

?????? C-446/03

Marks & Spencer plc

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David Halsey (Her Majesty's Inspector of Taxes)

[?????? ??? High Court of Justice (England & Wales), Chancery Division,

??? ??? ?????? ?????????????? ??????????]

«?????? 43 ?? ?? 48 ?? — ????? ?????????? ??????? — ?????? ??????? — ???????????
????????? — ????? ?? ??????? ??????? — ??????? ?? ?????? ??????????
????????????? ??? ?????? — ?????????? — ??????? ?? ?????? ??? ?????? ??? ?????? ???
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????????? ??? ?????? ?????????? M. Poares Maduro ??? 7?? ??????? 2005

????????? ??? ?????????? (????? ?????? ??????????) ??? 13?? ?????????? 2005

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

????????? ?????????? ??? ??????? — ?????????? ?????????????? — ?????????? ??????????
— ??? ?????????? ??? — ?????????? ?????????? — ?????? ?????????? ??
????????????? ??? ?? ?????? ??????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????
????? ??????? ?????? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? —
????????? — ???

(????? 43 ?? ?? 48 ??)

? ? ????? 43 ?? ?? 48 ?? ?? ???????????, ?? ?????? ?????? ?????????? ?? ??????????????
??????, ?? ?????????? ?????? ?????? ? ?????? ?? ?????? ?????? ?????? ?????? ?????? ???
????????????? ??? ?????? ?????? ?????? ?????? ?? ?????????? ?? ?????? ??? ?????? ??? ??
????????????? ??? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?
????????????? ??? ?????? ?????? ?????? ?????? ?????? ???, ??? ?????? ?? ?????????? ??? ?????? ???
??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

?????, ?????????? ??? ????? 43 ?? ?? 48 ?? ?? ?? ?????????? ? ?????????? ??? ??
????????????? ??? ?????? ?????? ?????? ??????, ???, ? ?????????????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????? ??
????????? ??? ?? ?????? ?????? ?????? ?????? ??? ?? ?????? ?? ?????? ?????? ?????? ??
????? ? ?????? ?????????? ?????? ??? ?? ?????? ?? ?????? ?????? ?????? ?????? ??? ??
?????, ???????, ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ?????? ??? ??
????? ?????????? ??? ?? ?????? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ??
?????, ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ??.

(???. ?????? 59 ??? ??????).

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

??? 13?? ?????????? 2005 (*)

«????? 43 ?? ?? 48 ?? – ????? ?????????? ?????? – ?????? ?????? – ?????? ?????? – ??????????
????????? – ????? ?? ?????? ?????? – ?????? ?? ?????? ??????????
????????????? ??? ?????? – ?????????? – ?????? ?? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ?????? ?????????? ?????? ?????? – ??? ??????»

????? ?????? C-446/03,

? ? ?????????? ??? ?????? ??????? ?????????? ?????? ??? ?????? 234 ??,
?? ??????? ?? High Court of Justice (England & Wales), Chancery Division (???????
????????), ?? ??????? ??? 16?? ?????? 2003, ? ?????? ??????? ??? ?????????? ???
????????? 2003, ??? ?????? ??? ??????

Marks & Spencer plc

????

David Halsey (Her Majesty's Inspector of Taxes),

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

????????? ??? ??? ?. ??????, ??????, P. Jann, C. W. A. Timmermans ??? A. Rosas,
????????? ??????, C. Gulmann (????????), A. La Pergola, J-P. Puissochet, R. Schintgen, N.
Colneric, J. Klu?ka, U. L?hmus, E. Levits ??? A. Ó Caoimh, ????????,

?????? ??????????: M. Poiares Maduro

?????????: K. Sztranc, ??????? ??????????,

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
1?? ?????????? 2005,

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

- ? Marks & Spencer plc, ?????????? ??? G. Aaronson, QC, ??? P. Farmer,
barrister,
- ? ?????????? ??? ?????? ?????????, ?????????? ??? M. Bethell,
R. Plender, QC, ??? D. Ewart, barrister,
- ? ?????????? ???????, ?????????? ??? W.-D. Plessing ??? A. Tiemann,
- ? ?????????? ???????, ?????????? ??? ?. ?????????? ??? ?. ???????????,
????? ??? ??? ??? ?. ?????? ??? ?. ???????,

