

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

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

??? 20?? ?????????? 2017 (*)

«????????????? ?????????? – ?????????? – ????? ?????????????? ????? – ?????? 2006/112/?? –
????? 90, ?????????? 1 – ?????? ??? ?????????? ??? ?? ?????????????? ??? ?????????????? ??
????? ??? – ?????? ??? ????? ?????????? ??? ????? – ?????? ??? ?????????????? ??? ???
?????? ??? 24?? ?????????? 1996, Elida Gibbs (C?317/94, EU:C:1996:400) – ??????????
?????????? ??? ?????????? ?????? ?????????? ?????»

???? ?????? C?462/16,

? ? ?????????? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ???
?????? ?? Bundesfinanzhof (????????????? ?????????? ??????????, ?????????) ?? ??????
??? 22?? ??????? 2016, ? ?????? ??????? ??? ?????????? ??? 17 ??????? 2016, ???
???????? ??? ???

Finanzamt Bingen?Alzey

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Boehringer Ingelheim Pharma GmbH & Co. KG,

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

????????? ??? ??? J. L. da Cruz Vilaça, ??????? ????????, E. Levits, A. Borg Barthet
(?????????), M. Berger ??? F. Biltgen, ????????,

????????? ??????????: E. Tanchev

?????????: A. Calot Escobar

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

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

– ? Boehringer Ingelheim Pharma GmbH & Co. KG, ?????????????? ??? ??? A. Funke,
Steuerberater, ??? H.?H. von Cölln, Rechtsanwalt,

– ? ?????????? ????????, ?????????????? ??? ??? T. Henze ??? R. Kanitz,

– ? ?????????? ??? ??????? ??????????, ?????????????? ??? ??? D. Robertson,
????????????? ??? ??? P. Mantle, barrister,

– ? ?????????? ????????, ?????????????? ??? ??? B.?R. Killmann ??? R. Lyal,

???? ?????? ??? ?????? ?????????? ??? ??????? ??? ?????????? ??? ??? ??? ?? ??????????
??? 11?? ??????? 2017,

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

????????

1 ? ??????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 90, ?????????? 1,
??? ?????? 2006/112/?? ??? ??????????, ??? 28? ?????? 2006, ?????? ?? ????
????? ?????? ?????? ?????????? ?????? (?? 2006, L 347, ?. 1, ??? ?????: ?????? ???).

2 ? ?????? ??? ??????????? ??? ?????? ??????? ??????? ?????? ??? Finanzamt
Bingen?Alzey (?????????? ??? Bringen?Alzey, ???????) (??? ????: ??????????? ????)
??? ??? ??????????? ??? Boehringer Ingelheim Pharma GmbH & Co. KG, ???
????? ??? ??????? ??? ??????????? ??? ?????? ?????? ?????? ?????????????? ??? (???)
??? ?? ??????????? ??? 2011.

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

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

3 ????? ?? ?????? 73 ??? ??????? ???;

«???? ??? ??????????? ?????? ??? ??? ?????? ??????????, ?????? ?????? ??? ?????????????? ???
????? 74 ??? 77, ? ??? ?????????? ??? ?????? ?????????????? ?????????? ?????????? ???
???????????, ??? ?????? ?????? ?????????????? ?? ?????? ??? ??? ?????? ?????? ?????? ? ?????????????? ?
? ?????? ??? ?????????? ??? ??? ??????????, ??? ?????? ??? ?????? ????????,
????????????????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ??? ?????? ??? ?????? ????.»

4 ?? ?????? 78 ??? ? ? ????? ??????? ????????

«????????????????? ??? ?????? ?????????????????? ?? ??????????;

?) ?? ?????. ????????????. ?????????? ??? ??????. ?? ?????????? ??? ???

[...]
»

5 ?? ?????? 79 ??? ????? ??????? ?????????? ????????????

«????????????????????? ??? ??? ????? ??????? ??? ????? ?? ??????»

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

?) ?? ?????????? ?? ???? ??????? ?? ??????????, ??? ?????????? ?? ???? ?????????? ? ??
????? ?? ???? ?? ?????? ?????????????????? ?? ???? ???????

6 ????? ?? ?????? 90 ??? ??????? ?????:

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

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

2. ?? ?????????? ?????? ? ??????? ?? ?????????? ??? ??????, ?? ?????? ??? ?????? ??
????????????? ??? ?? ??????? ??? ?????????? 1.»

