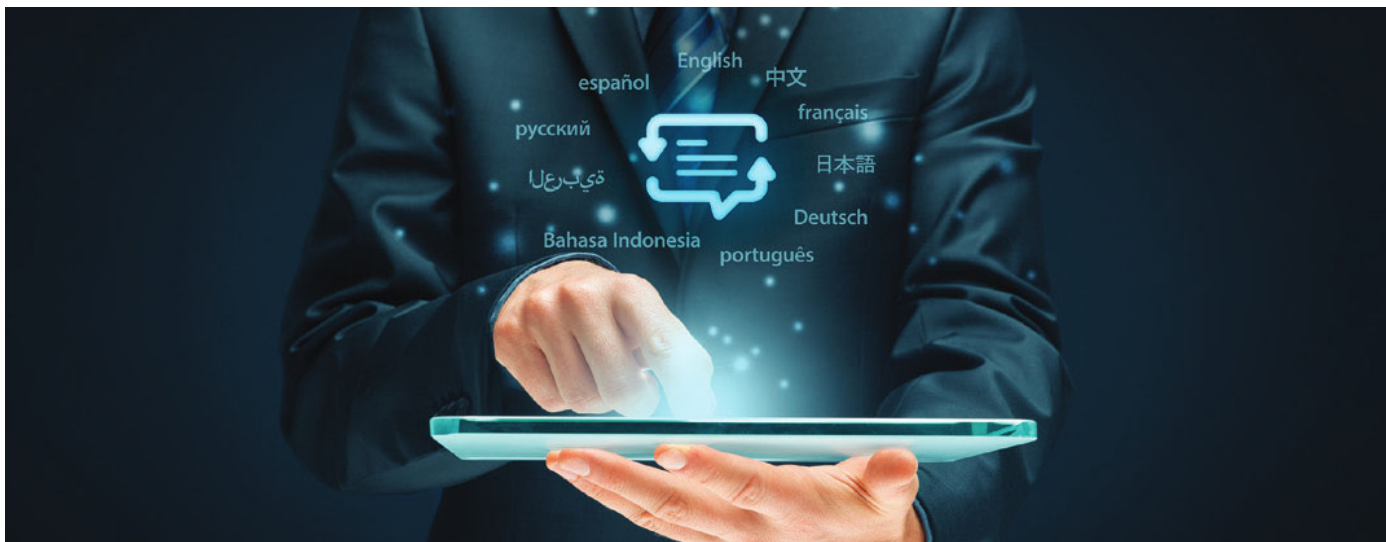


DUTY TO WARN NON-ENGLISH SPEAKING AND READING PRODUCT USERS

When are Multilingual Warnings Appropriate



The duty to warn and instruct is a significant duty in the United States. Under U.S. product liability law, liability can result if a manufacturer or product seller fails to adequately communicate appropriate safety information to purchasers and users of its products.

Given the considerable number of languages spoken and read in the United States and the significant number of people who do not speak English or are illiterate, developing a method to effectively communicate safety information to readers of product labels and instruction manuals is an important consideration. Adequate safety communications that are not effectively communicated to foreseeable users may arguably be considered defective.

This article will describe the relevant law and the voluntary U.S. technical standards concerning the use of foreign languages in safety information and will provide recommendations to manufacturers about using multilingual labels and instructions, including

the use of new technology to better transmit such information.

NON-ENGLISH READING OR SPEAKING RESIDENTS IN THE U.S.

According to the Census Bureau's 2020 census, the Hispanic population in the United States is close to sixty-two million. In addition, the Census Bureau estimated that 40.7 million U.S. residents five and older spoke Spanish at home in 2020, up from thirty-five million in 1990. And of those who spoke Spanish at home, the Census Bureau estimated that 16.2 million spoke English "not well."

In addition, forty-three million adults in the U.S. have low literacy skills, with 34% being Hispanic, 35% white, and 31% non-white. Thus, 66% of those with low literacy skills, or twenty-eight million people, do not read Spanish or English very well or at all.

Whatever the trends have been and will be in the future, millions of people are not proficient in speaking or

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By Kenneth Ross

writing English. And since they are not proficient in English or maybe any language, it will be challenging to communicate with them about how to use products properly and safely.

