

Product warning labels

How well-written product warning labels can lessen a company's liability

INTERVIEWED BY ROGER VOZAR

When screwdrivers were created, they had an obvious use — to turn screws. But over time people started using them as chisels and pry bars, which led to injuries and the addition of warning labels that laid out the proper use of screwdrivers.

What to include on warning labels is tricky. You not only have to warn about the inherent risks of the product from its intended use, but you have to consider the ways it could potentially be misused, says James C. Hyde, a partner at Ropers Majeski Kohn & Bentley PC.

“Most small to midsize businesses think about the need to have instructions and warnings on product labels, but there are topics they need to address that they’re not thinking about or are even aware of,” says Hyde.

Smart Business spoke with Hyde about what should and shouldn't belong in product warning labels and ways companies can protect themselves from legal judgments.

How do you determine what to address on warning labels?

There's an obligation to warn about inherent risks associated with the intended use of products and provide instructions on proper use. But companies often don't understand they have a duty to warn against reasonably foreseeable misuse of the product. Basically, you have to brainstorm scenarios in which people might be injured misusing the product and warn against them.

There is also a duty to warn of potential allergens in your product. That also applies to products that are not ingested. A small business selling hand soap might have an ingredient that could cause an allergic

JAMES C. HYDE
Partner
Ropers Majeski Kohn & Bentley PC

(408) 918-4538
jhyde@rmkb.com

WEBSITE: To learn more about James C. Hyde, visit www.rmkb.com/lawyers/James_Hyde.



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reaction, so there's an obligation to warn that the product contains the ingredient.

Making this more challenging is the prevalence of companies that sell products they do not manufacture under their own labels. The company might not be aware of all the chemicals used in the manufacturing process. For example, a company was selling exercise mats containing a chemical that required a California Proposition 65 consumer warning label. The company was not the manufacturer and were not aware the chemical was in the finished product, but it was sued for not warning of its presence. The state Office of Environmental Health Hazard Assessment has a website that lists chemicals that require a warning label because they're considered carcinogens, or could cause birth defects or reproductive harm.

Do you have to warn against obvious dangers, such as coffee being hot?

There is no duty to warn consumers of an obvious danger — those making custom knives do not have to warn that the knives are sharp and may cut the user. The law requires warnings to be effective. But if the warnings become voluminous, consumers won't read them and they lose their effectiveness.

The famous McDonald's coffee case seemed pretty obvious on the surface —

coffee is hot. But the plaintiff's argument was that it was served at a temperature that was much hotter than one could drink it at or that one would expect it to be served. This illustrates how broad and very product-specific the issue is and why businesses need to have a well thought out procedure in place for developing use instructions and warnings.

How does a company protect itself?

Before the product goes to market, the company has to evaluate it specifically to determine what use instructions and warnings need to accompany it. The process should include the people involved in developing the idea for the product, as well as the designers and marketers, and engage resources such as industry associations. It's a good idea to not only document the design and development process of the product but also to document the development of warnings and instructions, too. If sued, it helps to show the jury the process undertaken when developing the warnings. It demonstrates that there was a procedure in place and a comprehensive effort to provide clear and complete warnings including dangers of potential misuses of the product.

Ultimately a jury will decide whether it was reasonably foreseeable that someone was going to use that screwdriver as a chisel. ●