

???????? C-464/05

Maria Geurts ??? Dennis Vogten

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Administratie van de BTW, registratie en domeinen, Belgische Staat

(?????? ?? rechtbank van eerste aanleg te Hasselt

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«?????? 43 ??? 56 ?? — ??????? ??????????? ??????? — ?????? ??????????? — ??????????????
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1. ?????????? ?????????? ??? ??????? — ?????????? ?????????????? — ?????????? ???
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(?????? 43 ??, 56 ?? ??? 58 ??)

2. ?????????? ?????????? ??? ?????— ?????????? ?????????????— ??????????
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(????? 43 ??)

1. ?????????? ?????? ?????? ??????, ?????? ?? ??? ????? ??????????????, ? ??????
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????????? ??? ??? ????? ?????? ??? ?????????? ?????????? ?????????? ?????????????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ?????????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 43
?? .????? ??? ?? ?????? ?????? ??? ?? ?????????????? ?????? ?????? ?????????????? ??? ??????????
????????? ??????????, ?? ?????????? ?????? ?????? ?????????? ?????????? ?????????????? ??????????
????????? ?????? ?????? ??? ?????? ?????? ?????????????? ?????????? ?????????????? ??? ???
????????? , ?? ??? ?????????? , ?????? ?????? ??? ?????? ?????? ??? ?? ??? ?????? ??? ?? ??????
?? ?????? 56 ?? ??? 58 ??.

(??, ??, ??, ??, ??, ??, 12, 16, 18)

2. ?????????? ??????? ?????????????????????? ??????, ?? ?????? 43 ?? ?????????????? ?????????? ??
??? ????, ?????????????? ??????? ???????, ???????, ???????, ??? ?????? ???? ?????? ? ?????????????? ???,
????? ?????????????? ?????????????? ???????, ???????, ??? ?????? ?????? ?????? ??? ?????????? ???
????????????? ?? ??????, ??? ?? ?????? ??? ?? ?????? ?????, ??? ?????????????????? ???,
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?? ?????????????? ?????????????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ??????.

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?????? ?????????? ??? ??????? ??????? ??????? ??????? ??????????????, ??????. ???????.

????????? ??? ?? ???? 43 ?. ????????, ???, ?????? ??????? ??????? ??????? ???
????????????? ??? ?? ??? ?? ???????????, ??? ??????? ??????? ??????? ???????,
????????? ??? ?????? ??????????? ??? ?? ?????? ??? ??? ??? ??????????? ??? ??
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?? ?????? ??????? ?? ??????????????? ?? ?????? ??????? ?? ?? ?????? ??????? ??
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????, ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??????? ??? ???????????
?? ?????????????? ???, ???????, ???????, ??????? ??? ?????????? ??????? ???
????????, ??? ?? ?????? ?????? ?????? ???????????, ?? ?????????? ?? ??? ?????? ?????? ???
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??????, ? ?? ??? ?????? ??? ?????? ?? ?????????????? ??? ?? ?????? ?????????? ???
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?????? ?? ??????? ??? ?? ?????????????? ?? ?????????? ??? ?? ??????? ?? ??????????
????????? ???, ??? ?? ?????????? ??? ?????? ?????????? ??? ?? ??? ?????? ??????????
????????? ??? ?????????? ??? ?????? ?????? ?????????? ?? ?????????? ??? ?????? ???
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(??, ??????? 19, 21-22, 27-29 ??? ??????.)

????????? ??? ?????????? (???????)

?? 25?? ??????? 2007 (*)

«????? 43 ?? – ?????? ?????????? ?????? – ????? ?????????? – ?????????? – ?????????? ??
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? ? ?????????? ??? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ??,
?? ?????? ?? rechtbank van eerste aanleg te Hasselt (?????) ?? ?????? ??? 21??
????????? 2005, ? ?????? ?????? ??? ?????????? ??? 27 ?????????? 2005, ??? ??????
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Maria Geurts,

Dennis Vogten

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Administratie van de BTW, registratie en domeinen,

Belgische Staat,

?? ?????????? (?????? ????),

????????? ??? ??? K. Lenaerts, ?????? ??????, R. Silva de Lapuerta, E. Juhász
(??????), J. Malenovský ??? T. von Danwitz, ???????,