U.S. CASE LAW

With this as a backdrop, let us first consider what the courts say in this area. The two main ways to effectively communicate to illiterate or non-English reading product users are using their native language or commonly understood symbols. However, U.S. common law provides little guidance on when foreign languages or safety symbols are appropriate or required. Court rulings show the difficulty the courts have had on this issue.

Stanley Industries, Inc. v. W.M. Barr & Co., Inc.

In 1992, the U.S. District Court for the Southern District of Florida issued the *Stanley Industries* case.¹ In that case, the plaintiff alleged that a fire that occurred in the plaintiff's facility was caused by the spontaneous combustion of rags soaked in the defendant's linseed oil. The linseed oil was being used by two employees who were brothers from Nicaragua and whose primary language was Spanish.

The plaintiff sued the manufacturer of the linseed oil and the retailer, Home Depot, Inc., for negligent failure to warn, strict liability, and breach of warranty of fitness for a particular purpose. The defendant manufacturer filed a motion for summary judgment on negligent failure to warn.

The plaintiff's response to the defendant's motion for summary judgment argued that, because the language on the back of the product label was only in English and contained no symbols, it was inadequate. It further alleged that the label did not fairly, appropriately, and comprehensively warn Spanish-

speaking, monolingual product users of the dangers likely to be encountered with the product's use.

The key fact in this case was that the defendants arranged to advertise, promote, and market products in the Miami area jointly and cooperatively. Home Depot regularly and actively advertised in the Miami market in Spanish on Hispanic television, radio, and in Hispanic newspapers. Home Depot also marketed a number of its products with bilingual instructions.

After reviewing the few prior cases discussing the subject of multilingual warnings or universally accepted symbols, the court denied the motion for summary judgment and held that it was for the jury to decide whether the defendants could have reasonably foreseen that the linseed oil would be used by persons such as the plaintiffs.

The court also held that the jury must decide whether a warning should at least contain universally accepted precautionary symbols. Lastly, the court held that it was for the jury to decide whether a warning, to be adequate, must contain words in a language other than English or must contain symbols.

In addition to denying the defendant's motion for summary judgment, the court added that it did not intend to advance any position on the merits of the case, nor did its decision foreclose affirmative defenses such as comparative negligence or intervening cause.

However, in a subsequent trial in November 1993, the jury returned a verdict in favor of Home Depot. Since the only defect claimed by the plaintiff was an inadequate warning, it can be assumed that the jury felt that it was unnecessary for the defendants to warn the plaintiff's employees in Spanish or by use of symbols, even if the defendant retailer advertised in Spanish.

Interestingly, many people have interpreted the judge's ruling in *Stanley* to mean that symbols and Spanish were necessary in this situation. That is not the holding of the court, and the fact that the jury subsequently ruled in favor of Home Depot supports the view that communications in Spanish were not considered necessary in this case.

Interestingly, three days before the jury verdict in 1993, Home Depot reportedly sent a letter to many of its suppliers asking that Spanish be included on all warning labels and instructions accompanying products sold to Home Depot. Presumably, Home Depot, as a preventive measure, decided that its suppliers should warn and instruct in Spanish regardless of the outcome of this case.

Ramirez v. Plough, Inc

In the second major opinion on this issue, the California Supreme Court ruled in 1993 that a manufacturer might not be held liable in tort for labeling a non-prescription drug solely in English.² The court ruled on the adequacy of English-only warnings regarding Reye's syndrome on aspirin purchased by the plaintiff's mother, who could not read English but was literate in Spanish.

The pertinent facts this court considered were that the aspirin was advertised to and used by non-English-literate Hispanics and that the manufacturer presented no evidence as to the cost of Spanish-language labeling and the reasonableness of the manufacturer's conduct in not labeling in Spanish. The California Court of Appeals held that the adequacy of warnings was normally a fact issue for the jury, and the manufacturer appealed the case to the California Supreme Court.

The California Supreme Court reversed, dismissing the plaintiff's case against the manufacturer. The court held that the plaintiff's cause of action for inadequate warnings was preempted by federal and state regulations regarding warning requirements. Thus, the court held that, as a matter of law, a manufacturer could not be held liable for failure to include foreign language warnings when the product's warnings and labels complied with federal and state regulations.