– ? ?????????? ??????????, ???????????????? ??? ??? G. de Bergues ??? C. Jurgensen?Mercier,
 – ? ?????????, ?????????????? ??? ??? D. J. O'Hagan, ?????????????? ??? ??? E. Fitzsimons, SC, ??? G. Clohessy, BL,
 – ? ?????????? ??? ??? ???, ?????????????? ??? ??? H. G. Sevenster, S. Terstal ??? J. van Bakel,
 – ? ?????????? ??? ???, ?????????????? ??? ??? A. Guimaraes-Purokoski,
 – ? ?????????? ??? ???, ?????????????? ??? ??? A. Kruse,
 – la ???????? ??? ?????????? ?????????, ?????????????? ??? ??? R. Lyal,
 ????? ?????? ??? ?????????? ????????????, ?????????????? ??? ??? ?????? ?? ?????????
 ??? 7?? ????????, 2005,
 ??????? ??? ???????

???????

1 ? ?????? ?????? ?????????? ?????????????? ?????????? ??? ?????? ??? ?????? 43 ?? ??? 48 ??.
 2 ? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? Marks & Spencer plc (???: Marks & Spencer) ??? ??? ?????????? ??? ?????? ??? ?????? ??? ???????????,
 ?????? ?? ?? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????????
 ??? ?????? ??????? ? Marks & Spencer, ??????????? ?? ??????? ??? ?? ??????????? ???
 ?????? ?????????? ??? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ???????, ???
 ?????? ??? ??? ?? ?????? ?????????????? ???.

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

3 ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????
 ?????????? ??? 1988 ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????
 ?????? (Income and Corporation Tax Act 1988, ?: ICTA). ?? ?????????? ???
 ?????????? ????????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ? ?????? ??????????.

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

4 ??? ?? ??? 6, ?????????? 1, ??? 11, ?????????? 1, ??? ICTA, ? ?????? ??????????????
 ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????????????
 ?????? ????????, ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??????????
 ???????????

5 ??? ?? ??? 8, ?????????? 1, ??? ICTA, ?? ?????????? ??? ?????? ??????
 ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ????. ???
 ?? ?????? 11, ?????????? 1, ?? ?????????? ?????? ?????? ?????? ?????? ??????????
 ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ???????

6 ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ??????
 ?????????? ??? ??? ?????? ?????? ??????, ?????? ?????, ?? ?? ?????? ??? ???????

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

7 ?????????? ?????????? ????? ?????????????? ??? ?????????? ?????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????

8 ?? ??????? ???. ??????????????, ?????? ???. ?, ??? ??????????? ???. ????.

10 ??????????, ??? ?????????????????? ??? ?????????? ?????????? ?????????? ? ?????? ?????? ?????? ??????????
????????????????? ??? ?????? ?????? ?????????? ?????? ??? ?????????????? ?????????????????? ??? ?????? ???
????????? ??? ?????? ?????????????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ???
????? ?? ?????? ?????????????? ?? ?????????? ???, ?????????????, ?? ?????? ?????????
????????????????? ??? ?????? ????. ??????? ??? ?????? ?????? ?????????? ? ?????????? ??? ?????? ???
????????????? ?????????? ?????????, ? ??????? ?????????? ??? ?????????? ??? ?????????????? ??? ??? ?????? ???
??? ?????????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????? ??? ?????????? ??? ?????? ???.

11 ???' ?????????? ??? ?????? 208 ??? ICTA, ?? ?????????? ??? ?????????????? ??
????????????? ??? ??????? ??????? ??????? ??????? ??????? ??? ?????? ?????????????? ???
??? ??????? ??????? ?????? ?????? ?????????? ??? ??????????????, ?????????? ??? ?? ??????????????
??? ?????????????? ??? ?????? ?????? ??????? ??????? ??????????.

?????? ???????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? (????????????? ??????????
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12 ??? ??????? ??????????, ??? ??????? ?????????????? ?????????????? ??? ??????? ?????? ??????????
????????? ??? ?????????????? ??? ??????? ?????? ??? ?????? ??? ?????? ?? ?????????? ???
????? ??? ?????????????? ??? ??????? ??? ?????? ??? ?????? ???.

