

Special Report



WARNING! ADVERTENCIA! ACHTUNG!

Should U.S. Manufacturers Label Products in Languages Other Than English?

by DONNA PEAVLER

U.S. manufacturers of hazardous products often speak and label their products in only one language: English. When people whose primary language is not English are injured or die using these products, will they or their families have products liability causes of action in Texas based on missing foreign-language warnings?

Like many legal questions, the answer is "maybe." With few Texas court decisions or statutes to shed light on product makers' duties, the issue is far from settled and likely will become more prominent as the number of people whose primary language is not English continues to

increase in Texas.

The 2000 Census reported that 18 percent of the U.S. population — 47 million people — speaks a language other than English at home. Of those, 11 million speak English "not well" or "not at all." Texas ranks third in non-English speakers, with more than 6 million people whose primary language is not English. More than one-fifth of the nation's Spanish-speaking population resides in Texas.

Texas law is especially murky on whether non-English warnings are legally required on products used and sold in Texas. The Texas Supreme Court has never directly addressed whether a product manufacturer must warn of potential dangers in more than one language. Neither has a Texas intermediate court of appeals held that multilingual warnings are required. One state intermediate

appellate court has touched on the subject, but it stopped short of holding that a duty exists under Texas law to warn in multiple languages.

In *Lozano v. H.D. Industries Inc.* (1997), the 8th Court of Appeals in El Paso expressed its concern that "in a bicultural community such as El Paso, an effort should be made to ensure that workers are provided with safety instruction in their primary language." The El Paso court did not reach the issue, however; it found that a pothole-patching machine's English warnings were sufficient under the circumstances, because the evidence supported a finding that the plaintiff was fluent in English.

To resolve the issue of when and if manufacturers must print warning labels in languages other than English, courts will have to extend more basic elements of products liability

law. In 2004, the Texas Supreme Court stated in *Humble Sand & Gravel Inc. v. Gomez, et al.* that when deciding whether to impose a duty to warn on manufacturers, courts should consider “social, economic and political questions and their application to the facts at hand.”

The Ultimate Decision

So what “facts at hand” should manufacturers evaluate in deciding whether to include a non-English warning on their products? What facts should plaintiffs lawyers evaluate in deciding whether to file a failure-to-warn products liability suit based on the lack of a multilingual warning label? A review of out-of-state cases grappling with multilingual warnings reveals at least six significant and fact-intensive considerations.

- *The extent to which the product user understands the existing warning:* This raises questions of the user’s command of the English language and whether the warning contained universal symbols that overcome any language barrier.

- *The availability of an interpreter to read or translate existing English warnings:* This may then give rise to additional questions, such as whether the interpreter translates all of the warnings.

- *The type of product:* If state or federal law strictly regulates the kind of product at issue, such regulations may limit or pre-empt common-law duties. For example, in 1993, the California Supreme Court held in *Ramirez v. Plough Inc.* that a manufacturer may not be held liable for labeling a nonprescription drug solely in

English, if the drug complied with federal and state regulations. Other regulations that may limit or pre-empt common-law causes of action may include the Occupational Safety and Health Act, the National Highway Traffic Safety Administration’s Federal Motor Vehicle Safety Standards and other industry-specific regulations.

- *The warning’s compliance with voluntary industry standards.*

Some sets of standards are promulgated by groups such as the American National Standards Institute or the International Organization for Standardization. As U.S. Magistrate Judge Marcia A. Crone of the Southern District of Texas noted in an unpublished Nov. 20, 2001, decision, *Flock v. Scripto-Tokai Corp.*, “Although these standards are voluntary in nature, voluntary industry standards are routinely viewed as evidence of the standard of care.”

- *Requests by the manufacturer’s customers or distributors for multilingual warnings or labels:* Large-scale buyers who sell or use the product in a non-English speaking area often request language-specific warnings for their own employees’ or customers’ benefit.

- *The manufacturer’s specific targeting of non-English speaking or non-U.S. costumers:* For example, if a manufacturer advertises its product in a foreign language using foreign-language media, courts may require



the manufacturer to warn in the same language in which it advertises. On the other hand, the necessary warnings on the product itself relative to the product’s size may already be so voluminous in English that adding translated warnings is not feasible or practical.

Some may argue that courts should leave the task of mandating multilingual warnings to legislators, especially considering the current controversy over immigration and the growth in use of languages other than English. Indeed, the Texas Legislature has grappled with similar issues in the past by enacting laws requiring non-English language warnings in the context of workers’ compensation, medical consent, financial transactions, conveyances, concealed handguns and consumer protection.

Whoever makes the ultimate decision, it is unlikely that a Texas court or the Texas Legislature will make one sweeping rule that applies to all situations. Rather, judges and legislators will decide the question on a case-by-case — if not a product-by-product — basis, depending on the facts at hand.

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