????? ??????????: J. Kokott

?????????: M. Ferreira, ????? ?????????? ????????????,

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??? ?????????? 2006,

????????? ??? ??? ?????????? ??? ??????:

– ? ?. Geurts ??? ? D. Vogten, ?????????????? ??? ??? A. van Zantbeek, A. Nijs ??? A.
Verbeke, advocaten,

– ? ?????? ????????, ?????????????? ??? ??? M. Wimmer ??? L. Van den Broeck,
????????????? ??? ??? R. Deblauwe, C. Doclo ??? N. Labeeuw, advocaten,

– ? ?????? ??? ?????????? ??????????, ?????????????? ??? ??? R. Lyal ??? A.
Weimar,

???? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?? ??????????
??? 15?? ?????????? 2007,

????? ??? ??????

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1 ? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? 43 ???
56 ?? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ????????????

2 ? ?????? ?????????? ??? ?????? ????????, ??????, ??? M. Geurts ??? D.
Vogten, ?????? ?????????? ??? J. Vogten, ???, ???????, ??? Administratie van de BTW,
registratie en domeinen (????????? ???, ?????? ??? ?????? ?????????? ?????????? ??? ????:
????????? ?????????? ???), ?????? ?? ??? ?????? ??? ?????? ?????? ?????? ?? ??????????
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3 ??? ?? ??? 3 ??? ?????? ?????????? ?? ?????? ?????????? ???
?????????: ??? ???????, ??? ?????? ??? ??? ????????.

4 ??? ?? ??? 3, ??? ???????, ??? 4, ??? ?????? ??? 16?? ??????????
1989, ??? ?????????????? ??? ?????????? ??? ??? ?????????? (Moniteur belge ??? 17??
????????? 1989, ?, 850), ??? ?????????? ??? ??? ?????? ??? 13?? ??????
2001, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????????? (Moniteur belge ??? 3?? ?????????? 2001, ?, 26646),
????????? ??? ??? ?????? ?????? ?????????? ?????? ?????????? ??? ?????????? ??? ????????

?????? ?? ??????????????. ??????? ?? ?????? 4, ??????????? 2, ??? ?? ??? ?????? ?????? ???
16?? ?????????? 1989, ?? ?????????? ?????? ?????? ?????? ?? ?????? ??? ??????????
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5 ????? ?? ?????? 1, ?????? 1, ??? ?????? ?????? ????????????, ? ?????? ??????????? ?? ??
????????? ???????? 308, ??? 31?? ?????? 1936 (*Moniteur belge* ??? 7?? ?????? 1936, ?.
2403) ??? ??????? ?? ??? ??? ??? 4?? ????? 1936 (*Moniteur belge* ??? 7?? ????? 1936, ?.
3426, ??? ????: ??????? ?????? ??????????????), ? ?????? ??????????? ??????????? ????? ???.
?? ??????? ?? ??????????? ??? ??????????? ?? ???????????, ??????????? ??? ??????.

6 ?? ?????? 60 bis ??? ?? ?? ????? ???????, ??? ?????????????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????????? ??? ???????, ?? ??? ????? ?????????? ?? ?? ?????????? ???
????????? ??? ?????? ??? 20?? ?????????? 1996, ??? ?????????? ??? ?????? ???
????????? ??? 1997 (decreet houdende bepalingen tot begeleiding van de begroting 1997,
Moniteur belge ??? 31?? ?????????? 1996, ?. 32555), ??? ????? ?????????? ?? ??
????????? ??? ?????????? ??? ??????? ?? 22?? ?????????? 1999, ??? ?????????? ???
?????? ??? ?????????? ??? 2000 (decreet houdende bepalingen tot begeleiding van de
begroting 2000, *Moniteur belge* ??? 30?? ?????????? 1999, ?. 50232), ????:

«§ 1 ????? ??????????? ??? ?? ????? 48 ??? 48/2, ?????????????? ??? ????? ????? ??????????? ?
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?) ??? ?????????????? ?????????? ??? ? ?????????????????? ? ? ??????? ??? ??? ??? ????????,
??? ??? ?????? ??? ?????????????? ???, ?? ?????????? ?????????? ???