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

7 ?? ?????? 10, ?????????? 1, ??? Umsatzsteuergesetz (????? ??? ?????? ?????? ??????
?????????), ??? ?????????? ??? 21 ?????????? 2005 (*BGBI.* 2005 I, ? 386), ?????? ??
????:

8 ?? ?????? 17, ??????????? 1, ??? ?????????? ?????? ??? ?????? ?????? ?????? ????????,
?? ?????? «????????? ??? ?????? ?????????? ??? ??????», ?????? ?? ???:

«?? ?????????? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???
????, ??? ???? ?????? ??? ?????? 1, ?????????? 1, ?????? 1, ? ?????????????? ???
????????? ??? ?????? ?????? ?? ?????????? ?? ?????? ??? ?????????? ??? ??? ?? ???
????? ????. [...]»

9 ????? ?????? ??? ?????? ?????????? ?????? ??? ?? ?????????? ?????? ?????? ??????????
??????, ?? ????? 2 ??? Fünftes Buch Sozialgesetzbuch (?????? ?????? ??? ??????
????????? ??????????), ??? ?????? ??? 22 ?????????? 2010 (BGBI. 2010 I, ? 2309, ???
???: SGB V), ???????? ?? ???:

«1. ?????????????????????? ?????? ?????????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?????????????? ??? ?????????? ??? ?????????? III ?????? ?????????? ??? ?????? ???
????????? ?????????????????? ?????????????? (????? 12), ??? ?????? ??? ? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ??????????????. ??? ?????????????? ?? ?????????? ??????????, ??
????????? ??? ?? ?????????? ?????? ?????? ?????????? ??????????. ? ?????????? ??? ?
????????????????? ??? ?????? ?????? ?????? ?? ?????????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ??? ? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ???

2. ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????, ??? ???
????????? ??? ?????????? ??? ?????????????? ??? ?????? ?????? ?????? V ? ??? ?????? IX. ??????
?????????, ?? ??????? ??????? ??????? ?? ?????????????? ??? ?? ?????? ?????? ??????????? ??
“?????????? ?????????? ?????????? ??????????????”? ?? ?????????? ??? ?????? 17, ?????????? 2 ???
4, ??? ?????? IX ?? ?????????? ?? ??? ?????? ?????? ??? ?????????? ??? ?????? ???
?????????????, ????? ??? ??? ??? ?????? 159 ??? ?????? IX, ????? ??????. ? ??????
??? ??????? ?? ?????? ??? ??? ?????? ?????????? ?????????? ?? ?????????? ?????????? ??????
????? ?????????? ?? ?????? ?????????? ?????????? ?? ??? ?????? ?????????? ?????????? ???
????????? ??? ?????????? IV.»

10 ????. ?? ???? 130a, ?????????? 1, ??? SGB V:

11 ????? ?????? ????? ??????????????? ?? ?????????? ?????? ??????????? ???????, ?? ??????
192 ??? Versicherungsvertragsgesetz (????? ??? ??????????????? ??????????), ???? ????? ???
23 ?????????? 2007 (*BGBI.* 2007 ?, ?, 2631), ?? ????? «????? ??????????? ?????? ???
?????????», ?????????? ?? ????:

«(1) ?????????????? ??? ?????????? ??????????, ? ?????????? ????????????, ?????? ???
 ?????????????? ???, ?? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ???
 ?????? ??? ?????????? ? ??????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????????????,
 ?????????????????? ??? ??????? ??? ?????????? ??? ?????????????? ?? ??? ?????????????? ??? ??? ??????
 ?????? ??? ??? ?????? ??? ?????????????? ?????????????????? ?????????? ?????????? ???
 ?????????????? ??? ?????????????? ?? ??? ?????? ???.

[...]»

12 ????? ?????? ?? ??????? ??? ?????????????? ?????????? ??? ?????????? ?????????? ??? ?????
???? ?????? ??? ?????????? ??????????, ?? ????? 80 ??? Bundesbeamtengesetz (????????????
????? ??? ?????????????? ??????????), ??? ?????? ??? 14 ?????????? 2011 (*BGBI.* 2011 ?,
. 2219), ?? ????? «???????? ?? ?????????? ??????????, ???????? ?????????? ???
?????????», ?????? ?? ???:

«(1) ??????????? ??? ??????

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

[...]

(2) ?????????? ?????, ???' ?????, ????? ?? ?????????? ??? ?????? ??? ??????????

