

?????? C-438/09

**Bogusław Juliusz Dankowski**

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**Dyrektor Izby Skarbowej w Łodzi**

(?????? ??? Naczelnego Służby Administracyjnej

??? ??? ?????? ?????????????? ??????????)

«????? ?????? ??? – ?????????? ?????????? ??? ??? ?????? – ?????????????? ?????????? –  
????? ??? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??? –  
????????? ??? ?????? ??? ??? ?????? – ?????? ?????????? ?????? – ?????????? ???  
??? ?? ?????? ?????? ?????? ??? ?????? 17, ?????????? 6, ??? ??? ?????? ?????? ???»

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1. ?????????? ?????? – ?????????? ??? ?????????? – ?????? ?????? ?????? –  
????? ?????? ?????? ?????????????? ??? – ?????? ??? ?????? ?????? – ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????  
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????  
????? ?? ??? ??? – ?????????? – ?????? ?????????? ??? ??? ?? ??? ??? ??????  
????????? ?? ??? ?????? ?????????? ??? ?? ?????????? ?????? ?????? ??????

(?????? 77/388 ??? ??????????, ????? 18 § 1, ??????? ?, ??? 22 § 3, ??????? ?)

2. ?????????? ?????? – ?????????? ??? ?????????? – ?????? ?????? ?????? –  
????? ?????? ?????? ?????????????? ??? – ?????? ??? ?????? ?????? – ?????????? ???  
????????? ?????? – ?????? ??? ?????? ?????? ?? ?????????? ??? ?????????? ???  
??? ?????? ?????? ??? ?????? ?????? – ?????? ?????? ?????? ?????????? ?? ??????  
????????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?? ??? ??????  
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(?????? 77/388 ??? ??????????, ????? 17 § 6)

1. ?? ??? 18, ?????????? 1, ??????? ?, ??? 22, ?????????? 3, ??????? ?, ??, ???  
????? ?????? 77/388, ??? ?????????? ??? ?????????? ??? ??????? ???, ??? ??????  
?? ??? ?????? ?????? ??????, ??? ?????????? ?? ??? ?????? 2006/18, ??? ??  
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??  
????????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ??  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? ??  
????? ??? 22, ?????????? 3, ??????? ?, ?????????? ??? ?????? ??? ?????????? ??? ??  
????????? ??? ?????? ??? ?????? ?????? ??? ?? ??? ?????? ?????? ??? ?? ??? ??  
????????? ??? ??????.

??????????, ??? ? ?????? ?????? ?????????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ??  
????????? ??? ? ?????????? ??? ?????? ???, ?? ?????????? ??? ?????? ???????,

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

?????????, ? ?????? ?? ?????? ??? ??? ?????????? ?????????? ??? ?????????????? ??? ?????? 22,  
????????? 1, ??? ?????? ?????? ??? ?????????? ?? ?????????? ?????????? ??? ?????? ???  
????????? ??? ?? ??? ?????????? ?????? 17, ?????????? 2, ??? ?? ???  
??????.

(???. ??????? 35-36, 38, ??????. 1)

2. ?? ????? 17, ?????????? 6, ??? ????? ?????? 77/388, ??? ?????????????? ???  
????????? ??? ?????? ???, ??? ?????? ?? ??? ?????? ?????? ?????? ???????, ??? ?????  
????????? ??? ?? ??? ?????? 2000/18, ??? ?????? ??? ?????? ??? ?????????? ?????? ??????????  
?????? ? ?????? ?????????? ?? ?????????? ?????????? ??? ?????? ?????????????? ??????  
?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ???,  
?????? ?????? ??????????, ??? ? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ???  
??????.

?????????????, ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? 17, ?????????? 6,  
??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ? ?????? ??? ?? ?????? ??? ??? ?????????? ??? ?? ?????????? ?????????? ???  
????? ?????????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????????????? ?? ?????????? ???  
????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ???  
????????? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???  
????????? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???  
?????????.