?) ??? ??????? ?? ?????????????? ??????? ? ??? ?????????????? ??? ???????????, ???
??? ??????????? ???, ??? ?? ??? ????? ?? ?????? ??? ??????? ??? ?????????????? ???, ? ???????????
? ?? ??????? ???, ??? ???????????, ??? ?????????? ??? 50 %, ??? ?????????????? ???/?
????? ??????? ??? ??? ??? ? ?????????? ?????????? ?????????? ??? ??????? ? ???
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§ 2. ?????????????????? ?????????????? ?????????? ? ??????????????, ?????????, ?????????????? ?
????????? ??????????, ?????? ??? ?? ?????????? ??????????, ??? ?????????? ?????????? ?
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§ 3. ?? ?????????????? ??????? ??????? ? ??????? ?? ??? ?????????????? ?????????????? ??
??? ??? ?? ?????? ??? ?? ?????????? ???????, ? ??????:

- ????? ??????? ? ???? ??? ?????????????? ??? §§ 1, 5 ??? 8?

– ????? ??????? ??????? ?????????? ?????????? ?? ??????? ??????? ??? ??????????????

[...]

§ 5. ? ?????????? ??????????? ?????? ??? ???? ?????????????? ???, ??? ???? ?? ???? ??? ???? ??? ????
????????? ??? ???? ??????????????????, ? ?????????????? ? ? ?????????? ?????????????? ??? ???? ??????????????
???? ???? ?????? ?????????????? ?????? ?????????????? ??? ???? ?????? ??????.

???? ?????????? ??? ?? ?????? ??????, ?????????????? ?? 20 %, 40 %, 60 % ? 80 % ??? ?????
??? ?????????? ??? ?? § 9, ??????, ??? ?? ??????? ??? ?? ?????????? ??? ?? ?????????? ???
???????????????, ? ?????????? ?? ? ?????????? ????????????, ????????????, 1, 2, 3 ? 4

? ?????????????? ?? ?????? ?????? ??? ?????????????? ??? ??????????. ? ?????????????? ??????????
??? ?????????????? ??? ?????????? ??? ?? ????????, ?????? ?? ?????? ? ?? ??????????
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? ?????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
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§ 8. ? ?????????? ?????????? ???, ??? ?? ?????????? ??? ?????? ??? ?? ?????? ??? ?????????? ???
????????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ?? ??? ?????????? ???
????????? ??? ?????????? ??? 8?? ?????????? 1976, ??? ?????? ?????? ?????????????? ??????????????
??? ???????, ? ?????????? ?? ?????? ?????????? ?????????? ?????????? ?????????????? ??????????????, ??
????? ?????????? ??? ?? ?????????????? ??? ?????????? ?????? ?????????? ?????????????? [...].

? ?????????????? ?? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??
????????? ??? ?????? ?? ?????????? ?????? ?????????? ?????????? ?????????? ??? ?????? ?? ??
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§ 10. ??? ?????? ?????????? ??? ??????????, ?? ?????? 60 bis ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??????????:

1° ? ?????????? ??? ?????? 60 bis ?????????? ?????? ?? ?? ?????? ?????? ?????? ??????????????

2° ??? ?????? ??? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????? ??? ?????????? ??? ?????????? ??? ?? ?????? ???.

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§ 11. ?? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? 60 bis
????????? ?? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???,
????????? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? § 10.

[...]»

? ?????? ??? ?????? ??? ?????? ??? ?? ?????????????? ??????

7 ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? M. Geurts ??? D. Vogten ???,
????????? ???, ? ???? ??? ? ???? ??? J. Vogten, ?????? ??? ?????, ? ?????? ??????
????? 25 ?????? 1959 ??? ?????? ??? ?????? ??? ?????????? ??? 6 ?????????? 2003. ??? ???
????? ??? ??? ??? ?? ?????? ?????????? ??? ?????????? ???, ? J. Vogten ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ??? ??? ?? ??? ?????? ??? ?????? 60 bis ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ???.

8 ? ?????? ?????????? ??? J. Vogten ??? ??? ?????? ??? ?????????? ??? ?????? ???,
100 % ??? ?????? ??? ?????? Jos Vogten Beheer BV ??? Vogten Staal BV, ??????????