13 ?? ?????? 402 ??? |CTA ??????? ?? ????:

«1. ??? ??? ?????????? ??? ?????? ??? ?????????? ?o? ?????????? ?????????? ??? ?o? ??????
492, ?????????? 8, ? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???
????? ??? ?? ?o?o?? ?????????? ?????????? ??? ??? ??? ????? ?????????? ??? ??????

??????, ??? ?????????? ?o? ?????????? [...] ??? ?????????? 2 ??? 3, ??
????????????? ??? ??? ?????? (?o? ?????? "????????????? ??????") ??????? ??
????? ??????? ?? ??? ?????? ??????, ?????? ?????? ??? ?????? (?o? ?????? "?????
?????") ??? ?????? ??? ?????? ??? ??????, ??o ?????? ??? ?????? o? ???
??????, ? o?o? ?????? o?o? ?????? ?????? ??? ??????.

2. H ?????????? ?????????? ??? ?????? ?????????? ?????? ? ?????????? ??? ?
?????? ?????? ?????? ?????? ?????? [...]».

14 ?? ??? 403 ??? ICTA ?????? ?? ???:

«1. ?? ??? ?? ?????? ?????????? ?????????? ?????? ("????? ??? ?? ?????? ?????? ?
?????????"), ? ?????????? ?????? ?????????? :

a) ?????? ?????????? [...] ?o ??? ??? ?????? ??????, ??? ??? ?????????? ???
????????? ?o? ?????? ??????, ?? ??????????, ??? ?????? ??? ?o? ?????? ?o? ???
????????? ??????, ?? ?? ?????? ?o? ? ?????? ?????? ?????? ?????????????? ???
??? ?????????? ????.»

15 ??? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??? 1? ?????? 2000, ?? ??? 413,
????????? 5, ??? ICTA ?????????? ?? ???:

«??? ??? ?????? ???????, ? ??? "?????" ??? ?????? ?? ?????? ?????? ??? ???
????????? ??? ?????? [...]».

16 ?????? ??? ?????????? ?????????? ??? ?????????? ?????? ??? ?????????? ???
?? ?????? ??? ?????????? ??? 16? ?????? 1998, C-264/96, ICI (????? 1998, ?.-I-
4695), ?? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? 2000, ?? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ??????.

17 ?????? ??? ?????? ??? ?????????? ?????????? :

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

- ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????.

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

18 H Marks & Spencer ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? . ?????? ? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? . ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
?????????.

19 ??? ? 1975, ?????? ?? ?????????? ?? ??? ??? ?????, ?????????? ??? ?????? ???
?????. ??? ??? ??? ?????? ??? '90, ?????? ?????? ?????? ?????? ?????? ?????? ???
36 ???, ??? ?????? ??? ?????? ?????? ?????? ??? ??? ?????? ??????.

franchising.

20 ??? ????? ??? ???????? ??? '90, ?? ?????? ???????????? ??????? ????.

21 ??? ?????? ??? 2001, ? Marks & Spencer ?????????? ??? ?????? ??? ???????????????
??? ????? ?????????? ??????. ??? 31 ?????????? 2001, ? ?????????????? ??? ??????
????????? ?????????? ??? ???????, ??? ?? ?????? ?????????, ?????????????????? ???
????????????? ??? ?????? ??? ???????, ?????? ?????? ??????????????.

22 ??? ??????? ???????, ? Marks & Spencer ??????, ???' ?????????? ??? ?????? 6 ???
????????? 17 A ??? ICTA, ?? ?????? ?????????? ?????????? ??? ?????? ??? ??
?????? ??? ??????? ?? ?????????? ??? ??? ?????????????? ??? ?????, ???
????????? ??? ??? ??????? ??? ??????? ?????? ?????????? ??????? ??? ?????? ??? 31 ??????
1998, ??? 31 ?????? 1999, ??? 31 ?????? 2000 ??? ??? 31 ?????? 2001. ??? ??
????????? ??? ?????????? ?????????? ??? ??????? ??? ?? ?????????? ??? ?????? ???
????????? ??? ?? ?????? ?????? ?? ?????????? ?????????? ?? ??? ?????? ?????????? ??????
??? ?????????? ?????????? ?? ?? ??????, ?????? ?????????? ??? ?????????????? ??????, ? Marks
& Spencer ???????? ?? ??? ????? ??' ?????? ??? ??????.