(???. ??????? 41, 47, ??????. 2)

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

?? 22?? ?????????? 2010 (\*)

«???? ?????? ??? – ?????????? ?????????? ??? ??? ?????? – ?????????? ?????? –  
?????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? –  
????????? ??? ?????? ??? ??? ?????? – ?????? ?????????? ?????? – ?????????? –  
?? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? 17, ?????????? 6, ??? ?????? ?????? ???»

???? ?????? C?438/09,

? ?????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ??,  
??? ?????? ?? Naczelnego S?d Administracyjnego (??????) ?? ?????? ??? 14?? ?????? 2009, ?  
????? ?????? ??? ?????????? ??? 9 ?????? 2009, ??? ?????? ??? ??????

## **Bogusław Juliusz Dankowski**

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**Dyrektor Izby Skarbowej w Łodzi,**

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

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

?????? ??????????: P. Mengozzi

?????????: K. Malacek, ??????? ????????????,

?????? ??? ?? ?????? ?????????? ?????????? ??? ??????? ??? ??' ?????????? ?????????? ???  
11?? ??????? 2010,

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

– ? Bogusław Juliusz Dankowski, ?????????????? ??? ??? R. Grzejszczak, J. Skrzyniak,  
T. Grzejszczak ??? A. Kania, adwokaci,

– ? ?????????? ??????????, ?????????????? ??? ??? A. Kramarczyk ????? ??? ??? M.  
Szpunar ??? B. Majczyna,

– ? ?????????? ??????????, ?????????????? ??? ??? C. Blaschke ??? J. Möller,

– ? ?????????? ??????????, ?????????????? ??? ??? Z. ?????????? ??? ?. ??????????  
????? ??? ??? ?. ??????????,

– ? ?????????? ??????????, ?????????????? ??? ??? ?. ?????????????? ??? ??? A.  
Stobiecka-Kuik ??? K. Herrmann,

?????? ??? ?????????? ??? ??????, ??? ?????? ??? ?????? ?????????? ??????????, ?? ?????????? ???  
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1 ? ?????? ?????? ?????????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? 17,  
????????? 2 ??? 6, ??? ??? ??? ?????? 18 ??? 22 ??? ?????? ?????? 77/388/??? ???  
?????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???,  
??? ?????? ?? ??? ?????? ?????? ?????? – ??? ?????? ?????? ??? ??????????????  
?????: ?????????? ?????????? ??? (?? ????. ???.. 09/001, ?, 49), ?? ?????? ??? ???  
??? ?????????? ??? ?????? ???.

2 ? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?. Dankowski ??? ???  
Dyrektor Izby Skarbowej w Łodzi (????????? ??? ?????????? ?????????????? ??? ??? 6d?)  
?????? ?? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????????? ???  
(??? ????: ???).

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3      ??? ? ???? 2 ??? ??? ??????:

«????? ??? ?????????????? ??? ????? ??????????:

1.    ?? ?????????? ?????? ??? ???? ?????? ??????????, ??? ?????????????????? ??  
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?, ??? ?????? ??? ??  
????????? ??? ???.

[...]»

4    ?? ????? 4 ??? ?????? ?????? ??? ????:

«1.    ?????????? ?? “????????????? ??? ???” ?????????? ???, ??? ?????? ??????????  
?? ? ? ?????????? ???, ??? ??? ??? ?????????? ?????????????? ??? ??????????  
???? ?????? 2, ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ???  
????????????? ???.

2.    ?????????? ??????????????, ??? ??? ?????? ??? ?????????? 1, ??? ?????? ??? ??  
????????????? ??? ??????????, ??? ?????? ? ??? ?????????? ??????????,  
????????????? ??? ??? ?????????????? ??????????, ??? ?????????? ??????????????  
????? ??? ??? ?????????????? ??? ?????????? ?????????? ??? ?????????????? ???  
????? [...]

[...]».

5    ?? ????? 17 ??? ????? ?????? ??? ????:

«1.    ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ? ??????????  
????? ?????? ??????.

