

Thirdly, the applicant invokes that the Commission infringed essential procedural requirements by failing to analyse properly the evidence in its file and failing to provide the applicant with access to all relevant documents, thereby infringing the applicant's rights of defence.

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**Action brought on 9 October 2006 — Omnicare v OHIM  
— Yamanouchi Pharma (OMNICARE)**

(Case T-277/06)

(2006/C 294/120)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Omnicare Inc. (Covington, USA) (represented by: M. Edenborough, Barrister)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

*Other party before the Board of Appeal:* Yamanouchi Pharma GmbH (Heidelberg, Germany)

**Form of order sought**

- The appeal by the appellant to the Court of First Instance be allowed;
- the decision of the Second Board of Appeal case No R0446/2006-2 be annulled in its entirety;
- the application for *restitutio in integrum* be remitted to the Board of Appeal for reconsideration; and
- the Office pays to the appellant the costs incurred by it in connection with this appeal before the Court of First Instance.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* Word mark 'OMNICARE' for goods and services in classes 16 and 42 — application No 284 067

*Proprietor of the mark or sign cited in the opposition proceedings:* Yamanouchi Pharma GmbH

*Mark or sign cited:* National figurative mark 'OMNICARE' for services in classes 35, 41 and 42

*Decision of the Opposition Division:* Opposition upheld in its entirety

*Decision of the Board of Appeal:* Refusal of the application for *restitutio in integrum* and declaration that the appeal was deemed not to have been filed

*Pleas in law:* Misinterpretation of Article 78(5) of Council Regulation No 40/94 in finding that an application for *restitutio in integrum* cannot be made if the subject matter of the said application concerns the failure to comply with the time limit set out in Article 59 of the regulation.

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**Action brought on 6 October 2006 — United Kingdom v Commission**

(Case T-278/06)

(2006/C 294/121)

*Language of the case: English*

**Parties**

*Applicant:* United Kingdom of Great Britain and Northern Ireland (represented by: E. O'Neill, acting as agent, and H. Mercer, Barrister)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Article 1 of Commission Decision 2006/554/EC on the clearance of accounts presented by Member States in respect of expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund be annulled in so far as it excludes from Community financing United Kingdom expenditure for the years 2001-2004 in the sum of £1,351,441.25 in the audit field 'Butterfats in food processing' on the grounds of 'Insufficient quantity controls on manufactured quantities';
- the Commission be ordered to pay the costs incurred by the United Kingdom.

**Pleas in law and main arguments**

The applicant seeks the partial annulment of the Commission's Decision 2006/554/EC of 27 July 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (1) and in particular the part concerning the use of butterfats in food processing in the United Kingdom.