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

24 ?? ?????????? ?????????? ?????????????? ?????????????? ?????????????? ?? ?? ??????????????
?? ?????????? ?????????? ??? ?????? ?????? ?????????? ?? ?????????? ??? ??
????? ??? ?????????? ??? ??????? ??????.

25 ? Marks & Spencer ???????? ??? ?????? ??? ?????? ??? Special Commissioners of
Income Tax, ??? ???????? ??? ?????? ???.

26 ? Marks & Spencer ?????? ??? ?????? ??? ?????????? ??? ?????? ??? High Court of
Justice (England & Wales), Chancery Division, ?? ?????? ?????????? ?? ?????????? ??
????????? ??? ?? ?????????? ??? ?????? ?????????? ?? ?????????? ?????????????? ??????????:

«1) ?? ?????????? ??? ???????:

- ?? ?????????? ??? ??????? ?? ??? ?????? ?????, ??? ?? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ??????????.

- ?? ?????? ??? ?????? ??? ?????? ?????????????? ?? ??????? ????

- ???????? ?? ?????? ??? ?????? ?????? ?????????? ?????????????? ??? ?????? ??? ??
????????? ??? ?????? ?????, ?????????????????? ??? ?????? ??? ?????????????? ???
????????? ?? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ??????
?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?? ?????? ??? ?????????? ???
?? ?????? ??? ??????????.

- ??? ?????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????.

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

- ?????????? ??? ??????? ??????? ??? ?????????????? ?????????? ??? ?? ?????????? ???
??? ??????????? ?? ?????????? ??? ????? ?????????????? ?? ??? ?????? ????, ??? ??
??? ?????????? ??? ?????????????? ??????? ??? ?? ?????????? ??? ?????????????? ???
?????????? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ??????????.

- ??????? ??? ??????? ??????? ??????? ??? ?????? ??? ?????? ??? ??????????????, ???
????????? ??? ?? ?????????????? ??? ?????? ?????????????? ??? ?????? ??? ?? ??? ??????????
????? ??? ?? ??????? ??? ?????????????? ?? ??? ?????? ??? ??????????????, ?? ????
????????? ??? ?????????? ??? ?? ??? ?????? ???.

????????? ??? ??????? ?????????????? ??? ?????? ??? ?????? 43 ??, ?? ?????????? ?? ?? ??? 48 ??;
?? ??, ?????????????? ??? ?????? ??? ?????????? ???????;

2) ?) ?????????????? ??? ??????? ??? ?????? ??? ?????? ??????? ???, ??????? ?? ?? ??? ???????
????????? ??? ?????? ??? ?????? ???????, ?????????? ??? ?????????? ?????????? ??????????
?????????, ??? ?????????? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ???
????? ??? ?????? ??? ?????????? ??????;

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

- ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
???, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ??????????
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????.

- ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???, ???
?? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???.

- ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

27 ?? ?? ?????? ???, ?? ?????? ??? ?????????? ??? ?????? ???' ?????? ?? ?? ??? 43 ?? ??
48 ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????????
????? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ???, ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

28 ?? ??? ?????, ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????? 43 ?? ??? 48 ??.

29 ???????, ?????????????? ??? ??? ????? ????????, ?????? ? ????? ??????????
????????? ??? ??????????? ??? ?????? ?????, ?? ?? ??? ????? ?????? ?????? ??? ??????
??? ??????????? ??? ????? ??????? ?? ?????????? ?????? (??., ?????? ?????, ??? ??????? ???
8?? ??????? 2001, C-397/98 ??? C-410/98, Metallgesellschaft ?.??., ??????? 2001, ?. I-1727,
????? 37, ??? ??? ??? ????? ?????????? ??????????).