2.    ??? ? ???? ??? ???? ? ? ?????? ?????????????? ??? ??? ??  
????????????? ??? ?????????????? ??? ?????????? ???, ? ?????????????? ??? ??? ?????????????? ??  
????????? ??? ??? ???, ??? ??? ?????? ?????????? ??????:

?)    ??? ?????????? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ???  
?? ? ???? ??? ??? ?????????? ? ?????????? ?? ??? ?????? ??? ?????? ??? ??? ??? ??????????  
?? ??? ?????????? ? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? -

[...]

6.    ?? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
??????, ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ???????, ??  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ??????. ??????????  
?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ??????  
????????? ?????? ?????????? ???, ??? ?? ?????? ?????????? ???, ?????????? ??? ??????

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

[...]»

6 ?? ????? 18, ?????????? 1, ??????? ??, ??? ????? ?????? ??????????:  
«??? ?? ??? ???? ?????????? ?????????? ??? ?????????? ????? ???????, ? ?????????????? ???  
????? ??????:

?) ??? ??? ?????????? ??? ??? 17, ?????????? 2, ?????????? ??, ???????, ?? ????????  
??????????, ?? ?????? ??? ?????? ??? ?? ????? 22, ?????????? 3 [...]»

7 ??? ?? ??? 22, ?????????? 1, ??? ?? ??? ??????:

«?) ??? ?????????? ??? ??? ?????? ?? ??????? ??? ???????, ?? ?????????? ??? ???  
????? ??? ?????????????? ??? ?? ?????????? ??? ?????. [...]»

[...]

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

- ??? ?????????? ??? ??? [...]? ??? ?????????? ??? ?????????? ??? ??????? ??? ?????  
?????? ? ?????? ?????????? ??? ??? ?????????? ?????????? ??? ???????, ??? ???  
????????? ?????? ? ??? ?????? ?????? ?????????? ? ?????? ??? ?????? ?????????? ??? ???  
????? ??? ??? ?????????? [...].»

8 ?? ????? 22, ?????????? 3, ??? ????? ?????? ??? ?? ????:

«?) ??? ?????????? ??? ??? ?????? ?? ?????????? ??? ??????? ?????????? [...], ??  
[...] ??? ?????? ??????????, ??? ?????? ?????????????? ??? ?????? ?????? ?????????? ??? ???  
[...].»

?) ?? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??????  
????? ?? ?????????? ?????????? ??? ?????????????? ??? ?????? ?????? ??? ??????  
????????????? ?????? ??? ?????? ?? ?????????? ??? ?????????? ???' ?????????? ???  
????????? ??? ?????????? ?? [...]:

- ? ?????????? ?????? ??? ??????????,

- ?????????????? ?????? [...],

- ? ?????? ?????????? ??? ?????? ???, ??? ?????????? ??? ?????????? 1, ?????????? ?,  
????? ??? ?????? ? ?????????? ??? ?????? ?????????? [...]? ??? ?????? ??? ??????????,

- ? ?????? ?????????? ??? ?????? ??? ??? ??????, ??? ?????????? ??? ?????????? 1,  
????????? ?, ??? ?????? ??? ?????? ?????????????? [...]? ??? ?????? ??? ?????????? [...],

- ? ?????? ?????? ??? ???? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????????  
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- ? ?????????? ??? ??? [...] ??? ?????????? ??????????,  
- ? ?????????? ??? ??? ????? ?????????????? ? ?????????? [...] ? ??????  
????????? [...],

[...]».

9 ?? ????? 22, ?????????? 8, ??? ????? ??????? ??? ???????? ?? ???:

«?? ????? ??? ????? ??? ?????? ?? ?????????? ??? ?????? ?????????????? ??? ???????  
????????? ??? ?? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ??? ?????? ???  
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? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?? ?????????????? ??? ???  
????????? ?????? ?????????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? 3.»

