

PRODUCT WARNINGS AND INSTRUCTIONS:

AS CONSUMERS, WE'RE SOMETIMES SURPRISED OR EVEN FRUSTRATED BY THE EXTENSIVE WARNING LABELS WE FIND ON PRODUCTS AND THE CAUTIONS THAT FILL UP INSTRUCTION MANUALS, GUARDING US AGAINST SITUATIONS THAT SOMETIMES SEEM REMOTE AT BEST. WHEN THEY'RE DONE WELL, HOWEVER, THESE MATERIALS GUIDE US CLEARLY THROUGH PRODUCT INSTALLATION, PROPER AND SAFE OPERATION AND MAINTENANCE, AND PROVIDE VALUABLE WARNINGS AGAINST POTENTIAL RISKS. WHEN THEY'RE NOT, MANUFACTURERS MAY FIND THAT THEY CAN BE HELD LIABLE FOR CARELESS OR ILL-ADVISED ACTIONS BY THE CONSUMER AND, POTENTIALLY, FOR DELIBERATE MISUSE.

How to Win, **HOW TO LOSE**

Harlan T. Manning

For manufacturers of all kinds and sizes, product warnings and instructions are critical components of a solid product liability program. When properly presented, they can be exceptionally effective in preventing losses, defending against claims, or substantially reducing claims settlement costs and jury awards. But to accomplish these objectives, they must be crafted using best practices, some of which are based on established standards, others on case law or court decisions that have helped define requirements for effective warnings to users.

WHEN WARNINGS WORK AND WHEN THEY DON'T

Manufacturers have a responsibility to produce a product that is free from defects, suitable for its intended purpose and adequately controls hazards that the product might present to the user. Warnings can never be considered a substitute for this responsibility. Manufacturers who have attempted to use warnings to compensate for inadequate design have found out — often in court — that warnings will not protect them from liability.

Manufacturers also have a responsibility to foresee risks from ordinary use, carelessness, unintended use and even deliberate misuse of their product. Whenever possible, these risks should be eliminated through improved design, or by adding protections that guard against hazards that could be created by unintended use or misuse. Although warnings can be very helpful in these situations, manufacturers must still show that they took reasonable steps to design or guard against the risk. If manufacturers could have designed the product in a way to prevent an injury, even from foreseeable unintended use, carelessness or misuse, they will most likely be held at least partially liable even if warnings were effectively presented.

Once manufacturers have taken all reasonable steps to control product hazards and anticipate even deliberate misuse, the next step is to develop warnings and instructions that help protect the manufacturer and user.

WHEN WARNINGS ARE NEEDED

Warnings are essential when:

- **The product presents some hazard or risk of injury or property damage.** The risk can be inherent to the product itself (such as ladders or chainsaws), or associated with limited-risk products that can be subject to misuse (such as power tools or hair dryers).

- **The manufacturer is aware of the risk, the potential for risk, or could have foreseen that a risk could exist.**

Here, the courts view the manufacturer as an expert and give broad latitude to plaintiffs when defining what the manufacturer could have foreseen.

Companies who justify excluding a warning based on the logic that “no one in their right mind would ever...” should probably reconsider their decision.

- **The risk is not so obvious to the user that the user would be expected to guard or protect against it.**

Products such as matches, knives and razor blades feature very obvious hazards. Yet, there’s nothing about a television set that tells the user there’s dangerously high voltage inside.

- **There is risk of injury or property damage from foreseeable use or misuse even with additional safety protection in place.**

Protecting a user from dangerous machinery by using a guard is an effective safety control. But a manufacturer’s responsibility doesn’t stop there. The presence of a guard is no guarantee that the user won’t remove it. Since that misuse is foreseeable, the manufacturer must provide adequate warnings, clearly visible to the user, against removing the guard, or operating the equipment with the guard removed.

THE VALUE OF INSTRUCTIONS

Instructions, like product warnings, are a critical part of a product risk management process. Sound, complete and accurate advice, whether in the form of a user’s manual, a setup guide, or a service or maintenance handbook will help guide the user or service technician toward proper, safe procedures. Instructions also present the manufacturer with one more opportunity to warn the user about product risks, unsafe acts, improper application, misuse or unsafe operation.

GUIDELINES ON INSTRUCTIONS AND WARNINGS

Instructions should be clear, understandable, complete, correct and consistent. Consistency is perhaps the most difficult quality to achieve. Each piece of written documentation, from user’s manuals to maintenance bulletins, should be consistent with each other. Each should be consistent with actual product design, performance and risks. Instructions should always be consistent with the complexity of operation or maintenance, and they must be consistent with warnings presented in documentation and on the product, containers and packaging. Instructions should feature:

- An introduction, containing detailed safety information.
- A description of the product and its intended use, along with warnings against foreseeable misuse or misapplication.



- Procedures to be followed for handling, storing, installing, operating, inspecting, maintaining and servicing the product.
- Clear and detailed warnings for each potential risk presented by the product. These should be included in the safety information at the front of the instruction manual, then repeated each

and every time the risk may be present. If the product is a lawnmower, for example, a warning against placing hands into the catcher opening should be mentioned — as a minimum — at the beginning of the manual and when discussing attachment or removal of the grass catcher, clearing of jams, maintenance and even normal operation.