1. ?? ?????????? ?????????? ??? ?????????? ??????????

[...]

(3) ?? ??????? ??????????? ?? ?? ????? ??????????? ?? 50 % ??????????? ??
?????????? ?? ??????.

[...] »

13 ????. ?? .????? 1 ??? Gesetz über Rabatte für Arzneimittel (?????. ????. ???????????. ????. ???????????. ????. ???????????. ????. ???????????. ????. ???????????. 22 ???????????. 2010 (BGBI. 2010 ?, ?, 2262):

«?? ?????????????? ?? ?????????? ?? ?????????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??

???????????? ???? [????????????? ??? ?????????????? ??? ?????????? ??? ?????? ???]
??? ?????????? ??? ?????????? ?????], ??? ?????????????? ??? ?????? ??????????????
????? ?????????? ??? ??????? ?? ?????? ??? ??? ?????????????????? ??????, ??? ??
????? ??? ?? ??????????, ??????? ?? ?????????? ??? ??????????????, ??? ?? ??? ?????? ??
????? ??? ?????????? ??? ?????? 130a, ?????????? 1, 1a, 2, 3, 3a ??? 3b ??? SGB V. [...]»

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

14 ? Boehringer Ingelheim Pharma ?????????????? ?????????????? ?????????? ?? ??
?????????, ?? ??????? ?????????????? ???????????, ?? ??????? ?? ??????????????.

15 ?????? ??????? ?? (?????????) ??????? ?????????????? ?????????????? ????????, ?? ??????????
????????????? ?? ?????????????? ??????? ?????? ?????????????? ?????? ?????????????? ?????? ??????????????????
??? ?????? ??????? ?? ??? ?????? ?????? ?????????????? ??????? ?????? ?????????? ?????? ?????????? ??????. ??
????????????? ?????? ?????????????? ??? ?????? ?????????????? ???????, ?? ?????? ??
????????? ?????? ?????????????? ????. ?? ?????????? ?????????? ??? ?????? ?????????? ??????????????
????? ?????? ??? ?????? ?????? ??? ?????????????? ???????????. ? Boehringer Ingelheim
Pharma, ?? ????????????, ???????, ????????????, ?? ?????????? ??? ?????????? ??? ?????? ??? ??
????????? ? ?????? ????????????, ??????? ?????????? ??? ???????????. ??? ?????? ??????????
????????? ??? ???, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ??????????.

16 ????? ??????, ??????????, ?? ?????????????? ?????????? ??? ?????????????? ??? ??????????
?????? ?????????? ??????, ?? ?????????? ?????????? ?? ?????????? ??? ?????????? ?????? ???
?????? ??? ?????? ?????? ?????????? ??????????. ?? ?????????? ?????? ?????????? ?????? ???
????????? ?? ?????????????? ??????????, ??? ?????? ?????????????? ?????? ?????????????? ???,
????? ?? ????????, ?? ?????? ??? ?????? ?????? ?????? ??????????????. ??? ?????????? ???, ?
Boehringer Ingelheim Pharma ?????????? ?? ?????? ??? ?????????? ?????? ?????????? ??????
?????? ??????? ??? ??? ?????? ??? ?????????????? ??????????. ? ?????????? ??? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
???

17 ?? 2012, ? Boehringer Ingelheim Pharma ??????? ??????? ??????? ??? ?? ?? ???????????
???? 2011, ????????????, ?????? ????, ??? ??????????? ??????? ??? ?? ?? ??????
?????? ??????? ?? ?? ???.

18 ?? ?? ?????? ????, ? Boehringer Ingelheim Pharma ????????, ??? ?? ?????? ??
????????? ?????????????? ?????????? ??? ?????????????? ??? ?????????????????? ?? ??????????
????????????? ?????? ??????, ?? ???? ?????????? ??? ?????? ?????????????? ??? ?????????????? ??
????? ?? ?????????? ? ???.

19 ? ?????????? ??? ?????? ??? ?? ?????????????? ?????? ??? ?????? ?????? ?????? ???
????? ??? Boehringer Ingelheim Pharma ??? ?????? ??? ?????????? ??? ??????????
????????? ????. ???????, ?? ?? ??????, ??? ??? ??? ??? ??? ??? ?????????? ???
??? ??? ??? ??????? ??? ?????????? ??? ??????.