30 ? ?????????? ?????????????? ??? ??? ????? ?? ????? 43 ?? ?????????? ?????? ??????????
??? ?????? ??? ???? ???? ?????????? ??' ?????? ??? ?????? ??? ?????? ?? ????????
?????????????, ??? ??? ?? ?????? ??? ?????????? ??????????????, ??? ??? ????
????????????? ?? ?????? ??? ?????????? ?? ?????????? ??? ?????? ?????? ??????????????
??? ??? ?????? ??? ?????????, ?????????????, ?????????? ?? ?? ????? 48 EK, ??? ???
????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????? ???
??? ?????????? ??? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????? ??? ??????????, ?? ?????????? ?? ?????? ?? ?????????????? ??? ??? ?????? ??????
????? ??? ?????????????? ?? ?????????? (??., ?????? ?????, ??? ?????? ??? 21??
????????? 1999, C-307/97, Saint-Gobain ZN, ?????? 1999, ?. I-6161, ??? 35).

31 ??????? ?? ?????????? ??? ?????????? ?????? ?????????? ?????????????? ?????? ?? ?????? ?????, ???
??? ?????????? ???, ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ???
????????? ??? ?????????? ?? ??? ?????????? ?????? ?????????? ?????? ?????? ??? ??????
????? ?????????? ?? ?????????? ??? ?????????? ?? ?????? ?????? ?????? ??? ??? ???
????????? ??? ? ??? ?????????? ??? ?????? ?????????? ?????? ?? ?? ?????????? ??? (??.,
????? ???, ??? ?????????? ?????? ?????? ICI, ??? 21).

32 ??? ?????????? ?????????? ??? ?????? ?????? ??? ? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????????? ??? ?????? ?????? ?????? ??????. ?????????????? ??? ?????????? ???
????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ???
??? ?????? ??? ?????? ?????? ??? ?????, ?????? ?????? ?????? ?????? ?????????? ???.

33 ? ?????????? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ? ?????? ??? ?????? ??????????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????, ?????? ?? ??????????
??? ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??????????????,
????????? ??? ??? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

34 ???, ? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??????????????, ??
??? ?????? ??? ?????? 43 ?? ??? 48 ??, ?????? ?????????? ?? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ???
??? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

35 ??? ?????? ?????????? ?????????? ??? ?????? ?? ?????? ?????? ?????? ?? ?????????? ?????? ???
????? ?? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ??????????
?? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? (??., ??? ??? ?????? ???, ???
????????? ??? 15?? ??? 1997, C-250/95, Futura Participations ??? Singer, ?????? 1997, ?. I-
2471, ??? 26, ??? ??? 11?? ??? 2004, C-9/02, De Lasteyrie du Saillant, ?????? 2004, ?. I-
2409, ??? 49).

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

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

37 ?? ???????, ?????????????? ???, ??? ?????????? ?????, ? ?????????? ??? ?????????????? ???
?????? ?? ??????? ?????????? ??? ?? ?????????? ?????? ?????????? ?????? ?????? ?????????? ???
?? ?????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????? ??? ??
????????????? ?????? ????????. ??????, ? ?????? ??? ?????? ?????? ?????? ??????
????????????? ?????? ????????. ?????????? ??? ?? ????????, ?? ?? ?????? ??? ?? ??? ??
????? ?????????? ?????? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????? ??????
??? ??? ?? ??? ?????? ??? ???? ?? ?????? ??? ?????? ?????? ?????? ?? ??? ?????? ??? ??
????????? ?? ??? 43 ?? ??? ?????????? (??, ??? ?????? ?? 28?? ?????????? 1986,
270/83, ??????? ?? ?????? ?????? 1986, ?. 273, ??? 18).

38 ?? ??? ?????????? ???, ?????? ?? ?????????? ?? ? ?????????? ?? ? ?????????? ??
????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????????? ?????? ???
????????????? ??? ?????? ?????????? ?????? ?????? ?????? ?? ?????????? ?????? ??
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39 ?? ??????? ?? ??? ?? ??????? ???? ?? ??????? ???? ?? ?????? ??? ?????? ??
?? ?????? ?? ??? ?????????? ??? ???????, ?????????? ??? ?????? ?? ?????????? ??
????? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??
??? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????????? ?????? (??., ??? ?????? ???, ??? ?????????? ?????? ?????? Futura
Participations ??? Singer, ??? 22).

40 ?? ??????, ?? ?????? ?? ??? ?? ?????? ??? ?? ?????????? ?? ???? ?? ?? ??
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????? ?? ??? ?? ?????????? ??, ??' ??????, ??? ?????? ?????? ?? ?????? ?????? ??????????
????? ?? ??? ?? ?????? ??? ?????? ?????? ?? ?????????? ?????? ?????? ?????? ??????.

