

Duty to Warn—

U.S. Standards on Warnings and Instructions are Updated

Kenneth Ross, JD, Of Counsel to Bowman and Brooke LLP

The ANSI Z535 standards addressing product safety labels have been in existence since 1991. They have provided manufacturers with good guidance for the creation of safety labels and more recently, instruction manuals.

Basic Duty to Warn and Instruct

The law of product liability makes it clear that product sellers must provide “reasonable warnings and instructions” about risks that exist in their products. And it has been held that warnings, standing alone, may have no practical relevance without instructions and instructions without warnings may not be adequate.

Therefore, when the law talks about the “duty to warn,” it includes providing warnings on products in the form of safety labels, safety information in instructions, instructions that affirmatively describe how to use a product safely, and possibly even safety information in other means of communication such as videos, advertising, catalogs, websites, etc.

The law says that a manufacturer has a duty to warn where: (1) the product is dangerous, (2) the danger is or should be known by the manufacturer, (3) the danger is present when the product is used in the usual and expected manner, and (4) the danger is not obvious or well known to the user.

Once the decision has been made to warn, the manufacturer needs to determine whether the warning is adequate. Generally, the adequacy of a warning in a particular situation is a question of fact decided by the jury.

An adequate warning will:

- Alert the consumer or user to the severity of the hazard; severity is the magnitude of the hazard and the likelihood of it being encountered.
- Clearly state the nature of the hazard.
- Clearly state the consequences of the hazard.
- Provide instructions on how to avoid the hazard.

Case law concerning the adequacy of instructions is not particularly illuminating. Most of the cases address the adequacy of warnings either on the product or in the manual. In discussing the adequacy of instructions, the cases only say that manuals should be “adequate, accurate, and effective” and “clear, complete, and adequately communicated.”

ANSI Z535.4 Standard on Labels

For the last 20 years, the ANSI Z535 standards have provided guidelines on creating safety labels. Unfortunately, these standards mostly provide formats for labels and instructions. As a result, it is possible to comply with these standards and still have inadequate content, thereby resulting in potentially legally inadequate warnings and instructions.

ANSI Z535 was initially published on June 6, 1991, with revisions in 1998, 2002, 2006, and 2011. This standard provides the basis for developing a safety label system. Unlike some other labeling standards, ANSI Z535.4 sets forth performance requirements for the design, application, use, and placement of safety labels.

Compliance with a voluntary standard is not an absolute defense.

ANSI Z535.4 deals with on-product safety labels and provides a specific format label containing a signal word panel, word message panel, and an optional pictorial or symbol panel. The message required by the standard to be transmitted with words or symbols individually or in combination is (1) the type of hazard, (2) the consequences of not avoiding the hazard, and (3) how to avoid the hazard. These requirements are consistent with the case law that requires a label to convey the “nature and extent” of the danger.

ANSI Z535.4 was revised and reaffirmed in 2011. These revisions include the following:

- The signal word, CAUTION, is now to only be used for the risk of injury and not for the risk of property damage. NOTICE is the signal word to be used where the message relates to only the risk of property damage.
- There is a new “signal word” called SAFETY INSTRUCTIONS that can be used as a standalone sign or in combination with the typical safety label. This was allowed previously, but is now an official part of the standard. Other signal words, such as SAFE OPERATING PROCEDURES or SAFE INSTALLATION PROCEDURES, can also be used.

These revisions are fairly minimal as the standard evolves and would not necessitate any significant changes in current labeling.

ANSI Z535.6 Standard on Instructions

No matter what the manufacturer does to meet its “duty to warn” with on-product labels, most products will need some instructions. Given the limited space on products and the ever expanding need to warn about even remote risks, safety information in instructions is taking on increased importance.

A number of years ago, the ANSI committee concluded that while there are a number of other guides or standards that discuss instructions, none dealt specifically with incorporating safety information into instructions and how to interrelate these instructions with ANSI Z535 safety labels.

Therefore, it published a new part of the standard, ANSI Z535.6, to deal with this subject. This new standard was first published in 2006 and reaffirmed with minor changes in 2011.

The standard provides requirements for the purpose, content, format, and location of four different kinds of safety messages:

- supplemental directives
- grouped safety messages
- section safety messages
- embedded safety messages

Supplemental directives instruct readers to read the entire manual or safety information in the manual. That information can be located on the cover of a manual or on the first page of a section in the manual.

Grouped safety messages are commonly referred to as a “safety section.” This section usually appears at the beginning of the manual, before or after the table of contents, and generally describes the risks involved in the use of the product and how to minimize or avoid them. These sections should include definitions of the signal words—DANGER, WARNING, and CAUTION—that are used on labels and in the manual, as well as reproductions of the labels in an illustration showing where they are attached to the product. If the product has symbol-only labels, the manual should describe the meaning of all symbols.

Section safety messages are included at the beginning of a chapter (i.e. maintenance, installation, or operation) or within a chapter and do not specifically apply to a procedure. They include general messages such as “Do not perform maintenance without first reading this chapter and the safety precautions at the beginning of this manual” or “Failure to follow safety precautions in this chapter could result in serious injury or death.”

Embedded safety messages are contained within a specific procedure. For example, “To prevent burns, wear protective gloves when performing this procedure.”

Today, providing more interesting, compelling, and understandable safety information can be transmitted by video, CDs, and webcasts, in combination with written literature. This standard, however, does not provide any guidance on more effective ways to transmit safety information.

The challenge for manufacturers in the future will be to provide information in a way that is more likely to be read or viewed. While the law doesn’t specifically require it, it is important for manufacturers to consider doing more to encourage people to read or view their instructions and to use their products more safely. The technology is certainly available, but not many manufacturers are fully utilizing it.

Be Prepared

Allegations of inadequate warnings and instructions are dangerous because it is so easy for a plaintiff to argue that the manufacturer should have done something different. If the label had words, then a manufacturer would only have had to add a few more words and the accident would not have happened. If there had been only symbols and the plaintiff didn’t understand them, it could be said that all the manufacturer would have had to do was test the label for comprehension. The remedy is cheap and simple and it may be hard to defend a particular label given a serious injury and sympathetic plaintiff.

There is a similar argument for instructions, either in the form of manuals that accompany the product or that exist on a website. The plaintiff couldn’t understand the information, or it was inconsistent with the label and they became confused, or it didn’t have certain information.

Safety information in instructions is taking on increased importance.

Manufacturers can certainly use symbol-only labels in the U.S. because they will be able to say that the label complies with ANSI Z535. However, compliance with a voluntary standard is not an absolute defense. Therefore, they need to be prepared to prove how the symbol transmitted the required information.

As more and better warnings are placed on products and more safety information is created in manuals and elsewhere, plaintiffs’ experts will attack the adequacy of the labels on understandability and effectiveness. Every manufacturer needs to be prepared to rebut this argument by any available means. ☐

Mr. Ross, a former partner at Bowman and Brooke LLP in Minneapolis, has provided legal advice to manufacturers on safety labels and instruction manuals for more than 30 years, including the Mr. Ouch labeling project sponsored by NEMA in 1980. He can be reached at kenrossesq@comcast.net.