

PRODUCT LIABILITY AND YOUR SAFETY LABELS

By Erin Earley

Product safety labels are an important part of keeping users safe and reducing liability risk. There are two main standards for safety labels that are key to creating effective warnings that accurately communicate hazard information: ANSI Z535.4 domestically and ISO 3864-2 internationally. The current versions of these standards allow manufacturers to use different label format options: symbol-only, symbol and text, text-only ANSI, wordless, and multilingual. Deciding the best fit for your intended audience isn't always easy. It helps to understand the product liability and legal landscape. For perspective, we turned to Cal Burnton, a trial attorney with 30 years of experience in product/machinery safety, product liability, and complex litigation. Read our interview below for context on the importance of adequate labels and insight on formatting options, including the increasing trend toward labels that rely mainly or exclusively on symbols.

WHEN IT COMES TO TODAY'S PRODUCT LIABILITY LAWSUITS, HOW IMPORTANT ARE WARNINGS AND PRODUCT SAFETY LABELS?

Warnings and safety labels, along with the manual, should be the most important pieces of evidence in any product liability lawsuit. Exhibit number one should be the warning which, had it been followed, would have prevented the accident. The warnings and labels also put

forth a picture of the manufacturer's culture for safety; it's a reflection of the company's concern for the safety of the user. Ultimately the manufacturer wants to be able to show it provided the user with everything necessary to safely use the product. Warnings and instructions give the company the tools it needs to successfully defend a case.

WHAT TRENDING TOPICS ARE YOU CURRENTLY SEEING IN PRODUCT LIABILITY LAWSUITS THAT INVOLVE INADEQUATE WARNINGS?

Virtually every product liability case has a failure to warn component. The claim is typically simple to make, easy to understand, and often forms the basis for liability. There doesn't even have to be a design or manufacturing defect in the product to lose a failure to warn claim. The claim that "if only the injured party had known" is one most can easily understand. That's why warnings and instructions should be front and center for manufacturers. Warnings can be the downfall of a product but also its salvation.

Many lawsuits involve a misuse of the product. The extent to which the company was able to anticipate foreseeable misuse and therefore warn against it often is a critical issue in a case. Manufacturers must revisit their warnings and instructions regularly to evaluate if they

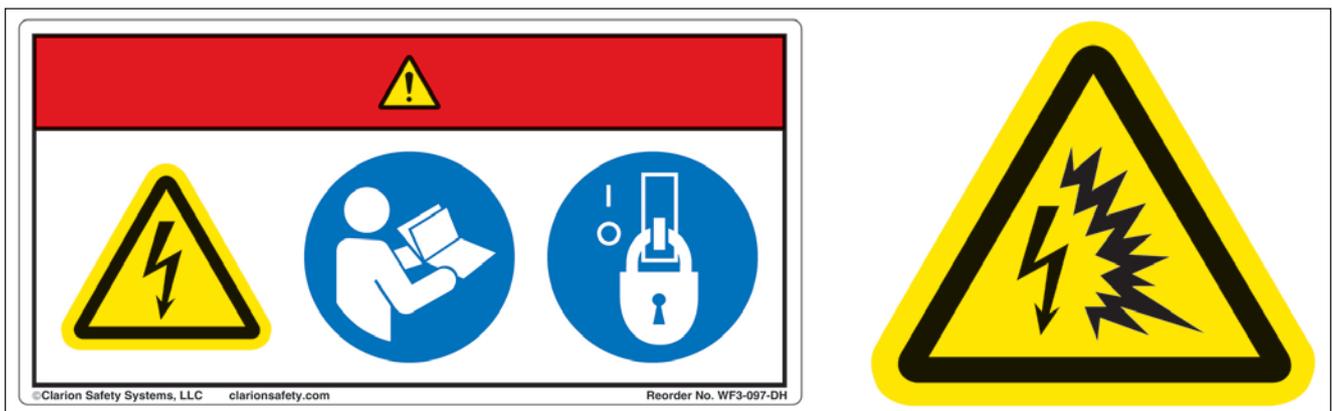


Figure 1: At left, an example of a 'wordless' format safety label and, at right, an example of a 'symbol only' format safety label. These formats meet ISO 3864-2 and are allowed by ANSI Z535 through its section 3.1.1, allowing manufacturers to use ISO formats.

remain adequate, given how the product is being used in the marketplace. Adequacy of warnings will be judged partly by what was known by the company as to the uses and misuse of its product. Companies need to be aware of how their product is being shown on social media. Complaints of injuries must be investigated to determine if a change in warnings is necessary.

Manufacturers will be deemed to be experts in their field, which includes knowing how people are foreseeably using, misusing, and modifying their product. Failure to warn about foreseeable misuses or modifications may lead to liability.

HOW MUCH WEIGHT DO THE ANSI Z535 AND ISO 3864-2 STANDARDS CARRY IN A U.S. COURT OF LAW?

Jurors and judges understand how manufacturers face a variety of difficult issues designing and selling a product. The presence of industry standards such as ANSI Z535 is the starting point for showing that a company made a safe product. If an injured party is able to show that the company failed to meet a standard such as ANSI Z535, defending the case is much more difficult. It will be close to impossible to get dismissed as a defendant prior to trial. But if it can be shown the product meets standards such as ANSI Z535, the company has taken the first steps in defending itself. Meeting a standard doesn't per se establish that a product wasn't defective, but it's a well-recognized piece of evidence that the company acted reasonably and followed established standards in making a safe product. Similarly, ISO 3864-2 can be relied upon by courts, experts, and manufacturers to provide a sound basis to justify that warnings helped to make the product safe to use and non-defective.

IN THE CONTEXT OF PRODUCT LIABILITY LAWSUITS, HOW IMPORTANT IS THE USE OF SYMBOLS IN A WARNING?

The goal of warnings is to adequately communicate a hazard, its severity, and how to avoid the hazard. Warnings serve to inform and remind users of hazards. Often split-second actions are involved by users of various backgrounds. Hazard symbols have been recognized as having the ability to serve all the needs of an adequate warning. A properly designed symbol can instantly communicate hazards, seriousness, and risk to users from all walks of life, regardless of education and language skills. A symbol in a warning can be easily understood by jurors and judges. Symbols are perhaps the easiest and quickest way to communicate risk to a user.

WHAT'S YOUR LEGAL PERSPECTIVE ON THE 'SYMBOL ONLY' AND 'WORDLESS' APPROACH TO LABELING THAT MEETS ISO 3864-2 (AND IS ALLOWED BY Z535)?

Most important, symbols communicate hazards and how to avoid them. In doing so, they help prevent accidents and, should there be one, give the company tools it needs to defend itself. The goal is to make the product safer and communicate to the user how to safely use the product. Simple symbols should be easy to understand and comprehend. This will lead to fewer accidents, fewer claims, and fewer lawsuits.

Warnings have to do more than warn; they have to adequately warn. So the old method of listing hazards in a laundry list manner, or like a legal contract, will no longer suffice. The warnings must communicate in a simple and direct manner. Pictorials can accomplish just that. The standards recognize that pictorials can communicate messages to users from many walks of life with diverse backgrounds, educational levels, and languages. Manufacturers now have many tools in the tool chest to communicate warnings, and failure to consider a wordless approach would be a mistake. 

Erin Earley, head of communications at Clarion Safety Systems, shares her company's passion for safer products and workplaces. She's written extensively about best practices for product safety labels and facility safety signs. Clarion is a member of the ANSI Z535 Committee for Safety Signs and Colors, the U.S. TAG to ISO/TC 145, and the U.S. TAG to ISO 45001. Erin can be reached at earley@clarionsafety.com.

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