Lessons from Losses

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LESSON #1: WINNING WITH MULTIPLE WARNINGS

- Type of loss: A car owner was crushed to death while working underneath his car when the jack supporting the car collapsed.
- Description of loss: The vehicle owner was using the car manufacturer's jack to raise the vehicle so that he could change the oil. To make the job easier, the owner placed the vehicle's front wheels up onto the sidewalk; he may also have used a block of wood to raise the working height of the jack. The jack apparently collapsed while the owner was underneath the vehicle. Although rescued, he died five days later. The owner's spouse sued the vehicle and the jack manufacturers claiming that they took insufficient steps to prevent misuse and that the warnings placed on the jack were insufficient.
- Outcome: The manufacturers were held not liable. Warnings against this kind of misuse had been placed on the jack, on the jack assembly cover and in several places in the manual. Other warnings against using the jack unless the vehicle was level were also included. The court concluded that the user could not have missed all of the warnings and was responsible for his own injuries.

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LESSON #2: LOSING WITH INCOMPLETE, CONTRADICTORY INFORMATION

- Type of loss: A heavy equipment mechanic was crushed between the vehicle's cab and transmission during vehicle maintenance.
- Description of loss: The mechanic had tilted the cab to a position far beyond the 90 degrees cited in the manual (a position often used by mechanics because it appears to be safer than the 90-degree position). He didn't bolt or chain the cab as recommended in the manual. He cranked the start mechanism prior to reinstallation, although the manual warned users never to run the engine when the cab was tilted forward. He also had the battery connected even though the manual warned mechanics to disconnect the battery before any maintenance work.
- Outcome: There were significant gaps in the instructions to mechanics. The manufacturer knew that the cab could be tilted more than 90 degrees, but never mentioned that fact or any risks associated with that position. The manual warned against "starting" the engine, not cranking it, and defined these terms differently. The instructions about disconnecting the battery were contradicted elsewhere in the manual. As a result, the jury found the manufacturer not negligent, but awarded \$500,000 on strict liability grounds. The verdict was upheld on appeal.



To be most effective, warnings should be:

- Clear.** A manufacturer should consider the characteristics of expected users and develop warnings suitable for them. Considerations include age, language, literacy, technical knowledge and possible disabilities.
- Action oriented.** Warnings should give clear direction. They should identify the hazard, explain the consequences if warnings are not heeded and provide a clear course of action. “Danger: Risk of Electric Shock. Do Not Use Near Water” is more effective than “Since this product uses electricity, it is inadvisable to use this product whenever water is present.”
- Consistent with product use and with other warnings.** The warning must be both practical and consistent. Safe use of the product should not make it impossible to use the product effectively. Warning users to “Disconnect all power before servicing, adjusting or calibrating this device” would have no value if the user could show that power was necessary to adjust or calibrate the device effectively. Warnings that caution against some action or use in one part of the manual, but then permit that same or similar use elsewhere in written documentation are often proven worthless after a loss has occurred.
- Repeated several times.** Repeating warnings on the product, on the carrying case, on the packaging, and in all instructions and manuals helps prove that users could not have avoided seeing at least one warning.
- Designed to protect the user, not the manufacturer.** Warnings must support safe use of the product. A warning on holiday tree lights that states “Danger: Electrocution Hazard. Do not use this product where children may be present” is impractical given their intended use. Not only would juries see through this thinly veiled attempt at self-protection, but the warning itself might raise suspicions that the manufacturer knew all along that the product posed an excessive hazard.
- Consistent with laws, standards and competitive practices.** Warnings should meet all applicable laws and consensus standards, and be consistent with industry and competitor’s practices. If similar products contain more effective warnings, your product could be considered deficient.
- Practiced by sales, marketing and service groups.** When sales and marketing representatives, or service technicians violate or ignore safe product use or exaggerate the capabilities of the product, their actions can jeopardize the value of any warnings in court. Product brochures, literature or even live demonstrations that show unsafe practices have been

effectively used as evidence that the manufacturer did not consider the risk to be real, or as significant as the written warning indicated.

• **Commensurate with risk.**




The American National Standards Institute has developed a three-level hierarchy of hazards (ANSI Z535.1 through Z535.4) shown in the chart below in descending order of risk and intensity.

And finally, effective warnings:

- Address all industry, association, state and federal requirements
- Are presented wherever needed
- Attract attention
- Inform users of the nature and gravity of risks
- Tell and show (pictographs) users how to avoid risks
- Motivate change in the user's behavior.

Product warnings are effective tools to help direct safe use of a product and caution users against unsafe practices, misapplication of the product and even intentional misuse. However, to be effective, they must be part of a sound product liability program, which includes safe product design, effective guards and physical protections against product hazards. Consistent, well-worded warnings, combined with equally effective instructions that are clearly presented, impossible to avoid and direct the user toward safe action, offer tremendous value.

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	SIGNAL WORD	SYMBOL	MEANING
	White lettering on a red background	White triangle with a red exclamation point	Indicates an imminent hazard, which, if not avoided, will result in death or serious injury.
	Black lettering on an orange background	Black triangle with an orange exclamation point	Indicates a potential hazard or unsafe practice, which, if not avoided, could result in death or serious injury.
	Black lettering on a yellow background	Black triangle with a yellow exclamation point	Indicates a potential hazard or unsafe practice, which, if not avoided, could result in minor or moderate personal injury, or product or property damage.