20 ? Boehringer Ingelheim Pharma ??????? ?????????? ??? ?? ?????????? ??? ?????????????
?????, ??????? ??? Finanzgericht Rheinland-Pfalz (????????????? ?????????????? ??? ??????-
?????????????, ???????), ??? ?????? ??? ?????????? ??? ?????????? ?????? ??????????.

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

???

22 ?? Finanzgericht Rheinland-Pfalz (?????????? ?????????? ??? ??????? ????.
?????? ??? ???????? ??? Boehringer Ingelheim Pharma, ?????????????? ??? ?? ?????? ??
????? ? ???????? ??? ?????? ?????? ?????? ? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????? ?????? ?????????? ??? ?? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ???
????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

23 ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? Finanzgericht
Rheinland-Pfalz (?????????? ?????????? ??? ?????????-?????????) ??????? ??
Bundesfinanzhof (????????????? ?????????? ??????????, ??????????).

24 ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????????????? ?????????? ?
??????, ??????? ??? ?????????? ?????????? ?? ??? ?????? ??????????, ??? ?????????? ??
????? ?????? ??? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ??
?????? ???????, ? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ???????,
????? ?? ?????????? ??? ???????????, ?? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? (??.
??? ??? ?????? ???, ?????????? ??? 24?? ?????????? 1996, Elida Gibbs, C?317/94,
EU:C:1996:400, ?????? 28 ?? 31, ?????? ??? 16?? ?????????? 2014, Ibero Tours,
C?300/12, EU:C:2014:8, ????? 29).

25 ?? ?????? ?????????? ?????????? ??? ?? ?????????? ???????, ??????, ?? ??????
??? ?????? ??????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????????? ???????,
????????? ?? ???????, ??????? ??? ?????? ?????? ??????????, ?? ??? ??? ?? ?????????? ???
?? ??? ??? ???????????, ??????? ??? ?????? ??? ?????? ?????? ?????? ??? ??? ?????? ??????????
????? ? ?????????? ?????? (?????? ??? 16?? ?????????? 2014, Ibero Tours,
C?300/12, EU:C:2014:8, ????? 33). ?? ??????? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ?? ?????????? ??????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???.

26 ??? ?? ?????? ??????????, ? ?????????? ??? ?????????? ?????? ?? ?????????? ??
??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ? ?????????????? ?? ?????? ?? ???
????? ??? ?????????? ?????????? ??? ?????? ?? ??? ?????? ?????????? ??? ??? ?? ??????????
??? ??? ??????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ?? ??????
????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ???????, ??
????????? ??? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?? ???
????????? ??? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? Boehringer
Ingelheim Pharma, ?????????? ??? ?? ?????????? ?????? ?????????? ?????? ??? ??????????
??? ??????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???.

27 ??????, ?? ?????? ?????????? ?????? ??? ?? ?? ?????????? ??? ?????? ?????????? ??
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??????????
??????, ??????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??????????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? 20 ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ??????????
?????. ?????????? ??? ?????????? ?????? ??? ?????? ?????? ?????????? ?????? ??? ??????????
??????, ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??????????.

28 ?? ?????? ?????????? ?????????? ???, ??? ? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??????????.

? ?????????? ??? ??????? ?????? ??? ????? ?????????????? ?????? ?? ???????????????, ???
????????? ????, ??? ??? ????? ?????????? ??? ?????? ?????????????? ?? ?????? ???
????? ???' ??????? ??????????????, ??? ?????????? ?????? ?? ?????????? ??? ??????
?????? ?????????? (????????? ??? 10?? ??????? 2008, Marks & Spencer, C?309/06,
EU:C:2008:211, ??? 49, ????? ??? 25?? ??????? 2013, ??????? ??? ??????????,
C?480/10, EU:C:2013:263, ??? 17). ?????????? ?????????? ???, ??? ?????????? ???, ?
???? ??? ??? ?????????????? ??? ?????????? ?? ??? ??? ??? ?????????? ?????????? ??????
(????????? ??? 25?? ??????? 2013, ??????? ??? ???????, C?480/10, EU:C:2013:263,
????? 18).

