

?????? C-452/03

RAL (Channel Islands) Ltd ?.??.

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Commissioners of Customs & Excise

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

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

«??? — ??? ?????? — ??? 9, ?????????? 1 ??? 2 — ??????? ?????? ?????????? —
????????? ? ?????????? ?????????? — ?????? ?????? ?????????? ?????????? ????

????????? ??? ?????? ?????????? M. Poares Maduro ??? 27?? ?????????? 2005

????????? ??? ?????????? (????? ????) ??? 12?? ?????? 2005

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????????? ?????? — ?????????? ??? ?????????? — ?????? ?????? ?????? — ???
????? ??? ?????? ?????????? ??? — ?????? ?????? — ?????????? ???
????????? ??? — ?????? ?????? ??? ?????? ?????? ?????? — ?????? —
????? ??? ???, ?????? ??????, ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? — ??????

(?????? 77/388 ??? ??????????, ??? 9 § 2, ????. ??)

? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ? ?????????? ??
??????????, ??? ?????? ???????, ??? ?????? ?????? ?????????? ?????????????? ??
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????????? ?? ??? ??
??? ??? ??? ?????? ??? ?????? 9, ?????????? 2, ?????? ??, ??? ?????? ???????, ??? ???
?????? 77/388, ??? ?????????? ??? ?????????? ??? ?????? ???, ??? ?????? ???
????? ?????? ?????? ???????, ?????????? ? ?????????? ??????????????, ????
????? ?????? ?????? ??????? ??? ?????? ?????? ?????????? ???????.

??????, ? ?????????????? ?????? ?????? ??? ?????? ?????????? ?????????????? ??????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?? ??? ?????? ?????????? ??
????? ?' ?????? ?????? ??? ? ?????????? ?? ??? ?? ?????????? ?????? ?????? ??????? ??
????? ?????? ??? ?????? ??? ?????? ?????? ???????, ??? ?????? ?????????? ?? ??? ??
????? ??? ?????? ??? ?????? ??? ?????? ???????, ??? ?????? ?????????? ?? ??? ?? 1,
????? ??? 2, ?????? ??, ??? ?????? ???????, ??? ??????, ???????, ?? ?????????? ???
??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???????
????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???????
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???????.

(???. ??????? 31, 33-34 ??? ???????.)

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

??? 12?? ??? 2005 (*)

«??? – ??? ????? – ??? 9, ?????????? 1 ??? 2 – ??????? ?????? ?????????? –
????????? ? ?????????? ?????????? – ?????? ?????? ?????????? ?????????? ????

??? ?????? ??? ?????? – ?????????? ??? ?????? ?????? ??????»

???? ?????? C-452/03,

?? ?????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ??,
?? ?????? ?????? ?? High Court of Justice (England & Wales), Chancery Division (???????,
???????, ?? ?????? ?? 17?? ??????? 2003, ? ?????? ?????? ??? ?????????? ??? 27
????????? 2003, ??? ?????? ??? ????

RAL (Channel Islands) Ltd,

RAL Ltd,

RAL Services Ltd,

RAL Machines Ltd

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Commissioners of Customs & Excise,

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

????????? ??? ??? P. Jann, ?????? ???????, K. Lenaerts (?????????), N. Colneric, K.
Schiemann ??? E. Juhász, ???????,

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

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

??????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
24?? ??????? 2004,

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

– ?? RAL (Channel Islands) Ltd, RAL Ltd, RAL Services Ltd ??? RAL Machines Ltd,
????????????? ??? ??? K. Lasok, QC, ??? ??? V. Sloane, barrister,

– ? ?????????? ??? ??????? ??????????, ?????????? ??? ??? ??? K. Manji,
????????? ??? ??? C. Vajda, QC, ??? M. Angiolini, barrister,

– ? ?????????? ??????????, ?????????????? ??? ??? D. O'Hagan, ?????????????? ??? ???
G. Clohessy, BL, ??? ??? D. McDonald, SC,

– ? ??????????? ????????, ?????????????? ??? ??? L. Fernandes ??? Â. Seiça Neves,

– ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? R. Lyal,

???? ??????? ??? ??????? ???????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ???????????
??? 27?? ?????????? 2005,

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

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1 ? ?????? ??????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? 2, 4 ???
9 ??? ?????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ??????????????
??? ?????????? ??? ?????? ??????, ??? ?????????? ?? ??? ????? ?????? ?????? ?????? – ????
?????? ?????? ?????????????? ????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?. 49, ??? ????: ??? ?????), ??? 17?? ?????? 1 ??? 2 ??? ?????? ??? ?????? ??????
86/560/??? ??? ??????????, ??? 17?? ?????? 1986, ??? ??? ?????????? ??? ??????????
??? ?????? ??? ?????? ??? ?????????? ?? ??? ????? ?????? ?????? ?????? – ??? ?????? ?????????? ???
????? ?????????????? ??? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??????????????
??? ?????? ??? ?????????? (?? L 326, ?. 40, ??? ????: ?????? ?????? ?????? ??????).

2 ? ??????? ??????????? ??? ??????? ???????? ?????? ??? RAL (Channel Islands) Ltd (???
????: CI), RAL Ltd (??? ????: RAL), RAL Services Ltd (??? ????: Services) ??? RAL Machines
Ltd (??? ????: Machines), ??????, ??? ??? Commissioners of Customs & Excise (??? ????:
Commissioners), ???????? ?? ?????? ????? ?????????????????? ??? (??? ????: ???) ????? ???
????????? ??????????, ?? ?????????????? ??? ?????????????? ??? ?????? ??? ?????????????? ???
????????? ?????????? ?????????????? ?????????? ?????????? ?????????? ??????????.

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

4 ?? ?????? 3, ??????????? 1, ???. ?????? ??????? ??????:

«??? ??? ??????? ?? “????????? ??? ????”, ??? “????????? ??? ????” ??????? ?? ???
????????? ??? ??????? [??], ??? ???????, ??? ??? ?????? ??????, ??? ?????? [299]».

5 ????? ?? ?????? 4, ??????????? 1, ??? ????? ???????, «[?]????????? ?? “????????????? ???
????” ?????????????? ?????, ??? ????? ??????????? ??? ?? ?????????????? ???, ??? ??? ???
?????????? ?????????????? ??? ?????????????? ??? ??????????? 2, ?????????????? ???
????????????? ??? ????? ? ??? ?????????????? ??? ?????????????? ??? ?????».

6 ?? ???? ???. ?????????????? ???. ???? ???. ???? ?????????? ???. ???? ???. ???? ??????. ???? ??????, ???.
?????. 9 ???. ??????. ??????. ??????:

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

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

[...]

?) ????? ??????? ?????????? ??? ?????? ?? ??????????:

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

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

[...]».

7 ?? ????? 1 ??? ?????? ?????? ?????? ?????? ?????? ?????????????? ?? ????:

«????? ??? ?????? ??? ??????? ??????, ??????????:

1) ?? “?????????? ??? ?????? ??? ?????? ?? ?????? ?????????????? ??? ?????? ???
?????????”, ? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? 4, ?????????? 1 ???
[?????] ?????? [...] ? ??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 3,
????????? 1, ??? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????????? ???, ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ????????, ???, ?????? ?????? ?????????? ??? ? ?????? ??????????????, ??? ?????????? ?
?? ?????? ??????? ???, ??? ? ??????, ??? ?? ?????? ??? ?????? ??? ?????? ??????????, ???
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? 2 [...]».

8 ?? ????? 2, ?????????? 1, ??? ?????? ?????? ?????? ??????:

«[...]????? ?????? ?????? ?????? ?????????? ?? ???? ?????????? ?????? ???? ???? ???? ???
????????????? ??? ?????? ??? ?????? ??? ??????????, ??? ???? ???? ??? ?????????? ??? ?????? ???
[??] ?? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?? ??? ?????? ???
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???, ??
??? ?????? ??? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 17, ?????????? 3, ?????? ?? ??? ?, ??? [?????] ?????? [...] ? ??? ??????
????????? ??? ?????????? ??? ?????? 1, ?????? 1, ?????? ?, ??? ?????? ?????? ???»