????? ????? ???? ?? ??? ??????? (????? ??????). ??? ??????????????? ??? ?? ??? ?????? ???
????????????? ??? ?????????????? ??? ?? ?????? ??? ?????? 60 bis, ?????????? 3, ???
????? ?????? ???????????. ?? ?????????? ??? ?????? ?????????? ?????????? ?????? ???
??????, ??? ?? ?????? ??? ?????? 60 bis, ?????????? 1, ????????, ??, ??? ?? ???
??????, ??? 1 110 568 ??? ?????? Jos Vogten Beheer.

9 ??? ???????????, ????, ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? J. Vogten, ??????? ?? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????? ??? Vogten Staal BV ?????????? ??? ?????? ?????????? ??? Jos
Vogten Beheer BV ???????.

10 ?? ??????? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ??? ?????? ?????????? ??? J.
Vogten ??? ??????? ??? ?????? 60 bis ??? ?????? ??? ???????????, ?? ?? ??????????
??? ??? ?????????? ??? ??? ?????????? ??? ?????? ?????????? ???, ?????? ?? ??????????
??? ?????? Vogten Staal ??? Jos Vogten Beheer ??? ?????????? ??? ?????? ?????????? ???
???????. ? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?? 839 485,60 ???.

11 ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? J. Vogten ??? ??? ?? ???
????????? ????, ?? rechtbank van eerste aanleg te Hasselt, ?????? ?????????? ???
????? ?? ?????????? ??? ?????????? ??? 60 bis, ?????????? 5, ?????? ???,
??? ?????? ??? ?????????? ?? ??? ?????????? ??? ?????? ??? ?????????? ??, ?????? ?? ?? ??????
????????????? ??? ?????????? ?????????? ???, ??? ?????????? ??? ? ?????????? ???
????? ??? ??? ?????????? ??? ?? ?????????? ??? ?????????? ???, ?????????? ?? ??????????
?? ?????????? ??? ?? ?????????? ??? ?????????? ???, ?????????? ?? ?????????? ???
«????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?? ?????? 43 ?? 56 ?? ?? ?????????? ??? ??
????? ?? ?????? ??? ?????? ?? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ?? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??
????????? ??? ?? ?????? 60 bis ??? ?????? [????? ??? ?????? ??????????], ?????? ?
????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???,
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???,
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???,
????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???,
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? [?? ?????????? ???]
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??, ??
????????? ??? ?????? ??? ??????);»

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12 ?? ?? ?????? ???, ?? ?????? ?????????? ??? ?????? ?? ?????????? ???, ???' ??????, ?? ??
????? 43 ?? 56 ?? ?????????? ??? ?????? ?? ?? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ???
????? ??? ?????????? ??? ?????????? ??? ?????? ???, ??? ?? ??? ?????? ??? ?????? ???
????????????? ???, ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
?????, ??? ?????????? ?? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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13 ?????, ??????, ?? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ???, ?????? ?????? ???, ??? ?? ??? ?????? ???
????????? ??? ?????????? ???, ?????? ?????? ?????? ??? ?????? 50 % ?? ?????? ???,
????????? ??? ?????? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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14 ?????? ?? ???????????, ????, ???, ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????? ?????????? ??? ???? ?????? ??? ?????????? ?????????? ?????????? , ? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ?? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????????? ?? ??? ?????? ?????, ??????, ??? ???? ?? ??? ?????? ?????? , ??? ??????
????????? ??? ?????? 43 ?? (??., ??' ??? ???? ?????, ?????? ??? 7?? ?????????? 2006,
C?470/04, N, ?????? 2006, ?. I?7409, ????? 28).

15 ??? ?????? ????????, ?? ????? 43 ??, ??? ???? ?? ??? ?????? ?? ?????, ??????? ?? ??
????? ???, ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ???? ?????????? ??
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ??????
?? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ?????? ??? ??????
????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? (??., ??' ??? ???? ?????? ???, ?????? ???
13?? ?????? 2000, C?251/98, Baars, ?????? 2000, ?. I?2787, ?????? 28 ?? 29, ?????? ???
?? ??? ?????? ?????????? ??????????).

