



## Warning: Reading This Magazine Can Give You Paper Cuts

KEEPING US SAFE

by David Lefkowitz

When the water in a pool is shallow, we have come to expect that there will be a sign warning us of the danger and reminding us that diving is not permitted. Signs like these have saved lives and preserved many spinal cords. When an airplane is taking off, we are not surprised to see the warning that our seatbelts must be buckled. But, for every warning that makes perfectly good sense and which is met with a nod of approval or thanks, there seems to be one of these: *Caution: Contents may catch fire*. This warning is from the inside of a matchbook.

Manufacturers and sellers of items generally want their products to work well and be safe. Profits don't flow from products that won't work as advertised. At times, profits are made from products that work, but unnecessarily injure people in the process. Society frowns when companies and their leaders fail to prevent easily avoided injuries. In addition to the profit motive for making a good, safe product (they sell well), there is also a legal motive. Manufacturers can be held liable for injuries they cause, if those injuries should have been prevent-

ed. Sellers of a product also can be held liable for selling a dangerous product without an adequate warning, but it's more common for the manufacturer to be held liable, because the company that makes the product is usually the company that best knows what the dangers are.

There is a social and economic reason why the seller or manufacturer of a product should cover the risks of an unnecessarily dangerous product. Not only does it keep our family and neighbors safe, but when it comes to the high cost of medical bills, the bill payer of last resort for many people (the government), is having its own issues with money.

Manufacturers are not at all barred from placing dangerous products into the marketplace. Knives, nail-guns, screwdrivers and stoves can all hurt consumers if they are used in the wrong way or manufactured improperly. However, a manufacturer can be held responsible for an injury caused by a product that was designed incorrectly. (For instance, a company knew, or should have known, that the way its new baby bottle was designed, there was a good chance the baby would swallow the nipple and choke.) A company can also be held responsible for making a mistake while

putting a product together. (For example, the proper materials were not used while welding two pieces together when constructing a shelf.)

Once the product is manufactured, a "suitable" warning must be provided to the customer. One criterion for determining whether a warning is suitable is whether a warning is necessary at all. A manufacturer is not required to give warnings regarding risks that should be obvious to the ordinary user. As stated by one court ruling on the adequacy of a warning, "[a] manufacturer cannot manufacture a knife that will not cut, or a hammer that will not mash a thumb, or a stove that will not burn a finger. The law does not require him to warn of such common dangers." Put another way, we have an "open and obvious" rule: There simply is no duty to warn of obvious risks.

For products that have risks which are not obvious, consumers have a right to know that their safety or health may be in jeopardy. Therefore, once it is determined that a warning is necessary, it is only deemed suitable if the warning is adequate to "impress upon the reasonably prudent user of the product, the nature and extent of the hazard involved."

Two well-established mechanisms for risk reduction are warnings as to product hazards and instructions for reasonably safe use. These allow manufacturers to produce products that obtain optimal safety levels. However, an optimal level of safety does not mean maximum or total safety. In this country, we treasure personal autonomy, and our society (through its laws) has determined that a user or consumer of a product is entitled to make his own choice as to whether or not a product's usefulness or benefits justify exposing himself to the risk of harm. This is why we see warnings such as this: *Warning: Riders of personal watercraft may suffer injury due to the forceful injection of water into body cavities either by falling into the water or while mounting the craft.* This warning is in the manual for a Jet Ski. Many severe injuries have occurred exactly as described in the warning. If the rider is aware of the risk, understands how to limit the risk and then accepts the risk, our society deems it fair for Jet Ski to sell a product that can cause this harm.

Over the years, there have been many lawsuits which alleged that people were injured because dangerous products were put on the market (this is okay) but the warnings were inadequate. (That is not okay.) As a result of these lawsuits, companies have changed their manuals and have made their products safer to use. Our friends, family and neighbors are safer than they otherwise would be, and hopefully our country will not have to pay for the medical treat-

ment of Medicaid and Medicare patients who were injured as a result of products that should have been safer to use.

Still, with the advances in safety rules have come some very absurd warnings that make a reasonable person giggle. For instance, in the same Jet Ski manual from which the above-referenced, important and necessary warning was taken, you can find this: *Never use a lit match or open flame to check fuel level.* What was that again about there being no need to warn about obvious risks?

Speaking of obvious risks and the warnings that come along with them, there are some products that, I suppose, can cause such terrible harm to the unsuspecting, that they do require warnings, no matter how obvious. But even when it's this obvious?

*Warning: May contain nuts.* On a package of peanuts.

*Do not take if allergic to aspirin.* On a Bayer Aspirin label.

There are other warnings that you just know were added to an instruction manual after someone actually hurt themselves and the company decided that ink is cheap and that they'd post a warning. Take a look at these:

*Product will be hot after heating.* Mark and Spencer's Bread Pudding.

*This broom does not actually fly.* Harry Potter Toy Broom.

*Do not use orally after using rectally.* In the instructions for an electric thermometer.

Manufacturers have shown a particular interest in the safety

of children and pets, or perhaps an interest in the occasional dim bulbs who take care of them, as in the following:

*Do not use for drying pets.* In the manual for a microwave oven.

*Caution: Remove infant before folding for storage.* On a portable stroller.

And finally, for those of who want their Champagne warm — There must be a lot of these people, because it made it onto a Moët White Star Champagne label — *Warning: Remove label before placing in microwave.*

Perhaps the best way to evaluate the warning on a product label or manual is to read it carefully and then say, "I'm glad I know that," and occasionally, you simply have to shake your head and say, "Surely you don't think you had to tell me that?"

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