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

9 ? CI ?????? ??????? ??????????? ??? Guernsey (????????????????? ?????). ?? RAL, Services ??? Machines ??? ?????? ?????????? ??? ?????? ?????? ??????. ?? ??????? ?????????? ?????? ?????? RAL Holdings Ltd (?? ?????: Holdings), ??????? ?????? ?????????? ??? ?????? ??????. ?? CI, RAL, Services, Machines ??? Holdings ??????? ?? ?????? ??? ????? RAL.

10 ?????? ?? ????. ???? 2000, ? RAL ?????? ??? ?????????????? ??????? ???????
?????????? ???. ?????? ??????? ??????? ?????? ?????????????? ??? ?????? ?????? ?????? ??????? ???. ?
??? ????????. ????. ?????????????? ?????????????? ??? ?????? ?????? ??? ?????????????? ??? ?????
?????????. ??????? ???. ?????????????? ?????? ??? ?????? ??? ?????????????? ??? ??????????
??? ??? ?? ????. ???????.

11 ? Holdings, ??? ?? ?????????? ??? ?? ?????????????????? ?????? ??? ?????? ???
????????????? ????, ???, ??? ?????????? ?????????? ??? ?? ??? ?????? ??? ?? ?????? ??? ?? ?????? ??? ??
???, ?????????????? ??? ??????? ??????? ??????????.

12 ??????????, ?????????? ?????? ??????????????? ??? ?????? RAL. ???????, ??????
?? ?? ??????? ?? ???? ?????? ?? ?????? ???????????, ??? ?? ?????????? ?? ?????????? ??
?????? ?? ???? ?????? ??????????? ??????? ?????????? ??????????? ?? ???? ???????????
?????????? ?? ???? ??????????? ?????? ?? ???? ?????? ?????? ?? ???? ?????????? ???????????
?????????? ?? ???? ??????????? ?????? ?? ???? ?????? ?????? ??????????? ?? ???? ???????????
??? ??????????? ?????? ?? ???? ??????????? ?????? ?? ???? ?????? ?????? ??????????? ?? ???? ???????????
??????????.

13 ????? ?????? ? ??????? ??? CI ??? Guernsey, ?? ?????? ???????? ????.
????????????????? ????, ??????? ?????? ??? ?????? ??? ?????? ????. ??? ?????? ????.
????? ??????, ?? Machines ??? Services ??????? ??? ?????? ???????.

14 ? RAL ?????? ????????. ?????????? ?? ??????? ?? ?????????? ?????? ???.
????????????? ?? ??????? ?? ??????? ?????? ?????????? ???. ?????? ?????? ???.
????????? ???. ?????? ?????? ???. ?????? ?????? ???. ?????? ??????.. ?????? ???.
????? CI ???. ?????? ?????? ???. ?????? ?????? ?????? ???. ?? ?????? ??????.

15 ? Machines ??????? ?? ?????? ??? ??????? ?????????? ?????????? ?????????????? ??? ?????????????? ?
?????? RAL ??? ????? ??????? ??? ?????????? ??????. ??????? ?????????????? ?????????? ???
?????? ?? ??? CI, ? Machines ??????? ?? ?????????? ??? CI ??????? ??????? ?????????? ???
?? ?? ?????????? ??? ??? ????? ?????????? ?????????? ???.

16 ? ?????????????? ??? CI ?????????? ??? ?? ??????? ??? ?????? ?? ?????????? ??
????????????? ??? ?????? ??????? ??????????, ??? ??? ?????????? ? Machines, ???
????????????? ??? ?????? ??? ??????? ??? ? RAL. ????????, ? CI ?????? ??? ??????
????????????? ?????????? ?????????????? ??? Services ??? ??????? ?????????? ???
??????. ? ??????? ??? ??????? ?? ?????? ?????? ??? ?????????? ??? ?????? RAL, ???
?????? 600 ????. ? CI ??? ??????? ??? ?????????? ??? ??????? ??? ??????? ???????.