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

10 ?? ????? 96 ??? ????? ??? ?????????? ?????? ??? ?????????? (ustawa o podatku od  
towarów i us?ug), ??? 11?? ?????? 2004, ?? ??? ?????????? ??? ?????????? ??????????  
??? ?????????? ??? ?????? ???, ?????????? ??? ?? ?????????????? ??????????, ??? ???  
??? ?????? ??? ?????? ?????????? ??? ?????????????? ???, ?? ?????????? ??? ??????????  
????????? ??? ?????? ??? ?????????? ??? ?????????? ???.

11 ?? ????? 88, ?????????? 3a, ?????? 1, ??????? a), ??? ?? ??? ????? ?????? ?????????? ???  
?? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ??? ??? ??????????  
????????? ??? ?????????? ??? ?????? ??? ?? ??? ??? ?????????? ?????? ?????? ?????? ???,  
????? ? ?????? ?????????????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?? ???  
????????? ? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ??? ?? ???  
????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ???.

12 ?? ?????????? ?????????????? ?????????? ??? ?????????? ??? ?????? ???, ??? ??????  
????????? ?? ?????????? ??????????, ?????????? ??? ?? ?????????????? ??????????????, ??  
????????? ?????????? ??? ??, ?? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ?? ???,  
????????? ?????????? ?? ??? ?????? «????????? ???».

13 ?? ????? 48, ?????????? 4, ?????? 1, ??????? a), ??? ?????????? ???  
????????? ??? ??????? ???, ?? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ??????????  
????????????? ?? ?????????? ?? ?????? ??? ?????? ?????? ??? ?? ?????? ?????????? ??? ??  
????????????? ??? ?? ?????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ?????????? ?????? ??? ?? ??? ?????? ?????? ??? ??????????  
????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

14 ?? . Dankowski, ?????????? ??? ??? ???, ?????? ??? ?????????? Dan?Trak.  
?????? 2004 ?? 2006, ? M. P?acek, ?????????? ??? ?????????????? Artem-Studio, ??  
?????? ?????????? ?????????? ?????????? ?????????? . ? M. P?acek ??? ??????????  
?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
?????? ??? ???, ?????????? ??? ?????? ?????????? ?? ?????? ?????????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

15 ?? ?????? ??? 23?? ?????? 2007, ? Dyrektor Izby Skarbowej w ?ód?, ??  
????????????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ??? . Dankowski ??

? ?????? ? ??????? ?? ? ?????, ? ?????? ?????????????? ?? ? ?????? ?? ??.  
P?acek ???????.

16 ???? ?????????????? ??? ?????? ??? ?????????? ???, ?????????????? ??? ? ?????? ????  
????????? ?????????? ??? ???? ?????? ?? ?????????? ??? ???? ???, ??? ???? ??  
????????? ??? ???? ?????????? ?????? ??? ???? ?????????? ?? ?????????? ??? ???? ??  
????????? ??? ???? ?????? ??? ???? ?????????? ?????? ?????????? ??? ???? ??  
????????? ??? ???? ?????? ??? ???? ??.

17 ?????, ? ?. Dankowski ?????? ?????? ??? Wojewódzki S?d Administracyjny w ?odzi  
(????????? ?????????? ??? ?ód?) ?????? ??? ???? ?????????? ????. ??? ??????  
??? ?????????? ???, ? ?. Dankowski ?????????? ???, ?????? ???, ??? ? ?????? ????  
????????????? ?? ?????????? ??? ???? ?????? ?????? ?????? ?????? ??? ??  
????????????? ?????? ??? ?????? ?, ??? ???? ??? ?????? ?? ?????? ?????? ??? ???? ??  
????????? ??? ???? ??????.

18 ?? ?????? ?? 4?? ?????????? 2007, ?? Wojewódzki S?d Administracyjny w ?odzi  
????????? ??? ??????.

19 ?? ??? ?????? ??? ?????????? ??? Naczelnego S?d Administracyjnego, ? ?.  
Dankowski ???????, ?????? ???, ?? ?? ?????? ??? ?????????? ??? ?????????? ???  
????????? ?????????? ??? ?????? ??? ?????? ??? ?????, ?????? ??? ??????????  
????????? ??? ?????? 17, ?????????? 6, ??? ?????? ??????.