29 ??? ??? ??????? ????, ?? Bundesfinanzhof (????????????? ?????????? ??????????)
????????? ?? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
???? ?????????? ????:

«????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? (?????? ??? 24??
????????? 1996, Elida Gibbs, C?317/94, EU:C:1996:400, ?????? 28 ??? 31) ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????????, ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 90 ??? ?????? ???, ???:

- ??????? ?? ??????? ??? ?????? ??? ?????????? ??? ???????????????,
- ?? ?????????? ?????????? ?? ???????, ?? ??????? ?????????? ??? ???????, ??
????????????? ?? ?????????? ?????????? ?????????? ?????????? ???,
- ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ???
(????? ? ?????????? ?????? ??? ?????? ???) ?????????? ??? ?????? ?????????????? ???
??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
- ? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? «?????» ???
????????? ?????? ??? ?????? ??? ??????;»

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

30 ?? ?? ?????? ???, ?? ?????? ?????????? ??? ?????? ???' ?????? ???, ??? ?? ?????? ???
????? ??? ??????? ?? ?????????? ??? ?????? ??? 24?? ?????????? 1996, Elida Gibbs
(C?317/94, EU:C:1996:400, ?????? 28 ??? 31), ??? ?????? ??? ?????????? ??? ??????
????????? ??? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??
????? ??? ??????, ?? ?????? 90, ?????????? 1, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???, ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ?? ?????? ?????????????? ??? ?? ??? ?????? ?????? ?? ?????????????? ??
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??.

31 ??? ?? ?????? ??????? ??? ?????? ???, ??????, ??????, ?? ?????????? ???,
?????? ??? ?????? 73 ??? ??????? ???, ??? ??? ?????????? ?????? ??? ??? ??????
????????? ? ??? ?????? ??????? ??? ?????? ?????????? ?????? ?????? ??? ??????
??? ?????? ???? ? ?????????? ?? ?????? ??? ?????? ?????? ?????? ? ?????????? ?? ? ??????
??? ?????????? ??? ??? ???????, ??? ?????? ? ?????? ??????, ?????????????? ???
????????? ??? ?????? ?????? ?????? ???.

32 ????????, ?????? ?? ?????????? ?????? ??? ?? ?????? 90, ?????????? 1, ???
?????? ???, ?? ?????? ??? ?????????? ?????? ??????????, ??????????, ??????, ?????? ?
?????? ?? ?????????? ? ?????????? ??? ?????, ?????????? ??? ??? ?????????????? ???
????????, ?????????? ?? ?????? ??? ?????? ?? ?????????? ?? ??? ?????? ?????? ??? ?????, ??? ??? ???
????? ??? ??? ?????? ?????????? ??? ?????? ???, ??????, ?????? ?????? ?????? ???,
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???.
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ??? ???
? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ??? ??? ???
? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???, ?????????? ??
??? ?????? ??? ?????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??? ??? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? (?????? ??? 15?? ??? 2014,
Almos Agrárkülkereskedelmi, C?337/13, EU:C:2014:328, ??? 22 ??? ??? ?????????? ???
?????????).

33 ????, ?? ?????????? ??? ?????? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????
????????? ?? ?????? ??? ??? ?????? ??? ?????? ??? ??????????????, ??? ??? ??? ?????? ??? ??
????????? ??????, ??? ?????? ??? ?????, ?????????? ??? ?????? ?????????? ??????????,
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? (?????? ??? 24??
????????? 1996, Elida Gibbs, C?317/94, EU:C:1996:400, ??? 20).

34 ?? ????????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????, ? ??????????????
????????? ??????????, ??? ?????? ??? ?????? ??? ??????????, ?? ?????? ?????????? ???
????????? ?????? ?????? ?????????? ??? ?????, ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????, ??? ?? ??? ?????? ??? ??
?????????, ?????????? ??? ?????? ?????????? ??? ?????, ??? ?? ??? ?????? ??? ?????? ???
????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???.
????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????.

35 ????????, ??? ?????? ?????????? ???, ? Boehringer Ingelheim Pharma ??? ??
?????? ??? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?? ??? ?????? ??????. ???????, ??? ?????????? ??? ?????? ???
????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
? ?????????? ??? ?????? (??., ??? ??? ?????? ???, ?????? ??? 24?? ??? ?????? 1996,
Elida Gibbs, C?317/94, EU:C:1996:400, ??? 28).

36 ??? ????????, ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ? Boehringer Ingelheim
Pharma ?? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?? ??? ???
????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ???
????? ??? ?? ??? ?????? ???.