17 ??????? ??? ?????????????? ??? ?????? RAL, ? CI ??????, ??????????? ??? ??? 2,
4 ??? 9 ??? ????? ??????, ??? ?? ?????????? ?????????????? ?????? ?????? ??????????
?????????? ?? ?????????? ?? Guernsey. ?? ?? ??????, ??? ??? ?????? ???, ??????????
??? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ???, ? ??? ??
????? ??? ??? ?????? ?????????? ??? ?? ?????????? ??? ??? ??? ??? ?????????? ???
????? ??? ??? ?????? ?????? ??????. ?????? ?? ?? ?????? 1 ??? 2 ??? ??????
????? ??????, ?????? ?????? ??? ?????????? ??? ?????????? ??? ??? ??? ??????.

18 ?? ?????? ??? 28?? ?????????? 2001, ?? Commissioners ?????????? ?? ?????????? ???
CI. ?????? ??? ? CI ?????? ??? ?? ?????? ?????? ??????. ??????????, ??????????
??? ?? ?????????? ??? ?? ?????? ?????? ??? ?????????? ??? ?????? RAL, ????, ??? ??
??? ?? ?????????? ??? ?? ?????????? ???, ?? ?????? ?????? ?????????? ?????????? ??
????????? ??? ?? Holdings ??? ?????? ??????. ?? ??? ??????????, ??? ??
Commissioners, ?? ?????? ??? CI ??? ?????????? ?? ?????????? ??????????
?????????.

19 ?? CI, RAL, Machines ??? Services ?????????? ??? ?? ??? ?????????? ??????
????? ??? VAT and Duties Tribunal, London. ?? ?? ?? 3 ?????????? 2002 ?????? ???, ??
????????? ??? ? CI ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??????
??? ?????? ??????, ??? ?? ?????? ??? ?????? ??? ?????? 9, ?????????? 1, ??? ?? ??????
????? ???, ?? ??? Tribunal ?????????? ??? ? CI ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ??? ?? ?????????? ?????? ?????? ?????????? ??? ??
??? ?????? ?????? ????. ?????, ????? ?? ?????? ??? ?????? ??? ?????? ?????? ??????
????? ?????????? ??? ?? ?????????? ?????? ??? Commissioners ?? ?? ??????????
??? ?? ?????????? ?????? ??? ?? CI ??? ?? ??? ?? Holdings ??? ?? ?? ??
????????? ??? ?????????? ??? ?????? ??? ?????????? ?? ??????????.

20 ? CI ?????? ??? ?? ?????? ?????? ?????? ?????????? ?????? ??? ?????????? ??????????
?? Commissioners ?????? ?????? ??? ?? ??? ?????? ?????? ??? ?? ?????????? ??? ??
????????? ??? ?????? ???.

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

«??? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??
[...], ?????????? ?? ?? 2, 4 ??? 9 ?????, ????? ?? ?? ?????? ?????? ??? [...],
????????? ?? ?? 1 ??? 2 ?????, ????? ?? ?? ?????? ?????? ??? ?????? ??? ??????????
?????:

1) ??? ?????? ?? ?????????? ? ??? “????? ??????????” ??? ?????? 9 ??? ???
?????;

2) ??? ?????? ?? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ??
????? ?????????? ?? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??
??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ? CI ? ??? ?? ???
????????? ??? ?? ?????? ??? CI ?????? ?? ???;

3) ??????????:

?) ??? ? ?????????? ?????? ?????????? ??? ?????? (A) ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????

