Alligator Signs and Your Warnings

BY GEOFFREY PECKHAM

In this column, we'll explore the importance of being aware of accidents occurring within your industry, in order to better meet your legal duty to warn.

We all know it: accidents happen. When it comes to effective warnings that better protect people and reduce risk, it's important to not just think "inside the box" of your own company, limiting warnings to the injuries specifically related to your products. You also need to look at the industry that you're part of as a whole. As a safety professional, when you take a wider and more comprehensive view of the hazards affecting your industry, you'll be better equipped to define the safety messages that need to be conveyed on your products.

First let's step back and examine why you need to pay attention to developing the best warnings you possibly can. In recent years, U.S. courts have developed theories of liability that place an emphasis on the duty to warn. In short, you don't want to be found negligent because you failed to warn of "reasonably foreseeable" risks. What this means is that if your product can reasonably be foreseen to be used or misused in a way that would cause harm, you need to take this potential hazard into account when you're creating your product's design, guarding and warnings. "Reasonableness" is a key word here. It is not necessary to design/guard/warn about every possible unsafe misuse of your product. From the standpoint of

warning labels, doing this would, no doubt, dilute your more important safety messages, making them lost in a jumble of warning labels applied to your product.

Over the last two decades I have lectured at over sixty seminars centered on product safety and products liability. At nearly all of them there has been a legal or insurance industry expert who states that in the U.S., "inadequate warnings" and "failure to warn" are, by a wide margin, the leading allegations in product liability lawsuits. There are many reasons why this is the case, too many to discuss in this short column. But the fact is, on-product warnings are important and worth the product design engineer's time and continued attention. As this article is meant to emphasize, the creation of your warnings is not a once-and-done task. Today's legal theory of the duty to warn based on reasonably foreseeable risks makes it necessary that you stay aware of accidents occurring in the wider scope of your industry.

To illustrate this concept, I'd like to share a hazard that Clarion recently created a safety sign to warn about. Granted, it's not your average product hazard: alligators. Many public and private premises in the southeast U.S. – including parks, universities, and golf courses –

have problems with alligators. In July 2012, news broke of a tragic accident in Florida involving a teen who had lost an arm in an alligator attack. The attack occurred during alligator mating season when, local officials said, such aggressive behavior is not uncommon. In light of what I've discussed above, it can now be argued that property owners of areas that commonly have alligators present now have a reasonably foreseeable risk that they have a duty to warn about. Like many of your old pre-ANSI Z535 product safety labels, the old alligator safety signs, if they did exist, are text-only word message signs not formatted to any standard, much less ANSI Z535. To improve on the current situation, Clarion developed a safety sign using the latest warnings technology – the ANSI and ISO best-practice standards – including a recently-registered ISO safety symbol for alligators. While the Clarion sign was developed for golf courses, it can be used across a number of types of premises to better inform people of the hazard of alligators – with the aim of helping to reduce the risk of accidents and liability exposure, should an accident occur.

Now, back to how this applies to your work as a product design engineer. When it comes to product liability, as we have seen, there is a duty to protect your product users from reasonably foreseeable risks associated with the use of your products. Courts will hold you responsible for being an expert in your industry and part of being an expert includes being aware of injuries that are occurring in your industry. Staying abreast of the latest industry news, speaking with peers, and attending industry conferences are all methods that can help keep you informed. One

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at-your-fingertips method to keeping informed is to utilize Google alerts. This Google technology allows you to easily set up a system that sends you an automated alert via email for any new content that goes up on the web pertaining to a subject (e.g. news, blogs, video, discussions, articles, books). It's an unprecedented way to monitor hazards related to your industry. For example, you could create an ongoing Google alert to monitor the web for when the keywords "manufacturing," "packaging," or "equipment" are found together with "accident," "injury," or "safety." You will then receive notices via email related to URLs that have these combined words in their content. In effect, this technology does two things: 1) it enables you to be kept informed, and 2) it will most likely set a higher bar for what U.S. courts will consider to be "foreseeable." You could say this technology is both a blessing and a curse. The end result, though, is that it adds more weight to your responsibility as the product design engineer to stay informed so your products' warning labels are kept in line with an industry-wide perspective of what needs to be warned about.

While keeping current on the hazards related to your industry does take time, it's well worth the effort when the lives of people and the livelihood of your company are on the line. ◼

Alligators present safety sign informs golfers, spectators, and grounds visitors of the presence of alligators on a golf course. Safety messages – whether in the form of warning signs on premises or safety labels on products – should warn against reasonably foreseeable risks. Sign design ©2012 Clarion Safety Systems. Photo credit: www.silverimagephotoagency.com.