37 ???????, ?? ?????????? ????, ??? ????? 31 ??? ??????? ??? 24??
????????? 1996, Elida Gibbs (C?317/94, EU:C:1996:400), ??? ???? 11, ?, ?????????? 1,
??? ???? ?????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ????? ??????????????
??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ?????? ?????????? – ????
????????? ??? ????? ?????????????? ?????: ?????????? ?????????? ????? (?? ????. ????. 09/001, ?.
49, ??? ?: ??? ?????), ?? ????? ?????????? ??? ????? 90 ??? ?????? ???,
????????? ??? ????? ?????????? ??? ?????????? ?????, ?? ?????? ?????????? ?????? ????
?????? ??? ?????????????? ??? ?? ?????? ?????????? ?????? ?????????? ??????????.

38 ?????, ?????????? ??? ?????? ??? ???????, ???, ??? ?????? ????? 31 ???
????????? ????, ?? ?????????? ??? ?????????????? ??? ???? ?????? ??? ?????????? ???
?????? ??? ?????? ??? ?????????????? ???, ???????, ? ?????????? ??? ??? ?????? ??
????????? ??? ?????? ??? ?????? (??., ??? ??? ?????? ???, ?????? ??? 24??
????????? 1996, Elida Gibbs, C?317/94, EU:C:1996:400, ??? 31).

39 ???????, ??? ?????????? ??? ?? ?????????? ??? ???????????, ?? ?????? 90,
????????? 1, ??? ?????? ??? ?? ???????????, ??? ???? ?????? ?? ?????????? ? ???????
????, ?????????? ??? ?????????? ??? ?????????? ?????? ??????. ???????????, ? ??????? ???
????????? ???' ????, ?? ?????? ??? ?????? ?? ??????? ?? ??? ?????? ?????? ??? ??????, ??????,
????????? ??? ??????, ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ? ???????
???? ??? ?????? ????. ??????????, ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????? ??? 24?? ?????????? 1996, Elida Gibbs (C?317/94, EU:C:1996:400), ?????? ??
????????? ?? ?????? ?????????? ??? ?????? 11, ?, ?????????? 1, ??? ?????? ???????, ??
????????? ??? ?????? ??? ?????? 90 ??? ?????? ????. ??????????, ??? ?? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ? ?????? ?????????? ??? ??
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??????. ??????, ?? ?????????? ?????? ???
?? ?????? 11, ?, ?????????? 1, ??? ?????? ?????? ??? ?????? (??., ??? ??? ?????? ???,
?????? ??? 29?? ????? 2001, Freemans, C?86/99, EU:C:2001:291, ??? 33).

40 ???????, ?? ??????? ???, ??? ?????? ??? ?????? ??? ?????? ?????, ? ?????? ?????????? ???
????????? ??? ??????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ?????? ???
????????? ?? ??????? ?????? ??? ?????? ???????????, ??? ???? ?????? ?? ?????????? ??? ??????
????? ?? ??????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ???????????????
????????? ??? ?????? ??? ?????? ?????????????? ?????????? (??., ???' ??????, ?????? ???
27?? ?????? 2014, Le Rayon d'Or, C?151/13, EU:C:2014:185, ??? 35).

41 ???????????, ??? ??????? ? ?????? ?????? ?????????? ??? ?????? 44 ??? 45 ???
????????? ???, ?? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ?? ?????????? ?? ? ?????????? ??? ?????????? ??? ?????? ??? ??????, ??? ??
????? ?? ?????? 73 ??? ?????? ???, ??? ???? ?????? ???, ?????? ?? ?????? ??? ???????????,
????????? ??? ?? ?????????? ?????? ?????????? ?????? ??? ?????????? ??? ?? ??? ?????? ???
??????, ??????? ?? ??? ?????? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?
????????????? ???????????. ???????, ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????????? ???????????, ?? ??????? ?????? ?????? ?????????? ?????? ??? ?????? ?? ??????????
?? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ??????????
????????? ?? ???, ?????? ?? ?????? ??? ?????????? ? ?????????? ??? ?????? ??? ?????? ?? ??????
????????? ?????? ??? ?????? ??? ?????? ?????? ?????????? (??., ??? ??? ?????? ???,
?????? ??? 24?? ??????? 1996, Elida Gibbs, C?317/94, EU:C:1996:400, ??? 24).

42 ???????, ?????????? ? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ?????? ???
?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???

?????? ???? ?????? ?? ??????? ??? ?????????????? ??? ???????, ??? ???? 90, ??????????? 1, ??? ??????? ???.

