

# THE ADVERTISING (DOUBLE) STANDARDS AGENCY AND YOU

by Adam Smith MAMH



As a herbalist in the second decade of the 21st century, the chances are that you own and run a website as one of your primary windows on the world. However, like other practitioners of non-mainstream health disciplines, herbalists' websites are increasingly liable to receive unwelcome attention from the Advertising Standards Authority (ASA). This article examines the crucial question: do herbalists in this country need to change their practises to fit the ASA mould?

Henrietta Herbalist is worried. Sorting through this morning's mail, in among the assorted bills and junk mail, she is mystified to come across a letter from the ASA. Unsurprisingly, Henrietta has barely heard of the ASA, which was set up in 1962 to oversee self-regulation of the advertising industry. Opening the official-looking letter, Henrietta takes one look at the ASA's logo and the imposing word 'authority' and assumes that she is dealing with an arm of the UK government. She immediately sets to work changing the wording on her website as per the ASA's demands: better to have an uninformative website than none at all, she reasons.

What a shame that Henrietta didn't check the register of business names on the Companies House website (<https://www.gov.uk/government/organisations/companies-house>). Entering the term 'advertising standards' into the search engine immediately reveals that the ASA (Ltd) is merely a private limited company, incorporated on the 22nd August 1962 with company number 00733214. Nothing to do with government at all, then. So what's going on?

## A Significant Advancement

On 1st March, 2011, the ASA proudly announced the extension of its remit "to take action against misleading, harmful or offensive advertisements" from broadcast and print media to the Internet. The rule change was effected through the publication

of a revised version of the ASA's holy book, the Committee on Advertising Practice's Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP) Code, some 6 months earlier – and not through any change in the law of the land.

Three sections of the updated CAP Code are of particular interest to all things natural health: Section 3 covers 'Misleading advertising'; Section 12 is entitled 'Medicines, medical devices, health-related products and beauty products', including "herbal and homeopathic product rules"; while Section 15 relates to "Food, food supplements and associated health or nutrition claims". Together, these three chapters spell trouble for natural health practitioners of every stripe.

On scientific substantiation, Section 3 states: "The ASA may regard claims as misleading in the absence of adequate substantiation." We shall return to the vexed topic of who decides what determines "adequate substantiation" later. Section 12 covers the use and misuse of medicinal claims, something that any savvy natural healthcare practitioner already avoids.

Section 15 is entirely new, however, and heralds the ASA becoming the enforcer of a piece of European Union (EU) legislation called the Nutrition and Health Claims Regulation (NHCR). Section 15 is presently of most interest to supplement manufacturers and nutritional therapists, but some herbalists may become more interested when assessment of so-called 'botanical' health claims finally breaks free of an ongoing bureaucratic logjam.



With no in-house expertise of its own, the ASA is forced to rely for its investigations on external experts whose identities are shrouded in mystery, but who invariably take a pro-mainstream, anti-natural healthcare stance. Rumours swirled that the ASA regularly taps arch-skeptic Prof David Colquhoun as an 'expert'. This is just dandy, according to ASA Head of Investigations, Vena Raffles: "This is what

we do,” she announced to Robert Verkerk PhD of the Alliance for Natural Health International (ANH-Intl) in August 2011. “We deal with advertising complaints in all areas from roofing to guttering... we work to standards across all areas.” It took Jayney Goddard of the Complementary Medical Association (CMA) to point out the obvious: “Practitioner–patient relationships can’t, unfortunately, be evaluated in the same way as roofs and guttering.”



Plenty for an iridologist to study here - but iridology is one of the therapies that the ASA dismisses as scientifically unsupported.

### Alternative Specialisms Attacked

Here are just two examples of how the ASA has gone after natural health modalities and practitioners.

- In November 2010, the ASA ruled that an advert run in the *New Statesman* magazine by campaigning charity Homoeopathy: Medicine for the 21st Century (H:MC21) should not be run again in that form. H:MC21 was alleged to have contravened the revised CAP Code's Sections 1 (Compliance) as well as the aforementioned Sections 3 and 12. In the ensuing tit-for-tat battle, the ASA consistently dismissed all scientific evidence in favour of homoeopathy in a manner more ideological than scientific. H:MC21 eventually launched a formal complaint about the ASA's investigation process – but, since the ASA is answerable to no-one but itself (there is no ombudsman overseeing it, for example), this came to nothing.
- So infuriated was hormone specialist Alyssa Burns-Hill PhD over her treatment by the ASA over her core diagnostic technique that she produced a video entitled 'ASA The Truth: Alyssa Spills All' (<http://asa-the-truth.org.uk/>). In the blue corner: peer-reviewed articles on the use and

benefits of salivary hormone testing, published in reputable scientific journals, and accreditation by the UK's Care Quality Commission for Genova Diagnostics, the laboratory that performs the tests. In the red corner: a single complaint against Alyssa and a lone article in the *Wall Street Journal* questioning salivary hormone testing, written by a non-medically qualified journalist. Guess which corner the ASA declared the winner?