41 ?? ?????????? ?? ?????????? ?? ?????????????? ?? ?????????? ??????, ?????? ??
????????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??????
????? ?? ???.

42 ?? ??? ?? ??????? ???, ?? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

44 ?? ??? ?? ?????? ?? ?????? ?????????? ?????? ???, ?????????? ??? ?? ?? ??

? ?????????? ?????? ??? ?????? ?? ??????? ?? ?????????????? ??? ?????? ?????? ?????????? ?????????? ?
??? ?????? ?? ?????????? ??? ?? ?????????????? ?????? ?? ?????? ???' ?????? ?????? ?????????? ??
????????? ?????????? (??., ?????? ????, ??? ?????? ??? 7?? ?????????? 2004, C-319/02,
Manninen, ?????? 2004, ?. I-7477, ??? 49, ??? ??? ?????? ?????????? ??????????).

45 ??????, ??? ?????????? ?????? ?? ??????? ??????????, ? ?????????? ??? ??????????
????????? ??? ?????????? ?????????? ?????? ?? ?????? ?????? ?? ?????????? ??
????????? ?????????? ??? ???????, ??? ?????????? ?????????? ?????????? ???
????????????? ?????? ??? ?? ?????? ??? ??????????, ?????? ??? ?????????? ?????? ???
??? ?????? ????, ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

46 ??????????, ?? ?? ??? ?????? ??? ?????????? ? ?????????? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????? ?????? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????????? ?????????? ??? ??????????
????????? ?????? ??? ?????? ???, ?????????? ??? ? ?????? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????????? ??? ??????
??? ?????? ??? ?????? ??? ??????????????.

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

48 ? ?????? ?????? ??? ?????? ?????????? ?? ? ?????????? ?????????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? . ? ?????????? ???
????????? ?? ??? ?????? ?????? ? ?????? ?????? ?????? ?? ?????????? ?????????? ??? ??? ???
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49 ??? ?????, ????, ?? ?????? ?????????????? ??????????, ?? ?????? ?????? ??? ??????
????????? ???, ????, ?? ?????? ?????? ??? ? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ? ?????????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ?????????? , ?
????????? ??? ?????? ??? ?????? ?????? ??????.

50 ? ?????????? ??? ?????????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
?? ?????? ?????? ?? ?????????? ??? ?? ?????????? ?????? ?????????? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

51 ?????????? ??? ?????? ??? ?????? ?????????????? ?????? ?????? ?????????? , ?????????? ???
????? , ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ? ?????? ???
????? ???, ?????? , ?????????? ?????? ?????? ?????? ?????? ?????? ??? ? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ?????? , ???
????????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ???.

52 ? ?????? ??? ?????? ?????? ?????? ?????????????? ??? ?? ?????? ?????????? ??? ?????????????? ???
????????? ?????? ??? ?????? ?????? , ?? ?????? ?????? ?? ?????? ??? ?????? ???
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- ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????????? ???
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- ??? ?????????? ??? ?????????? ??? ????? ???? ?????????????? ??? ?????? ?????? ???
?????? ? ?????????????? ?? ??? ????? ?????? ?????? ?????? ??????.

53 ??????, ?????? ?? ??????? ?? ?? ?????????????? ??? ?????? ?????? ?????? ??? ??????????
??? ??? ?????????? ??? ?????????????? ?????? ??????.