The court relied on the lack of statutory authority from the California State Legislature requiring anything other than English labels on non-prescription drugs. It inferred that the Legislature had "... deliberately chosen not to require that manufacturers also include warnings in foreign languages." And they believed that requiring a language other than English "... is a matter of public policy for consideration by the appropriate legislative bodies and not by the Courts."

Medina v. Louisville Ladder and Home Depot, U.S.A., Inc.

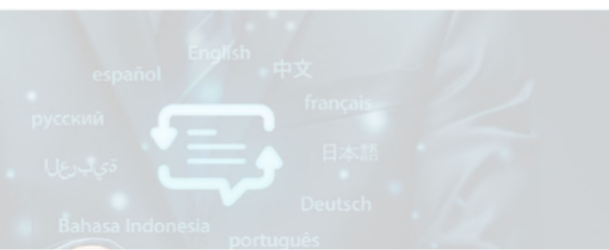
More recently, the federal district court in Orlando considered the efficacy of the *Stanley* decision. Plaintiff argued that a ladder was defective because it lacked warnings and instructions in Spanish and that the defendants were negligent in failing to include them.³ They relied on the *Stanley* case to support their allegations. Defendants filed a motion for summary judgment.

In June 2007, the court considered the *Stanley* opinion and declined to follow it. The court stated that *Stanley* is an "isolated precedent" and that in 15 years from the date of the opinion, no Florida case, state or federal, has concluded that bilingual warnings and instructions may be necessary under Florida law. The court said that there is no indication that Florida law imposes a duty to provide bilingual labels on consumer products and the court was unwilling to extend the law that far. On that basis, the court granted the defendant's motion for summary judgment and dismissed the plaintiff's case.

Farias v. Mr. Heater, Inc.

Lastly, in another Florida case, the plaintiff appealed from an adverse ruling on summary judgment against Mr. Heater, Enerco Group, and Home Depot on her claim of negligent failure to warn.⁴ The appellate court found no error in the district court's conclusion that the warnings provided with the manufacturer's heater were adequate as a matter of law and therefore affirmed the granting of summary judgment.

The appellate court stated that a trial court can rule on warning adequacy as a matter of law if the warnings are objectively accurate, clear, and unambiguous. While the plaintiff did not challenge the trial court's ruling that Florida law does not automatically



impose a duty to provide bilingual warnings on consumer products, she did argue, in part, that the question of the adequacy of the English-only warnings should be a jury question, citing the *Stanley* case.

The appellate court held that *Stanley* did not apply because there was no evidence that Enerco or Home Depot specifically marketed to Spanish-speaking customers through Hispanic media. And the fact that Home Depot requested its vendors to use bilingual packaging was not sufficient evidence of a targeted marketing campaign.

These cases are significant rulings since no defendant wants to have a jury decide such an issue but would prefer to have it decided by a judge in their favor as a matter of law.

Therefore, as of today, common law in general does not require a label to include a foreign language or even symbols for it to meet the duty to warn and instruct. And, if there is a direct marketing campaign to Spanish-speaking consumers, then it seems likely that, at least in Florida, the court would hold that the jury can decide whether Spanish should be required.

U.S. LABELING STANDARDS

The American National Standards Institute published voluntary consensus standards, referred to as ANSI Z535, concerning product safety labeling. ANSI Z535.4 (2011) provides guidelines for developing safety labels. This subpart provides, in an unofficial annex, acceptable formats for multilingual labels but does not provide any guidance on when to include foreign languages. On that issue, the standard says:

“The selection of additional languages for product safety signs is an extremely complex issue. Experts suggest that nearly 150 languages are spoken in the United States and millions of Americans speak a language other than English in their homes. If it is determined that additional languages are desired on a safety sign, the following formats should be considered. In all examples, the use of pictorials is strongly encouraged in order to better communicate the sign’s hazard information across language barriers.”

