

Warnings and Instructions

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There is no dispute that the seller is under a duty to give adequate warning of unreasonable dangers involved in the use of which he knows, or should know.

Warning Accomplishes Two Important Goals

- Prevents accidents by giving user the information to avoid a hazard
- The manufacturer can use the warning as evidence if there is ever a products liability lawsuit

What this means

- Warnings protect
 - User
 - Manufacturer

When is There a Duty to Warn?

- If there is a hazard (not necessarily a defect)
- When a reasonable person would want to be informed
- Consumers are entitled to make their own choices regarding whether a product's benefits justify their exposure to the risk or harm

Presumptions Under Products Liability Law

- Law requires manufacturer to have superior knowledge of the product and its use
- Must anticipate foreseeable
 - Use
 - Misuse
 - Modification
- Manufacturer cannot solve poor design through warnings
- Manufacturer is presumed to know all applicable standards

Factors in Deciding Whether to Warn

- Type of product
- Nature of possible injury
- Information and skills of user
- Information available to manufacturer about use of machine
- Cost and burden of instructions
- Possibility warnings will prevent harm

Warnings

- Manufacturer may be held liable under negligence or strict liability

Strict Liability

- In order to prevent the product from being unreasonably dangerous, the seller may be required to give directions or warnings on the container as to its use. Where warning is given, the seller may reasonably assume that it will be read and heeded: and a product bearing such a warning, which is safe for use if it is followed, is not in a defective condition, nor is it unreasonably dangerous

This says:

- Even a product that is perfectly designed, manufactured, assembled, and packaged can subject the manufacturer to liability

Adequacy of Warnings

- Legal responsibility of evaluating warnings not well defined
- Reasons include:
 - Diversity of products
 - Wide range of potential users
 - Extent of potential for harm

Guidelines for Evaluation

- Manufacturer should do risk assessment
- Consider:
 - Prior accident statistics
 - Field failure reports
 - Reports of how product is being misused

Evaluate “Reasonable Care”

- Consider:
 - Nature of product
 - Reasonably expected use
 - Age and experience of user
 - Frequency of potential injuries
 - Feasibility of eliminating or guarding against injuries
 - Obviousness of danger to user

Open and Obvious Danger

- No duty to warn
- However, there are some liberal interpretations of this. Trend may be more based on the likelihood of unreasonable danger, whether it is open and obvious or not

Obvious to whom?

- The specific risk must be obvious
- The means to avoid the hazard must be obvious
- The severity of any harm from risk must be obvious

Another use for warnings

- Warnings also serve to remind a user of hazards of which user is aware but may have forgotten

Actual Product Warnings

- On Sears hairdryer:
 - Do not use while sleeping
- On Tesco's Tiramisu desert:
 - Do not turn upside down (Printed on bottom of box)
- On packaging for a Rowenta iron:
 - Do not iron clothes on body

Actual Product Warnings

- On Nytol (a sleep aid):
 - Warning: May cause drowsiness
- On a string of Christmas lights made overseas:
 - For indoor or outdoor use only
- On Sainsbury's Peanuts:
 - Warning: contains nuts

Instructions v. Warnings

- Directions are to secure the efficient use of a product. Where a departure from the directions may create a serious hazard, a separate duty to warn arises

Instructions

- A manufacturer should design instructions for both the user and the owner of the product or machine
- Make sure all instructions discuss safe use and improper use

Common Components of Instruction Manuals

- Introduction, including safety information
- Description of product and intended use
- Receiving, handling, and storage
- Installation
- Operation, including correct and proper way
- Inspection, maintenance, and adjustment
- (including risks when not done properly)
- Overhaul and repair
- Supplementary information

Effectiveness of Warnings

- A warning must adequately communicate a hazard
- It is intended to warn the user of a hazard of which he may not be aware or has momentarily forgotten
- The goal is to modify behavior

Adequacy of Warnings

- To be adequate a warning should:
 - Disclose the nature and severity of the hazard
 - Instruct the user how to avoid the hazard
 - Catch the attention of the user
 - Be of a proper intensity

Factors to Evaluate Adequacy

- Likelihood of accident and seriousness of consequences
- Status of person using product
- Whether hazard is open and obvious
- Purpose for which product is used
- Reliability of the third party as a conduit of necessary information
- Whether warning attracts user's attention with its position, size, and coloring

Causation

- The mere fact that warnings are inadequate does not mean a manufacturer will lose the case. The law will ask whether the warnings would have made a difference

Causation

- Law states:
- Where no adequate warning is given, a plaintiff may benefit from the presumption that had a warning been given, it would have been read and heeded
- Where an adequate warning is given, the seller may reasonably assume it will be read

Post-Sale Duty to Warn

- Whether there exists a duty to warn of hazards which become known after manufacture is a question of fact for that product and situation
- One must look to each industry and the nature of the product to determine whether a post-sale warning is reasonable

Factors in Post-Sale Duty to Warn

- Prior accidents
- Nature of product
- Ability to warn
- Product life expectancy
- Obviousness of hazard
- Magnitude of harm and likelihood that it will occur
- Could hazard have been “designed out”
- What is reasonable (this is key)