



## Safety Messages 101: Warnings Content for Consumer Products

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The content of a warning is only as reliable as the infrastructure supporting the design and manufacturing of the product. This infrastructure already exists when product manufacturers design the product, select raw materials, require due diligence from suppliers, write product specifications, perform testing, assure quality, and comply with regulations. The key is to orchestrate this work into a brief safety message on the product that alerts users about hazards and instructs about use that avoids these hazards. Full warning content must go into the user's instruction guide and onto the manufacturer's website.

No warning is perfect, but some warnings are more defensible than others. Highly defensible warnings are those that have successfully marshaled the manufacturer's existing work into their product's safety message.

**To Begin.** Take three essential steps: (1) determine foreseeable use; (2) identify product hazards and rank their adverse consequences, severity, and probability of occurring; and (3) prepare a safety message about hazards that cannot be reduced or eliminated.

**Determine foreseeable use.** Hold a foreseeability conference. The purpose of this conference is to identify the product's reasonable intended use and misuse from the corporate disciplines responsible for the product, the manufacturer's institutional experience with the product, consumer feedback, claims and lawsuits, and other sources. Manufacturers have a duty to account for the probable results that may arise naturally during normal use or misuse of a product. (*Henley v. Prince George's County*, 305 Md. 320, 503 A.2d 1333 (1986).) Anticipation of intended use is required by law, but also it frames the product's hazard analysis and defines whether those hazards are reasonable. Include in the foreseeability conference those personnel that participated rolling that particular product out to market, including engineering, marketing, risk management, and legal.

**Identify product hazards.** Identify product hazards through an engineering analysis and rank the severity of their consequences. The purpose of the engineering analysis is to capture all hazards unrecognized by a lay person that present

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danger to a product user. This should be a formal engineering assessment, but its purpose should be limited to the identification and description of product hazards (i.e., a full FEMA or DRBFM is not necessary). Product hazards and their corresponding adverse consequences comprise much of the content in the product warning. Warnings about general dangers are insufficient. For example, a New Jersey Supreme Court upheld a plaintiffs' verdict that the defendant chemical company's warning was inadequate, adopting the research chemist testimony that "[i]t's not adequate to say something's an irritant. One has to say how much of an irritant or what kind of organ is affected." *Clark v. Safety-Kleen Corp.*, 179 N.J. 318, 845 A.2d 587 (N.J. 2004).

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**Prepare the safety message.** Work from the product hazards. The warning's purpose is to inform users about the product's inherent hazards. Only those hazards that cannot be reduced or eliminated by design or safety device but are integral to the form, fit, or function of the product should comprise the actual safety message. In the safety message, state each identified hazard, its adverse consequences, and the natural consequences if the warning is ignored. Include only those instructions about use or misuse consistent with avoiding the hazard. For example, a camping lantern fueled by propane might have one of its warnings state: "This lantern produces carbon monoxide that can kill you. DO NOT use this lantern in a tent." Operational instructions about product use are separate user messages that should appear elsewhere, such as a user's manual. Certain products will have industry standards or regulations that require particular content included in the product's safety message.

**Legal Requirements.** A manufacturer's warning about its product must be "adequate." (*Anderson v. Owens-Corning Fiberglas Corp.*, 53 Cal.3d 987, 281 Cal.Rptr. 528 (1991) (manufacturers must warn about product hazards not readily recognized by the ordinary consumer).) Generally, the product warning must communicate the hazards inherent to product use and the likely consequences a user may encounter from those hazards. A warning must also communicate user actions that avoid the hazard, including instructions about when to use or not use the product and how to avoid specific misuse of the product. Regulatory compliance is required, of course, but compliance alone seldom creates an adequate warning. Instead, regulatory requirements must be integrated into the content of the product's final safety message.

Manufacturers are frequently challenged by the absence of a definitive measure of a warning's adequacy. A few states require adequacy of product warnings in their product liability statutes, for example, Mississippi (Mississippi, Miss. Code Ann. § 11-1-63(c) (ii) (1993) (adequate warnings communicate sufficient information about product dangers and safe use)) and New Jersey (N.J. Stat. Ann. § 2A:58C-4 (adequate warnings evaluate manufacturer knowledge based on information reasonably available when product was made)).

Other states require adequacy solely through court decisions, such as Alaska (*Shanks v. Upjohn Co.*, 835 P.2d 1189, 1200 (Alaska 1992) (adequate warnings communicate scope of risk and seriousness of the risk's harm, communicated in a way that alerts a reasonable person)) and Massachusetts (*Wasylow v. Glock, Inc.*, 975 F. Supp. 370, 378 (D. Mass. 1996) (warning must be comprehensible to user, convey material risks, and be appropriate for the danger communicated)).

A court is more likely to defer to warning content grounded in the product's engineering and design than a warning based upon cursory, economic, or even legal considerations. These

warnings are more likely to be found “sufficient” or “adequate” under applicable law. (*Davis v. Avondale Industries, Inc.*, 975 F.2d 169, 172-73 (5th Cir. 1992) (manufacturer has provided an adequate warning of inherent dangers where the purchaser has knowledge of those dangers).)

**Next Steps after Completing the Warning Content.** Test the effectiveness of the warning through studies, communication specialists, or focus groups to determine whether it changes consumer behavior. The best practice is to evaluate the warnings separately from other marketing interests in the product. However, it is adequate to include questions about the product’s safety message in an existing focus group exercise. Evaluate whether the warning complies with industry standards and safety regulations or consult ANSI Z535.1-2006 to determine signal words, font, type size, symbols, and color. Assess consistency of the safety message with marketing materials and with other product lines to verify consistency. Determine whether other hazard communication is required, such as a safety data sheet. Determine placement of the product on the product and in other locations, such as the user’s manual, packaging, package insert, and website. Assure that the warning label is durable. As a last step—and only as a last step—check your final warnings against competitors’ products.

### PREPARING THE CONTENT OF A PRODUCT WARNING

Determine Foreseeable Use	Identify Product Hazards	Prepare the Safety Message
<input type="checkbox"/> What is the institutional knowledge about the product?	<input type="checkbox"/> What are the product’s Hazards?	<input type="checkbox"/> Which Hazards require a warning?
<input type="checkbox"/> What is the experience in the field and by marketing?	<input type="checkbox"/> Are they inherent to the product?	<input type="checkbox"/> What are the natural consequences of these Hazards?
<input type="checkbox"/> What is the experience from claims and lawsuits?	<input type="checkbox"/> Can they be reduced, eliminated, or guarded against?	<input type="checkbox"/> What content is required by regulations?
<input type="checkbox"/> Who will use the product and what is its original purpose?	<input type="checkbox"/> Have they been identified comprehensively?	<input type="checkbox"/> What content should be included from industry standards?
<input type="checkbox"/> How does this product compare to our other product lines?	<input type="checkbox"/> Do the Hazards arise from the product’s foreseeable use or misuse?	<input type="checkbox"/> Is my warning “adequate” under applicable product liability laws?

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