We are also aware of reports that individual herbalists are now being targeted by the ASA. Sarah Burt ([www.sarahburtnd.co.uk](http://www.sarahburtnd.co.uk)), a naturopath and herbalist based in Dorset, UK, found an email from the ASA in her inbox one morning. As well as demanding that Sarah remove from her website any links to her YouTube videos, “The ASA requested removal of any online case histories or testimonials from the clinic I work out of – basically my successes!” Sarah explains. “I was also told not to make reference to medical conditions, possible treatments and specific herbs. In my case, they asked me to provide scientific data substantiating the curative properties of slippery elm.”

These demands appeared to come from an official organisation, even an arm of government, according to Sarah: “The ASA claimed the government and courts recognised the ASA to be, in their words, the ‘established means’ of regulating the CAP Code/non-broadcast adverts, sales promotions and direct marketing communications in the UK. “The general impression I received from the ASA was comply or be shamed, with the added possibility of legal action”. Not surprisingly, Sarah complied with the ASA's demands “basically 100%” – with the ASA making her life easier by writing her new website copy for her. “These suggested changes were extensive,” she says, “Removing and in most cases diluting the information I'd given. I was thanked for my cooperation and told my case would appear on their website, but no details would be given except to say I had complied with their suggestions.”

Various therapies offered and diagnostic techniques used at his clinic also drew the ASA's attention to the website of an AMH Council Member. For now, things have gone quiet after a comprehensive response was submitted to the ASA that questioned the basis of its concerns.

### Approving Self-censoring Activities

As a private limited company, the ASA's edicts only carry legal weight when backed by legislation like

the NHCR or the EU and UK legislation governing medicinal claims. All the ASA itself can do is post details of its negative adjudications online and work with official bodies like Trading Standards and the UK medicines regulator, the Medicines and Healthcare products Regulatory Agency (MHRA), when appropriate. Even the 'legal backstop' between the ASA and Trading Standards is entirely untested and seemingly unworkable (<http://freedom4health.com/march-2015-b-newsletter/> – scroll down to the article entitled 'The odd couple').

Since the ASA is funded by a levy on advertising spend, UK natural health practitioners face the bizarre situation of their websites being considered as advertising by a 'regulator' they didn't ask for and whom they don't fund. A 'regulator', moreover, with no statutory powers and which only became involved when its partner company, the Committee on Advertising Practice, rewrote its own rules to cover the online sphere.

It is tempting to see the ASA's mission creep into the lives of UK practitioners as an attempt to plug a gap left by existing legislation, which has very little to say on how practitioners describe themselves and their modalities. After all, why legislate when you can scare people into self-censorship? The late author Terry Pratchett had a phrase for this kind of thing: "headology", defined as "the principle that what people believe is what is real".



### Available Solutions Assessed

Always bear in mind that practitioners must ensure they follow the law – all else is ASA headology. The options for practitioners targeted by the ASA are as follows:

1. Comply with the ASA's demands as and when they arrive.
2. Proactively rewrite your website to ensure that it ticks the boxes of legality, most pertinently to avoid making medicinal claims. These contravene the EU medicines code that is enshrined in the UK's Human Medicines Regulations 2012. A joint document here is the MHRA's 'Guidance

Note 8: A Guide To What Is A Medicinal Product' [<http://www.mhra.gov.uk/home/groups/is-lic/documents/publication/con007544.pdf>], which should be read and understood by all UK practitioners. However, further clarity is required from the MHRA on the legalities around practitioner–public communications. (Trading Standards enforces two laws, The Consumer Protection from Unfair Trading Regulations 2008 and The Business Protection from Misleading Marketing Regulations 2008).

3. Civil disobedience! The ASA is a paper tiger that often shrivels when directly confronted. Every time a practitioner meekly submits to ASA headology, it winds the gag around the mouths of all practitioners that little bit tighter – and, of course, reduces the overall voice of UK natural healthcare. The organisation Freedom4Health ([www.freedom4health.com](http://www.freedom4health.com)) has been set up specifically to advocate for practitioners on this issue, and they'd love to hear from you if you or anyoneyouknowhasreceivedaletterfromtheASA.

### Admirably Strong Adversaries

To end this piece on a high note, let's look at two women who have taken on and beaten the ASA at its own game.

- Sometimes, the ASA's arrogance and hubris backfires. London-based homoeopath and H:MC21 trustee Jennifer Hautman saw her website hits, retweets and Facebook shares explode after a run-in with the ASA, thereby boosting her online profile. New and returning clients followed. Ms Hautman has written a 7-point guide to using the ASA's attention against it: <https://sites.google.com/a/hautmanhomeopathy.com/www/advertising-standards/how-to-boost-your-business>
- Nutrition blogger and journalist Zoë Harcombe penned a blistering piece entitled 'The ASA and trolls working together to censor progressive thinking' after the ASA insisted she take down a video questioning the calorie theory and conventional weight loss advice. She refused, and the video remains available online.

*We hope this article is a useful primer on the bullying tactics being used by the ASA to silence UK natural healthcare practitioners. The AMH will always offer help and support to any of its members targeted by the ASA, so please get in touch with us if you receive an ASA letter or email.*

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