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# THE WHEATGRASS WARS

[www.tonicattack.com](http://www.tonicattack.com)



By Oliver Dowding

## Résumé of the VAT tribunal seeking to impose VAT on wheatgrass juice

This is a résumé of the VAT case between Ocean Grown Ltd and HM Revenue and Customs (HMRC). This is compiled by Oliver Dowding, who was the appellant. Whilst Ocean Grown Ltd., were officially considered to be the appellant, this was because Tonic Attack Ltd. was not at the time VAT registered. All subsequent references to Tonic Attack Ltd. in this article should be taken to understand that HMRC were in fact dealing with [Tonic Attack Ltd.](#) (TA), by referring to them through Ocean Grown Ltd.

The basis of the case upon which the Tribunal was asked to adjudicate, centred on whether wheatgrass juice could be considered to be food or drink.



**Wheatgrass, nature's health food**

In May 2005 Oliver Dowding was in conversation with the HMRC VAT unit to establish if the wheatgrass juice being produced by TA would be subject to VAT. He was verbally told no, and recorded that outcome in the business daybook. This seemed a totally logical decision as wheatgrass juice is surely a food, albeit that it is the juice extracted from wheatgrass, but which grass is the core part of the diet for tens of millions of animals roaming the planet, and which keeps those same animals, huge and small ones alike, healthy and fit.

However, a while later TA received a letter saying that HMRC had since re-thought this issue and that they considered wheatgrass juice to be a drink, and as such it would be levied with VAT. A lengthy series of letters bounced back and forth. The end result, after much correspondence was that TA felt compromised and that the only solution was to go to a VAT Tribunal and prove the point.

## Fight Or Fold?

TA was faced with a dilemma. Either we could cave in and accept that we have to add VAT to the price of our juice, and, because of this, so would everybody else, anywhere in the UK, and perhaps by extension that

may come to apply to anyone in the EU. Alternatively we could opt to stand up and fight. However to do the fighting option would mean doing it alone, and bearing all the cost that would be of benefit to everybody as well as TA. Oliver Dowding could not bear the thought of HMRC getting away with such blatant highway robbery, and imposing a tax on completely false grounds. Therefore he concluded that the only solution was to go to a Tribunal. Thus, some 30 months after the initial phone call TA assembled its case, using necessary and expensive legal assistance. The Tribunal sat in November 2007, and the case lasted two days.

The central part of TA's evidence was that the nutritional composition of wheatgrass juice, particularly the quantity of protein, was such that it could only be considered to be food. Previous cases brought against drinks manufacturers who were trying to prove that their product was a food, had often sought to show that the liquid "slaked the thirst". The case was made to the Tribunal that it would be highly unlikely for somebody who was thirsty to pick up a glass of wheatgrass juice and drink it to satisfy that thirst.

## **Wheatgrass Win**

Just over 2 months later the judge gave her verdict which was in TA's favour! She allowed HMRC time to consider appealing but HMRC concluded that they would not do so. TA was pleased that some common sense at last seemed to have been shown. Furthermore, the judge awarded costs to TA. This seemed the only logical outcome, and Oliver Dowding and his team were happy with this. TA had not asked to be taken to the Tribunal. TA had never doubted whether wheatgrass juice was food. HMRC had instigated the whole case, not proven their case, and lost. Therefore, it seemed perfectly reasonable that they should pick up the entire cost of the proceedings.

During the run-up to the Tribunal hearing, I had concluded I needed to suspend the business in order not to run up potential liability to VAT on ongoing sales, which I could not financially withstand. Thus the case effectively closed my new venture down, and disappointed a loyal and hard-won customer base, many of whom depended on wheatgrass juice arriving weekly to sustain their health, or restore it.

Following the case, as the judge had given me leave to claim my costs, I set about developing the claim. As a small business, sustaining a large bill was unrealistic. I only took the case to protect the logical situation to be enshrined in law, and that there were many others who would have been with me in this situation – but none of whom were ever asked to support my case.

## **Complaint To Treasury Over HMRC Behaviour**

I duly assembled my claim for costs. HMRC delegated the task of minimising my claim as much as possible to "recovery agents". This is element of the saga dragged on for a further 18 months beyond the date of the Tribunal hearing. The agents had been instructed by the HMRC case officer on what they would accept. This figure started at a very low number, totally unrealistic, and seemingly plucked from the air. Since that time it climbed bit by bit, and finally we ended up at about 70% of the total. This was after we had endured two meetings in the Supreme Court Costs Office, and just ahead of a possible full Court Case. Whilst this seems morally to be completely wrong, there was no way out, other than to accept. Going to a full Court Case could have resulted in losing a large part of what is already being hard-won.

So, 4 years after the initial phone call, and which was less than a year after I began the venture, I have a verdict. Thus 80% of the time this business has existed I have been fighting this VAT case. Leaving aside the very significant time cost to me, there is massive sum of costs borne by me to fight a case that need never have been brought if only people thought about the food that sustains huge numbers of mammals being grass, and that these mammals do not go out for a drink but to eat.

I have made a complaint to the Treasury about the performance of HMRC, pointing out that they will perhaps write back and offer me sympathy. At the same time I anticipated that they will assure me that due and fair process has been followed.

## **Justice Done At Very High Price**

The end result is that justice has been done, but at a huge cost to Oliver Dowding, TA, and those who work with it and also those who love the product, and even those from whom it was, without overstating things, a lifeline. Those officials from HMRC who slept through significant parts of the Tribunal could perhaps have done with this energising and boosting drink!

So, what of wheatgrass juice from now on? The answer is that TA is no longer producing it, and will not be doing so again. This is in part as well, because the Royal Mail's record of getting next day delivery is to the recipient on time is so poor. The product had to be sent chilled in iced packs, and if it did not arrive we could not afford to continue sending replacements to cover their poor performance.

However, all is not lost! We are now selling the juice on behalf of a company manufacturing it in Ireland. Work is being done of a pioneering nature, and now the juice is sold in single shot tubes, each containing 33ml, and best of all with a shelf-life of over two months. These tubes are assembled into a box containing seven, typically a week's supply, and that does not need to be kept chilled. The flat-pack nature of the box means that it will readily fit through any letterbox. The means by which the shelf-life is generated, is through pressurised packing. This ensures that every drop of their is expelled from the tube, which itself has been filled with fresh juice, as it is squeezed, and therefore the juice is preserved in a pristine state, just as if it had been squeezed minutes in advance of drinking. There is plenty more to be read about wheatgrass juice, and also the means by which it can be ordered, on TA's website [www.tonicattack.com](http://www.tonicattack.com)

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