20 ??? ??? ??????? ????, ?? Naczelnego S?d Administracyjnego ?????????? ?? ??????????  
?? ?????? ??? ?????????? ?? ?????? ?????????? ?????????? ??????????:

«1) ?????????? ?? ?????? ??? ?????????? [??] ??? ?????????? ?? ?????????? ???  
?????? 17, ?????????? 6, ??? ?????? ?????? [...], ?????? ?????????? ?????? ??????  
?????? ?????? ??? ?????? ? ?????????????? ??? ?????????? ?? ?????????? ??? ???  
?????? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ???  
????????? ??? ?????? ??? ??? ??? ???? ??????;»

2) ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????

?) ??? ?????????????? ??? ???? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ??????????  
?? ??? ??? ?????? ?????? ??????;

?) ?? ?????????? ??? ?????? ??? ???? ?????? ??? ?????????? ??? ?????? ?? ?? ??????????  
?????;

?) ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ??? ???? ??????  
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????  
??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????  
??? ?????? ??? ?????? ??? ??????;»

3) ?????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????  
(????????????? ??? ???? ??? ???? ?????? ??? ?????? ??? ?????? ??? ??????????);»

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

21 ?? ??? ??? ?????????? ????, ?? ?????? ?????? ?? ?????????? ??? ??????, ??  
????? ?????????? ????, ???' ??????, ?? ?????????? ??, ??? ??? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 18, ?????????? 1,

????????? ??, ??? 22, ?????????? 3, ??????? ??, ??? ????? ???????, ?????????????? ???  
???? ??? ?????? ?????? ?????????? ??? ?????? ???, ??? ??? ?????????? ??? ??????????  
????????????? ??? ?????? ?????? ?????????? ??? ?????, ? ?????? ??? ????? ?????????? ??  
????????? ??? ??? ???, ?? ?????????? ?????????, ?? ?? ??? 17, ?????????? 6, ???  
????? ?????? ?????? ?????????? ?????? ?????????? ?????? ??? ?????????? ?? ??????????  
????????? ??? ?? ?????????? ?????? ?????????? ??? ?????????? ?? ?????????????? ??  
????????? ??? ???.

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

22 ??? ????????????, ?????? ?? ?????????? ??? ?? ?????????????? ??? ??? 17,  
????????? 2, ??? ??? ?????? ?????? ?????????? ?????????? ?????????? ?????????????? ???  
????????? ??? ??? ??? ?????, ???????, ?? ?????????? (?. ?????????? ?? 8?  
????????? 2002, C?409/99, Metropol ??? Stadler, ?????? 2002, ?. I?81, ????? 42, ????? ??  
??? 26?? ??? 2005, Kretztechnik, C?465/03, ?????? 2000, ?. I?4357, ????? 33).

23 ?? ??????? ?????????? ??????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
?????? ??? ??? ?????? (?. ?????????? ?? 13?? ?????? 2008, C?437/06, Securenta,  
?????? 2008, ?. I?1597, ????? 24, ??? 4?? ?????? 2009, C?102/08, SALIX Grundstücks-  
Vermietungsgesellschaft, ?????? 2009, ?. I?4629, ????? 70, ??? ?? 29?? ?????????? 2009,  
C?29/08, SKF, ?????? 2009, ?. I?10413, ????? 55).

24 ??? ????????????, ?? ?????? ??? ?????????? ?????? ?? ?????????? ?????? ???  
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2004, C?137/02, Faxworld, ?????? 2004, ?. I?5547, ????? 37, ??? SKF, ??????????????,  
????? 56).