(B), ??? ??????? ?? ??????????????? ?????????????? ??????????? ??? ?????? ??? ??????? ???
??????????, ??????? ?????????? ?? ??????? ??????? ??????? ?????????? ??? ??????????? ??
????????? ??? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????;

i) ??????? ?? ?????????? ?? ??????? ??????? ?????????? ?????????? ??? ?????????????? ?? ??????? ??
????????? ??? ?????????? ?? ??????? ?????? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ??????;
??? ?? ?????????? ?????????? ??????????,

ii) ??????? ?? ?????????? ?? ??????? ??????? ?????????? ?????? ?????????????? ?? ??????? ??
?? ?????????? ?? ?????????? ?? ??????? ?????? ?????? ?????????? ?????? ?????? ?? ?????????? ??
????????? ??? ?? ??? ?????? ??? ?????? ?????? ? ? ?????? ??? ?????????????? ??? ??????????????;

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

i) ??????? ?? ?????????? ??????? ??? B ??? ?? ?????????? ?????????? ??? ?????? ??? ???????
????? (? , ? ??? ?) ?? ???????????????, ??? ?????? ??? ?????? ??? ?????? ??? ???, ?? ???????
????????? ??? ?????? ??? ? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ??????????????
????? ??????????????; ?? ?????????? ?????????? ??????????;

ii) ??? ?????????? ??? ??????? ?? ??????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ?? ??????? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??
?????????;

4) ?) ??????? ?? ?????????? ?? ?????? ??? ?????????? ?????????? ?????????? ? ?????? (??????????
?? ??? ?????? ??? ???? ?????? ?????? ?????? ???) ?????? ?? ?????????? ??
????????? ?????? ??? ?????? ?????? ??? ? ??????;

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

5) ?) ??? ???????, ?? ?????????? ??????????, ?????? ?? ?????????? ??? ?????? ??? ??
A, ? ??? ? ??? ?????? ?????????? ??? B ??? ? ???? ?????? ??? A, ? ??? ? ??? ?? ???
????? ??? ??????????;

?) ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? A ??? ? ??? ??
????? ?????? ?????? ??????????;»

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

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

22 ? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????, ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???

????????? ??????? ?????????? ??? ?????? ?????? ??? ?????? 6, ??????????? 1, ??? ???
???????. ?? ?? ?????????? ???, ?? ?????? ?????????? ?????????? ???' ?????? ???
????????????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ??????????.

23 ???????, ?? ??? 9 ??? ????? ?????? ?????????????? ??????? ??? ?????????? ???
???? ???????????. ??? ? ?????????? 1 ??? ?????? ?????? ?????? ?????? ?????? ??????
??????, ? ?????????? 2 ??? ?????? ?????? ?????? ?????? ??????. ?????? ??? ?? ???
????????? ????, ??????, ? ?????? ?????????? ?????????? ?????? ?????? ?? ??????????
?? ????? ?????? ???, ???????, ? ?? ?????????? ?????? (?? . ?????????? ??? 4??
??????? 1985, 168/84, Berkholz, ?????? 1985, ?. 2251, ??? 14, ??? 26?? ??????????
1996, C-327/94, Dudda, ?????? 1996, ?. I?4595, ????? 20, ??? ??? 6?? ?????? 1997, C-
167/95, Linthorst, Pouwels en Scheres, ?????? 1997, ?. I?1195, ????? 10).

24 ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? 9 ???
????? ???????, ?? ?????????? ??? ?????? ??? ?????? ?????? 1 ?????? ?????????? ???
????????? 2 ??? ?????????? ????. ?? ?????? ??? ?????? ?? ??? ?????? ??????????
????????? ?????????? ??? ?? ??? ?????? ?????? ??? ??? ?? ??? ?????????????? ??? ??? 9,
????????? 2, ?????????- ?? ???, ?????? ??? ?????? 1 (????????????????? ??????????
Dudda, ??? 21, ??? Linthorst, Pouwels en Scheres, ????? 11).