54 ??????????????, ? Marks & Spencer ??? ? ?????????? ?????????????? ??? ?? ?????????????? ??
????????? ?????????? ?????????????? ?????? ??? ?????? ?????????????? ??? ?????????????? ??
??? ?????????????? ?????????????? ??? ?????? ?? ?????????????? ?????????? ?? ??????????????
????????? ??? ?????????????? ??? ?????? ?????????????? ?????? ??? ?????????????? ??? ?????? ??
????????? ?????????????? ?????? ??? ?????????? ?????? ?????????????? ?????????????? ??? ?????? ??
????????? ?????????????? ??? ?????? ?????????? ?????? ?????????????? ?????????????? ??? ?????? ??
????????? ?????????????? ??? ?????????????? ??? ?????? ??? ?????????????? ?????????????? ??? ?????? ??
????????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?????????????? ?????????????? ??? ?????? ??
????????? ??? ?????????????? ??? ?????? ?????????? ?????? ?????? ??? ?????????????? ??? ?????? ??
????????? ??? ?????????????? ??? ?????? ?????????? ?????? ?????? ??? ?????????????? ??? ?????? ??
????????? ??? ?????????????? ??? ?????? ?????????? ?????? ?????? ??? ?????????????? ??? ?????? ??
????????? ??? ?????????????? ??? ?????? ?????????? ?????? ?????? ??? ?????????????? ??? ?????? ??
????????? ??? ?????????????? ??? ?????? ?????????? ?????? ?????? ??? ?????????????? ??? ?????? ??.

55 ??????, ?? ?????????? ?????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ???:

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

- ??? ?????? ?????????? ?? ?????? ?????? ??? ?????? ?? ?????? ??? ?????????? ??????????
????? ??? ?????? ?????????????? ??? ?? ?????? ?????????? ?????????, ??? ?? ??? ??
????? ???? ??? ??????, ??? ?? ?????????? ?????????????? ??? ?????? ?????? ??? ?? ??? ??
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56 ?????, ?????? ?????? ??????, ? ?????????????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ??? ?????????? ?? ?????????? ?????? ??? ??????????
??? ?????? 43 ?? ??? 48 ?? ?? ??? ?????????? ??? ?? ?????? ?????? ??? ?????????? ??
????????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ? ?? ?????????? ??? ?????? ??? ?????? ???.

57 ??? ?????? ???, ?????? ?????? ?? ?????????????? ??? ?? ?????? ??? ?????? ?????? ??????????
????????? ?? ?????????? ?? ?????????? ?? ?????? ?????? ?????????? ?? ?????? ??? ?????? ???
????????? ??? ?????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????????????? ?? ??????
????????? ??????????, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????????? ?? ??????
????????? ?????? ?????? (??., ??? ??? ?????? ???, ??? ?????????????? ?????? ICI,
????? 26, ??? de Lasteyrie du Saillant, ????? 50).

58 ??????, ??? ?? ?????? ??? ?????? ?????? ?? ?????? ?? ?????? ???, ?????????? ??????????
?????, ?????? ?????? ?????? ??????, ?? ??? ?????? ??????, ?????? ?????? ??????????
????????? ??? ?? ?????? ?????? ??????.

59 ??????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ??? ?? ?????? 43 ?? ??? 48
?? ??? ??????????, ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????.

????????? ??????? ???? ?????? ?? ??????? ?????? ?????? ?????? ?????????????????? ????
????????? ??????? ???? ?????? ?? ?????????? ?? ?????? ?????? ?? ?????? ?????? ?????? ????
?????? ??? ?????? ?????? ?????? ?????? ?????? ???? ?????????????? ?? ?????? ?????? ??????
????????? ???, ??? ??????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
????????????? ???, ?????? ?????? ?????? ?????? ?????? . ??????, ?????????? ??? ?????? 43 ?? ??? 48 ?? ??
?? ??? ?????????? ? ?????????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ?????? ??????
?????, ??????, ? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????????
????????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????????? ???
?? ??? ? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??????, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??????.

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

60 ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?
????????? ??? ?????? ??????.

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

61 ??? ??????? ??? ? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????????? ?????? ?????????? ??? ?????? ?????? ?????? ???? ?????? ?????? ?????????? , ?' ????
????????? ?? ?????????? ??? ?????? ?????????? ?????? . ?? ?????? ??? ?????? ?????? ??????????
???? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????????? , ??? ??????????
??? ?????? ?????? ?????? ?????? (????? ?????? ??????) ??????????:

? ? ?????? 43 ?? ??? 48 ?? ??? ?????????? , ??? ?????? ?????? ?????? ?????? ???
????????? ??????, ?? ?????????? ?????? ?????? ? ?????? ??? ?????? ?????? ???
????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????????
?? ?????? ??? ?? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ???
?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? . ??????, ?????????? ??? ?????? 43 ?? ??? 48 ?? ?? ?? ??
????????? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? , ??????, ? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ??? ?????? , ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ??????.

(?????????)

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