25 ??? ??? ?? ?????? ??? ?????? ??? ?????? ???, ?????????????? ??? ?? ?? ??????????  
????????? ?????????????? ??? ?????????????? ??? ?????????? ??? ?????????? ?? ??????????????  
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26 ???????, ?????????? ?? ?????????? ?????????????? ??????? ?? ?? ?????? ???  
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27 ?? ??? ??? ?????? ?????? ??? ?????????? ?????? ?????????? ?? ?????? 18, ?????????? 1,  
????????? ?, ??? ?????? ?????? ?????? ??? ? ?????????? ??? ?????? ??? ?????? ??  
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28 ? ?????????? ??? ?????? ?????????? ??? ?????????? ?? ??? ?????????? ?? ??? ??????????  
?? ??????????????, ??????????????, ??? ??? ?????? ?????? ??? ???, ??? ?????????? ?? ???  
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29 ??? ??? ?? ?????? ??? ?????????? ??? ??? ?????? ?????? ?????? ??? ?????? 22, ?????????? 3,  
????????? ?, ??? ?????? ??????, ?? ?????? ?????? ?????????? ??? ?????????? ??? ??

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30    ??????? ? ?? ??? ?????? ??????? ?????????? ??? ?????? ??? «?????? ??????????????

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????????? 3, ??????? ?, ?????? ???????, ??? ?????? ???????.

31    ????????, ? ?? ??? ?????? ?????? ?????????, ??? ?????????? ?? ??????

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32    ????????????, ?? ??? 22, ?????????? 1, ??? ?????? ?????? ?????????? ?????????? ??? ???

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33    ??????, ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???

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34    ????????????, ?? ??? 22, ?????????? 1, ??? ?????? ?????? ?????????? ?????????? ??? ??

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??? ??? ??? ?????? ??? ?????????? ?????? (??, ?????????? ??? 21?? ?????? 2000, C-

110/98 ??? C-147/98, Gabalfrisa ?.??., ?????? 2000. ?. I?1577, ????? 51, ??? ??? 21??

????????? 2010, C?385/09, Nidera Handelscompagnie, ??? ??? ??? ?????????? ??? ??? ???

??????, ??? 48).

35    ??????, ??? ? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??

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

????????? ??? (??, ?????? ??? 8?? ?????? 2008, C?95/07 ??? C?96/07, Ecotrade,

????? 2008, ?. I?3457, ????? 64, ????? ??? 30?? ?????? 2010, C?392/09,

Uszodaépít?, ??? ??? ??? ?????????? ??? ?????? ??? ???????, ??? 40).

36    ???????, ? ??? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ???

????? 22, ?????????? 1, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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?? ??? ??????.

37    ?? ??? ?????? ??? ??? ?? ?????? 22, ?????????? 7 ??? 8, ??? ??? ?????? ???, ???

?? ?? ?????? ?? ?????? ??????????? ?? ??????? ?????? ?? ???? ??????????? ?? ?? ??????????? ?? ?? ??????????? ??  
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?? ??????? ?? ???? ??????? ?? ?????? ?????? ?? ?????? ?? ??????? ?? ?????? ?? ???? 18??  
?????????? 1997, C-286/94, C-340/95, C-401/95 ?? C-47/96, Molenheide ?.?.?, ??????? 1997,  
. I?7281, ??? 47, Gabalfrisa ?.?.., ???????????????, ??? 52, ??? ??? Ecotrade,  
??????????, ??? 65 ??? 66).

38     ?? ???? ?????? ??????? ?? ???? 18, ??????????? 1, ??????????? ??, ???  
22, ??????????? 3, ????????? ??, ??? ????? ?????? ?????? ?? ??????? ?? ??????????? ??  
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39     ???????, ?????? ? ?????????? ?? ?????? ???????, ??????? ?? ??????  
???????, ??????????? ???????, ?? ?????? ??????????? ??????????? ?? ?? ??? 17,  
?????????? 6, ??? ?????? ??????? ?? ?????? ?? ?????? ?? ?????? ??????????? ?????? ???????????  
???????, ? ?????? ??????????? ?? ?????? ??????????? ?? ?????? ?? ?????? ?????? ?????? ??????????? ??  
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40     ???????, ?????? ?? ??????????? ?? ???? ?????? ?????? ?????? ??????????? ?????? ???????????????,  
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?? ? ?????????? ??????? ?? ?????? ?????? ??????????? ?? ?????? ?? ?????? ?????? (?)?. ??????????  
?? 11?? ??????????? 2008, C?371/07, Danfoss ?? AstraZeneca, ??????? 2008, ?. I?9549,  
????? 28, ??? ?? ?? ?? ?? 15?? ??????? 2010, C?538/08 ?? C?33/09, X Holding ?? Oracle  
Nederland, ??? ?? ??? ?????? ??????????? ?? ?????? ?? ???????, ??? 38).