Safety symbols are an optional part of the warnings developed in the ANSI Z535 standard, and the standard provides:

“Safety symbols may be used to clarify, supplement, or substitute for a portion or all of a word message found in the message panel. When used with a word message, safety symbols shall be compatible with the word message. A symbol may only be used to substitute for a portion or all of a word message if it has been demonstrated to be satisfactorily comprehended (e.g., Annex B of ANSI Z535.3) or there is a means (e.g., instructions, training materials, manuals, etc.) to inform people of the symbol’s meaning.”⁵

Some courts have suggested, but never clearly ruled, that the manufacturer should have considered adding symbols to transmit the safety message. However, as a practical matter, it is risky to fully rely on a symbol in that it may not be understood by everyone or may not fully transmit the required safety message. Thus, it may be a good idea to add a safety symbol to a label with words to more clearly and forcefully transmit the message.

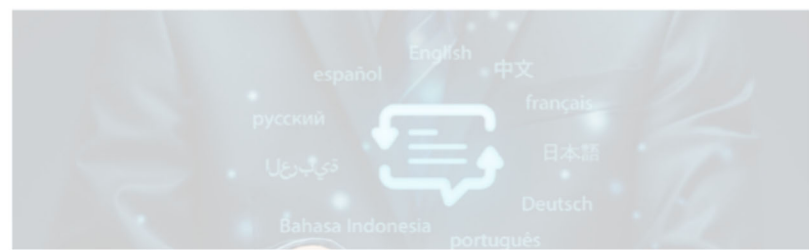
And lastly, a subpart, ANSI Z535.6, which provides guidelines on instructions, was issued in 2006 and reissued in 2011. This part of the standard does not contain any discussion of multilingual manuals.

Therefore, the main U.S. safety label standards do not require multilingual labels and provide no definitive guidance on when or where they may be appropriate.

RETAILER AND GOVERNMENT ACTIONS

Even though the common law and voluntary standards do not require foreign language safety labels or instructions, some manufacturers are including bilingual or even trilingual (English, Spanish, and French) labels and instructions with their products sold in North America. This may arise out of safety or liability concerns or is merely a reaction to sales patterns in North America or from customer demands such as Home Depot’s.

Trilingual labels and other identification information would allow a manufacturer to sell anywhere in North America without changing its labeling. To the extent that this trend grows, the “state of the art” may be raised despite the lack of clear judicial, legislative, or voluntary standard guidance or requirements.



In addition, some government agencies have required manufacturers who fall under their jurisdiction to attach bilingual labels and symbols to some of their products. One example of government action is the California legislature's adoption of a law requiring 5-gallon buckets sold in California to have a bilingual label with a symbol. In addition, the U.S. Consumer Product Safety Commission mandated a number of years ago that charcoal used for grilling be in packaging that contains explicit warnings in English and Spanish along with several symbols.

There may be other specific examples of government agencies or even standards groups requiring or recommending foreign language labels, but it is limited and has not resulted in a broad legal or practical requirement. Therefore, most manufacturers and product sellers still have great flexibility as to how to meet their duty to warn and instruct.

PREVENTIVE TECHNIQUES

As discussed above, with a few narrow exceptions, neither U.S. law nor voluntary consensus technical standards specifically require that Spanish or any other foreign language be used on safety labels or instructions even when those products are clearly being sold in non-English speaking or reading areas in the United States.

Based on that, one could argue that there appears to be no duty to warn in any language other than English. However, having a good defense against a lawsuit may not be the best result when preventing accidents should be your primary goal. To provide a safer product for foreseeable non-English reading product users, a manufacturer or retailer may decide to exceed any enunciated or anticipated legal or technical requirements.

Before including foreign languages on labels on their products and in their instructions, however, manufacturers should think about this carefully. A manufacturer may run some risk of liability if it voluntarily chooses to include foreign languages or symbols on its products and these labels contain inadequate information or are not effectively communicated.

Likewise, a manufacturer who voluntarily chooses to include one foreign language on its label or in its

instructions may be criticized for its failure to include other languages. If one foreign language is selected, another significant part of the user population that reads one of the over 150 other languages used in the United States may be neglected.

Another reason to be careful is that there is no assurance that product users in the U.S. will be able to read the foreign language. In fact, they may be illiterate in all languages. Also, including other languages on a safety label tends to clutter the label and could diminish the effectiveness of the entire label, especially the English message. And lastly, if the label is in a foreign language, there is a good argument that the manufacturer should also provide an instruction manual in the same foreign language.

