

When manufacturers or sellers fail to warn a consumer about potential dangers associated with using their product, those failures are known as [marketing defects](#). The laws surrounding proving a product liability case are complex, and Portland product liability lawyers are frequently called upon when liability is denied. To begin with, marketing defects are not the same as product faults, but rather a failure to warn consumers to use, or not to use, the product in a certain way to avoid injury.

### ***Factors in Marketing Defects Cases***

Failure to warn, or marketing defects cases usually occur when a product has no design or manufacturing flaws but still poses some dangers to its users. Some products are inherently dangerous, like electric blenders or carving knives. It is necessary for the manufacturer to caution users of their products about foreseeable risks and to do so in a manner that is clear enough for the average user to understand the potential dangers. If the manufacturer or seller fails to issue these clear warnings and the user is injured by the product, courts will ask product liability lawyers to prove at least some, if not all, of the following factors in a marketing defects case:

- Did the defendant manufacture, sell and/or distribute the product?
- When sold or distributed, did the product pose risks to the consumer the defendant knew or could reasonably have been expected to know about?
- Did the possible risks pose a substantial danger to anyone who might use the product?
- Would an ordinary customer know the potential risks without a manufacturer's warning?
- Did the manufacturer or distributor fail to adequately warn the consumer about any potential risk of injury from using the product in a particular way?

Burdens of proof also exist for the plaintiff, and a court may determine that liability in a case should be shared if:

- The plaintiff used or misused the product in such a way that the defendant could not reasonably have been expected to foresee
- The plaintiff was injured by his misuse of the product
- A lack of warnings cannot be shown to be a substantial factor in why the plaintiff got hurt

### ***Common Defenses in Product Liability Cases***

Defendants cannot be expected to warn against every possible risk. It's simply not feasible. Many manufacturers or distributors who find themselves defending such cases argue that the danger of injury was open and obvious, particularly if the injured consumer used the product incorrectly. For example, if someone injured themselves trying to cut their own hair with an electric carving knife, a court will most likely agree that using the product in this way posed

an open and obvious risk of injury. In such cases, the defendant would not be liable for the plaintiff's injuries. Additionally, the defendant in this hypothetical case could not be reasonably expected to foresee that a consumer would use an electric carving knife in this manner, and therefore could not be expected to warn against doing so.

### *Summary*

Product warnings should cover all reasonably foreseeable uses, even those that involve the product being used incorrectly in some cases. Cotton swabs are used by tens of thousands of consumers to clean the ear canal, even though they are not meant to be used for this purpose, and most boxes carry warnings not to do so. Courts will also look at details such as whether a product warning is given in pictures, words or both, as well as where on the packaging the warning is placed and how easy it is to read and understand the warning. Both manufacturers and consumers bear responsibility in the safe use of products. If you live in Oregon, and have been injured by a product because the manufacturer failed to warn you of the potential dangers of their product, you should consult one of the experienced and reliable [Portland product liability lawyers](#). They will guide you through the process of putting in a claim and help you get the compensation you deserve, as well as protecting other unsuspecting consumers from suffering similar injuries due to insufficient warnings.