16 ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ???
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????????? ?????? ?????? ??? ?? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? 56 ?? 58
?? (??., ??????, ??o????? ?? 13?? ?????? 2007, C?524/04, Test Claimants in the Thin Cap
Group Litigation, ? ?????? ??? ?????? ?????? ?????????? ??? ?????? , ?????? 33 ?? 34,
????? ??? ?????? ??? 10?? ?????? 2007, C-102/05, A ??? B, ? ?????? ??? ?????? ???
????????? ??? ?????? ?????? 26 ?? 27).

17 ??? ?????? ??? ?????? ?? ??????????, ?? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
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????????? ?????????? ??? ?????? ?????? ?????? (?????? ??? 11?? ?????????? 2003, C-
364/01, Barbier, ?????? 2003, ?. I?15013, ????? 75).

18 ? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???
????????? ??? ??? ?????? ?????????? , ??? ?????? ?????????? ?????? ?????????? ???, ???
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????? ?? ??? ??? ??? ?????? ??? ?????????? ???, ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???, ?????? ??? ?????? ?????? ???, ?????? ???
?? ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?? ???.

19 ??? ?? ?????????? ??? ?????????? , ?????????? ?????? ?????? ?????? ?????? ? ???
????????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? , ?????? , ?????? ?????? ??? ???? 43 ??
(??., ??' ??? ???? ?????, ?????????? Baars, ?????? 30 ?? 31). ?? ???
????? ??? ??? ?????????? ?????? ?????? ?????? ?????? ? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???.

20 ???????????, ??? ???? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ???, ??

????????? ??? ??? ?????????????? ?????????????? ??? ??? ?????? ??? ?????????? ?????????????? ???
????????????? ??? ?????????? ?, ??? ?????? ??? ??????????, ??? ?????, ??? ??? ??? ?????? ???
????????????????? ??? ?????????? ???? ??? ?????????? ?????? ?????????? ?????????? ??????????
????????? ??? ?????? ??? ?????? ?????? (????????? ??? 19?? ?????????? 2000,
C?156/98, ?????????? ??? ??????????, ?????????? 2000, ?. I?6857, ??? 83, ??? ??? ???
????????????? ??????????).

21 ??? ??????, ? ??????? ??? ?????? ??? ?????? ?????? ??????????, ?? ?????????? ??????????
??? ?????????????? ??????????????????, ??? ??????????, ??? ?????????? ?????????? ??????????,
????????? ?????????? ?????????? ?? ?????????? ??? ?????????? ?????? ?????????? ??????, ??????????
??? ?????, ??????????????, ??? ??? ??? ?????? ?????????? ?????????? ??? ??? ??????????????
??? ?? ??? ?????? ?????? ?????? ??????.

22 ??? ????????, ? ??????? ??? ?????? ?????? ??????, ?????? ??? ?????????? ??????????
?????????????, ??? ??? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?? ???
???? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????????
????????????? ??? ??? ?????????? ??????.

23 ??? ??????? ??? ?? ?????????? ??? ?????? ?????? ??????????, ? ?????????? ??????
????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ? ?????? ?????? ?????? ???
????????? ??? ?????????? ??? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????, ??? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ???, ??????????????, ??????????,
???? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????, ?? ?????? ??? ??????????
????????? ??????????????, ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
??? ?????? ?????? ???.

24 ??? ?????? ?????????? ??? ?????? ?? ??? ?????? ?????? ?????? ?? ?????????? ?????? ???,
????????? ?? ?? ???????, ??? ?????????????? ??? ?????????????? ?????? ?????? ??????
??????????. ??? ??? ??? ?????? ?????? ???, ?? ?????? ? ?????????? ??? ?????? ?????? ??????
?? ??? ?????? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?? ?????? ??????
??? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? (??., ?????? ???, ??????????
??? 13?? ?????????? 2005, C?446/03, Marks & Spencer, ?????? 2005, ?. I?10837, ??? 35,
??? 12?? ?????????? 2006, C-196/04, Cadbury Schweppes ??? Cadbury Schweppes
Overseas, ?????? 2006, ?. I?7995, ??? 47, ??? ??? 29?? ?????? 2007, C?347/04, Rewe
Zentralfinanz, ? ?????? ??? ??? ?????? ?????????? ??? ???????, ??? 37).