41      ????? ?????? ?? ??????????? ??? ?????????? ??????, ?? ?????????? ?????? ??? ?  
????????? ??? ????? ?????? ??? ?????? ??? ?? ?????? 17, ?????????? 6, ??? ?????? ??????  
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? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ??? ?? ??????  
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??? ?????????? ?? ?????????? ?????????? (??.. ?????????? ??? 5?? ?????????? 1999, C?305/97,  
Royscot ?.., ??????? 1999, ?. I?6671, ??????? 22 ?? 24, ?? 14?? ??????? 2005, C?434/03,  
Charles ??? Charles-Tijmens, ??????? 2005, ?. I?7037, ??????? 33 ?? 35, ?????? ??? ?? 30??  
?????????? 2010, C?395/09, Oasis East, ??? ?? ?????????????? ?????? ??? ???????,  
????? 23).

42      ???????, ?????? ?????????? ??? ?????????? ?? ?????? ?????????? ?????????? ??? ??  
????? ??? ?????????? ??? ?????? ??? ??, ?????? ?? ?????????? ?????????? (??.  
????????? ??? 22?? ?????????? 2008, C?414/07, Magoora, ??????? 2008, ?. I?10921, ???  
28, ??? Oasis East, ???????????, ?????? 24).

43      ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ?? ?????????? ?????????? ???  
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????????? ??? ?????? ??? 1? ?????? 2004. ???????, ? ?????????? ??? ?????? ??? ?????? ???  
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????? (?????? Oasis East, ???????????, ?????? 25).

44      ??? ?? ?????????? ? ??????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ???  
????????? ??? ?????? 17, ?????????? 6, ??? ?????? ?????? ??? ?? ??????????????  
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45      ???????, ? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ?????????? ??? ??,  
? ?????? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? 17, ?????????? 6, ??? ??  
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46      ???????????, ?? ?????????? ??? ?????????? ?????? ?????????? ??? ?? ?????? ??? ?????? ???  
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(????????? ??? 23?? ??????? 2009, C-74/08, PARAT Automotive Cabrio, ??????? 2009, ?.  
I?3459, ??????? 28 ?? 29, ?????? ??? Oasis East, ???????????, ?????? 30).

47      ??? ?? ?????? ??? ?????????? ?????? ?????????? ??? ?? ?????? 17, ?????????? 6, ???  
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ???  
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48      ?????????? ??? ? ??????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ???  
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? ??????????? ?? ???????? ?? ???? ???? ?????????? ??????. ?? ?????? ??? ?????? ?????? ???????????  
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?? ???? ?????? ??????, ?? ?????????? (????? ????) ??????????:

1) ?? ?????? 18, ?????????? 1, ??????? ??, ??? 22, ?????????? 3, ??????? ??, ???  
????? ??????? 77/388/?? ?? ????????, ??? 17?? ??? 1977, ??? ???????????  
??? ?????????? ??? ?????? ????, ??? ??????? ?? ??? ?????? ?????? ??????? -  
????? ?????? ??? ?????? ?????????????? ?????: ?????????? ?????????? ????, ???  
????????????? ?? ??? ?????? 2006/18/?? ??? ????????, ??? 14?? ??????????  
2006, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ????  
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????????????? ??? ?????? ?? ?????? ?????? ?? ?? ??? ?????? 22, ?????????? 3,  
????????? ??, ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???  
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2) ?? ?????? 17, ?????????? 6, ??? ?????? ?????? 77/388, ??? ?????? ???????????  
?? ??? ?????? 2000/18, ??? ?????? ?????? ?????? ?????????? ?????? ?????????? ??????????  
? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ?????? ?????????????? ?????? ?  
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