If the manufacturer decides to add some Spanish but does not want to make it fully bilingual, one option is to have two signal words (e.g., WARNING in English and Spanish) and a pictorial on the label that at least clearly shows the hazard. The remainder of the label would be in English. Another option for products used in workplaces is to include one sentence in the foreign language describing the hazard and telling the reader to consult with their supervisor to find out how to avoid it.

In either case, the non-English reading or illiterate users could at least understand the type of hazard and possibly the consequences of not avoiding it. Then, if they are unable to read the English message on the label, they could ask someone who reads English to translate. Also, in this situation, the label could include a reference to the company website that includes safety information in a variety of foreign languages. Presumably, this safety information will already be translated for manuals shipped with products sold in foreign countries.

LEVERAGING TECHNOLOGY

New technology might also be useful in offering Spanish or other languages without having a full translation. There could be a label on the product with a sentence in English and Spanish about getting further information on their smartphone using QR codes which, when scanned, can portray a warning message on the screen or send the user to the company's website. This website can contain a link to the full English version of the instructions and to selected foreign language warnings and instructions.

A manufacturer's goal in this area is to adequately communicate safety information to foreseeable users, no matter where they are located. It is not too difficult to anticipate that people may not read or speak the English language.



In addition, there are companies that offer 3D interactive instructions that can be accessed from your smartphone (for example, see <https://biltapp.com>). These might be able to be programmed to offer information in English, Spanish, and other languages.

SHIFTING THE BURDEN

When the manufacturer does not know what foreign language may be appropriate for a given situation, it could provide English labels, including symbols, with the product and offer to provide labels in other languages to product sellers or employers. The practical burden (although probably not the legal burden) could be shifted to the product sellers or employers to decide if another language is required for the safe use of this product by customers or employees. These entities could then specifically request foreign language labels and manuals from the manufacturer. While this approach might be appropriate for some industrial equipment and other products used by workers, it is not practical for most consumer products.


One alternative is that manufacturers could offer to provide to retailers in areas with a substantial number of non-English speaking customers a pamphlet or leaflet providing safety information in the foreign language of the customers. Another alternative is to include a toll-free customer information number on the label of the product, informing the consumer that they can call the toll-free number to receive safety information in a foreign language.

Since the retailer or employer knows its customers or product users better than the manufacturer, maybe the decision as to the appropriate course of action properly resides with them. While it may not be possible as a legal matter to delegate the duty to warn to others, it may be appropriate to allow those more familiar with product users' language skills to assist in more effectively communicating the safety message to enhance safe product use.

CONCLUSION

The legal and technical requirements for providing adequate safety communications to those who do not read or speak English will evolve. Manufacturers who are creating safety communications for sales in the United States must keep track of these requirements and trends and try to comply with or exceed them as they exist today or might exist in the foreseeable future.

If the plaintiff is illiterate or only reads a foreign language and the safety information does not fully transmit the necessary information to that product user, there are risks no matter what course of action a manufacturer takes. Therefore, a manufacturer should assess the risk of different strategies that could be taken and try to predict whether they will be defensible if challenged.

A manufacturer's goal in this area is to adequately communicate safety information to foreseeable users, no matter where they are located. It is not too difficult to anticipate that people may not read or speak the English language. It is much more difficult, if not impossible, to communicate all necessary safety information to all foreseeable product users. Nevertheless, attention to this issue can help minimize future liability in the United States as well as provide a better-quality product that is safer and easier to use. 

ENDNOTES

1. *Stanley Industries, Inc. v. W.M. Barr & Co., Inc.*, 784 F. Supp 1570 (S.D. Fla. 1992)
2. *Ramirez v. Plough, Inc.*, 25 Cal. Reporter. 2d 97 (1993)
3. *Medina v. Louisville Ladder and Home Depot, U.S.A., Inc.*, 496 F. Supp.2d 1324 (2007)
4. *Farias v. Mr. Heater, Inc.*, 684 F. 3d (11th Cir. Fla. 2012)
5. ANSI Z535.4 (2011)