43 ????????, ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ???????, ????????????,
?????????? ??? ? ??????? ??? ??????????? ??? ??????????? ??? ??? ??? ?????????? ???????????
??? ???? ??????????? ??? ?????????? ??? ?????? ?????? ?????????? ??????? ?? ????
?????????? ??? ?????? ??????????? ??? ?? ?????? ??? ?????? ?????????? ??????? ?? ????
?????????? ??? ?????? ??????. ??? ??????????? ??? ?????? 35 ??? ??????? ???????, ???
??? ??????? ????, ? ??????????? ??? ?????????? ??? ??????? ?? ??????? ??? ??????? ??? ?? ????
?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????? ??? ?????????? ??? ?????? ??? ??????
????? ?????????? (??., ??? ??? ?????? ???, ??????? ??? 19?? ??????? 2012,
International Bingo Technology, C?377/11, EU:C:2012:503, ??? 31).

44 ??????, ?? ?????????? ??? ??????, ??? ?????? 28 ??? ?????????? ??? 19?? ??????
2012, International Bingo Technology (C?377/11, EU:C:2012:503), ??? ?????? ?? ??? ??? ?????
????????? ??? ?????? ?? ??????????? ??? ?????? ?? ?????????? ???????, ???, ??? ?????? ??? ??
????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ?? ?????? ?????? ?????? ???????
????? ?? ??? ?????????? ??? ?????????? ?? ?????? ??? ?????????? ??? ??????? ??
????????? ?? ??? ?????? ??? ??????????? ??? ?????????? ? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ??????.

45 ??? ?????? ???? ??????? ? ??????? ??????????? ??? ?????? 42 ??? ?????????? ???, ???????
?? ?????????? ???????????, ??? ?? ??? ?????? ???, ??? ??????? ??? ?????? ?????????? ???
?????? 73 ??? ??????? ???, ? ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ??? ??????
??? «?????????», ??? ?????????? ??? ?????? ???, ?????? ?? ?????????? ??? ??????
?????? «?? ??????? [...] ?????? ??? ?????» ??? ?????????????? ??? ?????? 90 ??? ??
???? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?? ?????? 73 ??? ??????? ???
????????????? ?? ?????????? ??? ?????? ?????????? ??? ??????.

46 ?????? ??? ???????????, ??? ?????????? ??????? ??? ?????? ?? ?????? ? ??????? ???,
??? ?? ?????? ??? ?????? ??? ?????????? ?? ?????????? ?? ??? ?????? ??? 24?? ??????????
1996, Elida Gibbs (C?317/94, EU:C:1996:400, ?????? 28 ??? 31), ??? ?????? ???
????????? ??? ?????? ??????? ??? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ??? ???
????????? ??? ?? ??????? ??? ?????? ??? ???????, ?? ?????? 90, ?????????? 1, ??? ?????? ???
????? ??? ?????? ??? ? ??????? ??? ?????????, ?????? ?????? ???, ??? ?????????? ???
????????? ?? ??????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ??? ??? ??????? ???
????? ??????, ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??????????, ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???
??????????, ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???
??????????, ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???
??????????, ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???.

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47 ?????? ??? ? ??????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ??????????? ??? ?????? ??????? ??? ?????????? ??? ?????????? ???, ?' ????
????????? ?? ??????? ??? ?????? ?????? ??????. ?? ?????? ??? ?????? ??????????
???? ??????? ?????????? ??? ?????? ??? ???????, ??? ?????? ??? ?????? ???????, ??? ???????????.

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

? ?????? ??? ?????? ??? ??????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?? ???
?????? ??? 24?? ??????? 1996, ElidaGibbs (C?317/94, EU:C:1996:400, ?????? 28 ???
31), ??? ?????? ??? ?????????? ??? ?????? ??????? ??? ?????? ?????????? ??? ?????? ???????????
?????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ???????

??? ??????, ?? ??? 90, ?????????? 1, ??? ?????? 2006/112/?? ??? ???????????, ???
28?? ?????????? 2006, ??????? ?? ?? ????? ?????? ?????? ?????????????? ?????,
????? ??? ?????? ??? ? ??????? ??? ??????????, ?????? ??????? ??????, ???
????????????? ?????????? ?? ?????????? ?????? ?????????? ?????? ??????????????,
????? ??? ?????? ??? ?????? ??????, ?????? ??? ?????? ?????????? ??? ?????? ????
????????????? ?????? ??????????????, ???? ?? ?????????? ??????????????
????????? ?????????????? ???? ?? ??? ?????????????? ?? ?????????????? ?? ?????????? ??????
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(?????????)

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