

Write It Right!

Carefully Written Product Literature Can Reduce Liability

- To reduce risk, make sure your product materials are reviewed by a lawyer skilled in litigation and personal injury

Whether it's a new pancake griddle, laser printer, porta-crib, or drill press, you can be sure it comes with a plethora of product literature. Fine print and illustrations provide detailed instructions... how to plug in, install, test, use, maintain, clean, protect, and repair that newly acquired possession.

THE PROBLEM?

Marketing people produce promotional literature. And technical people prepare product-use material. While they're experts in their field, they may not realize how written statements can be used in litigation.

THE SOLUTION?

All product materials—whether promotional or informative—should be carefully reviewed by lawyers knowledgeable about personal injury and other types of litigation in order to reduce the risk that those materials can be used against product manufacturers.

PRODUCT LITERATURE TO REVIEW

- Advertising
- Promotional literature and brochures
- News releases
- Websites
- Owner's and user's manuals
- Repair and maintenance manuals
- Technical bulletins

PROBLEMS TO LOOK FOR

Inadequate Warnings or Cautions Regarding Product Use

A caution is given if an action or use could result in damage to the *product*. A product warning is given if a specific action or use of the product could result in *personal injury*. As a general statement, a manufacturer has the duty to warn if it knows or should know that a foreseeable action or use of its product may result in injury to a product user.

The effectiveness of a warning can be an issue in litigation. Effective warnings require an understanding of how the product will be used, and the potential harm that could result from its use. To be effective, warnings should:

- Be conspicuously labeled and stand out from other literature text
- Describe the action that could result in injury
- Describe the injury that can result
- Explain how the risk of injury can be avoided while using the product

Absolute statements

Sales and promotional literature may contain statements about product benefits—but they should not be absolute or written in such a way as to imply a guarantee. For example, electronic stability control—a popular automotive technology—acts to help a driver maintain control of a vehicle in bad driving conditions. But automotive literature cannot describe the system as preventing a loss of vehicle control. No technology can prevent all accidents. Statements should be qualified or moderated to avoid claiming the product can do more than it can.

Inconsistent statements

Inconsistencies can occur within a single document or when there are multiple pieces of product literature. Attorneys in litigation will use inconsistencies to attack the product. Owner manuals, service manuals, and promotional materials should be reviewed to make certain they speak with one voice.

Insufficient information

Figures, photos, and illustrations keyed to literature text help provide user information and should be considered when preparing product literature—particularly owner and service manuals.

Manufacturers can substantially reduce the risk that product literature can be used in litigation by following these and other guidelines, and having an experienced attorney review written materials. Call us if you'd like some help.

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