25 ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????????, ? ?????? ??????????
????????? ??? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???
?? ?? ?????????? ??? ?????? ?????? ??? ?????, ??? ??? ?????????? ??? ?????? ?????? ???
????????? ?????? ???, ??? ??? ??? ?????? ??? ??? ?????????? ??? ?????? ??????????
??????.

26 ??? ?????? ????, ??? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????, ?? ??????????, ??
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
?????? ? ?????? ??????.

27 ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
??? ?????????? ? ?????? ?? ?????? ?????? ? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
????????? «?????????» ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ??? ?????? ?????? ??????. ?????????? ??? ?????? ???, ?? ??????????, ??? ???

??? ??????? ??????? ??? ??????????? ??? ?????????????? ?????????????? ???, ????????,
????????? ??? ??????????? ??? ????? ???????, ??? ???? ??????? ????? ???????????, ??
?????????? ?? ??? ????? ?????? ????? ?????????????? ?????????????? ??? ???? ??????????? ?? ???
?????????? ??? ????? ?????? ?????.

28 ???????, ??? ????? ?? ??????????? ??? ???? ?????? ?????????? ??????? ??? ??? ??????
?????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ???????, ??? ???? ??? ???? ????
77/799/??? ??? ???????????, ??? 19?? ??????????? 1977, ??? ??? ?????????? ?????????? ???
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? (?? ??? . ??? . 09/001, . 86),
??? ??? ?????? ?????? ??? ?????? ???????????, ??? ???? ? ?????????? ??? ? ?????????? ??? ???
????? ?? ?????????????? ??? ?????????????? ?????? ?????? ?????????? ??? ??????????
?????????? ???????????????, ??? ???? ???? ?????????? ?????? ?????????? ?? ?????????? ??? ???
?????????????? ?? ?????????????? ?? ?????? ??? ?????? ?? ?????????? ?????????? ???????????, ??? ??
????????????? ??? ??? ?? ??? ????? ?????????? ?????????????? ?????????? ?????????? ?????
????? ?????????? ?? ?????????? ??? ?????? ?????? ?????????? ?????????? ?? ??? ?????? ?????? ??????
(??., ???????, ??????? ??? 11?? ??????? 2007, C?451/05, Elisa, ? ?????? ??? ??? ??? ???
????????? ??? ???????, ??? 98).

29 ???????, ??? ??????? ??????? ??????? ?? ??? ???? ???? ?????? ???, ??????? ???????
????????????? ???, ?? ?????? 43 ?? ?????????? ??????? ?? ??? ??? ???????????
?????? ??????? ???, ??????? ??? ?????? ??? ?????????? ??????? ??? ?????? ??????????????
????????????? ??? ??????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ?? ??? ???,
???? ?? ??? ??? ??? ?????? ??? ?????????????? ???, ?????????????? ?????????????? ??????????
????????????? ?? ??? ??? ?????? ???, ??? ?????????? ?? ?? ?????????? ?????????????? ?????????????? ??
????????? ??? ?????? ?????? ??????.

??? ??? ?????????? ??????

30 ??????? ??? ???? ?????? ??????? ??????? ??? ???? ?????? ?????? ?????????? ??? ?????? ???
??? ??????? ?????????????? ??? ?????? ?????? ??????? ??? ?????? ?????????? ???????????, ?' ???
?????????? ?? ?????????? ??? ?????? ?????????? ??????. ?? ?????? ??? ?????? ?????????? ??????
???? ??????? ?????????????? ??? ???????????, ??? ??? ?? ??? ???????, ??? ??????????.

??? ??? ?????? ???????, ?? ?????????? (?????? ????) ??????????:

????????? ??????? ?????????? ?????????????? ???, ?? ?????? 43 ?? ?????????? ??????? ??
?? ??? ?????? ?????????? ??????? ??????? ???????, ??????? ??? ?????? ?
????????????? ??? ?????? ?????????????? ?????????????? ?????????? ??? ??? ??? ???
????? ??? ?????????? ??? ?????????????? ?? ???????, ??? ?? ??? ??? ??? ??? ???
??? ?????????????? ???, ?????????????? ?????????????? ?????? ?????????????? ?? ??? ???
????? ???, ??? ?????????? ?? ?? ?????????? ?????????????? ?? ?????????????? ?? ??? ???
????? ??? ?????? ??????.

(???????)

* ?????? ??????????: ? ???????.