25 ??????????, ??????, ?? ?????????? ?????????????? ?? ?????????????? ??? ?
????????? ?????????? ??? ?????????? ??? ?????? ?????????? ??????, ??? ?????????????? ?
????????? ??? ?????????? ??? ?????? 9, ?????????? 2, ??????? ?, ?? ??? ???
??????, ?? ?????? ?????? ??? ??? ?????????? ??? ?? «????????? ? ??????????
?????????????». ???????, ?????????? ? ?????????? ?????? ??? ?? ?????????? ???
????????? ?? ?????????? ??? ?????? ?????????? ??? ?? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????????? ??? ??? ?????????? ???
????? ??? ??????????, ?????? ?? ?? ?? ?? ??? ?????? ?????????? ?????? ??? ?? ??????????
?? ?????????? ??? (?? . ?????????? ??? 12?? ?????????? 1990, C-241/89, SARPP, ??????
1990, ?. I?4695, ????? 8, ??? 2?? ?????????? 1994, C-315/92, Verband Sozialer Wettbewerb,
????? ?? «Clinique», ?????? 1994, ?. I?317, ????? 7, ??? 4?? ?????? 1999, C-87/97,
Consorzio per la tutela del formaggio Gorgonzola, ?????? 1999, ?. I?1301, ????? 16, ??? ??
?? ?????????? 2004, C-456/02, Trojani, ??? ??? ??? ?????????? ?????? ??? ??????,
????? 38).

?? ?? ?????????? ?? 9, ?????????? 2, ??????? ?, ?? ??? ?????? ???????

26 ? ?????????? ??? ?????????? ?????????? ?????????? ??? ? ?????????????? ??? CI
????????? ??? ?????? ?????????? ??? ?????? 9, ?????????? 2, ??????? ?, ?? ??? ???
??????, ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?? ???
?????????. ???????, ?????? ?????? ?????? ??? ?????? ?? ??? ?????? ?????????? ???
????????? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
??????, ?? ?????? ??? ?????? ???????.

27 ? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ??? ?????? RAL ???????
???????????, ????????, ?? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
?????????? ?????????? ?????????? ??? ?????? ??? ?????? 9, ?????????? 2, ????????
??, ??? ?????? ??????. ?????????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????????
????????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ???
?? ?? ??? ?????? ?? ??????. ?? ?? ??? ?????? ?????? ?????? ??? ? ?????????? ???
????????????? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ?????????? ??????????
?? ?????????? ???????. ?? ?????? ??? ? ??? ?????? ?????? ?????? ?????? ?????????? ???
?????????? ??? ?????? ????????

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

28 ? ???????? ?????? ??? ?? ????? 9, ?????????? 2, ???????? ??, ??? ????? ??????
?????? ??? ?????????????? ?????? ?????????? ?????? ?????? ?????? ?????????? ??????
????????? ??? ??, ?? ?????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ? ??
????????? ?? ?????? ??? ?????? (?. ?????????????? ?????? Dudda, ??????? 23 ??
24). ??????????, ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????????
????????? ?? ?????? ?????? ??????????, ?????? ?????? ? ?????????? 1 ??? ?? ???
?????? ?????? ?????? ???????.

29 ??????, ?????? ? ??????? ??, ?????? ?? ?? ????? 9, ?????????? 2, ??????? ?,
?? ?????? ??????, ? ?????? ??? ?????????? ?????? ??? ?????? ?? ??????????
????????? ? ?????????? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??
?? ??? ??????.

30 ?? ??? ?? ?????? ?? ?????? ?????????, ??? ?????? ??? ?????????? ??????????
?? ?????? ???, ?????????? ?????????? ? ?????????? ?????????? ?????????? ??????????
????????? ??? CI ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??????????
?????????, ?? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ??????.

31 ?? ??????????, ? ?????????? ?? ?? ?????????? ?????????? ?????????? ??? ??????????
????????? ?????????? ?????? ??? ?????? ?????? ?????????? ?????? ?????????? ??? ??????????
????????? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ?' ??????. ??????, ???
????????? ? ?????? ?????????? ??? ?????? 29 ??? ?????????? ???, ? ?????????? ??
????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???
????????? ?? ?????? ?????? ?????? ??????????.

32 ?? ??? ?? ?????? ?? ?????? 9, ?????????? 2, ??????? ??, ??? ?????? ???, ??? ??????
?????? ?????????? ? ?????????? ?????????? ?????????? ??? ?????????? ??? ?? ?????? ???
????????? ?????????? ?????????? ?????? ?????? ??????, ?????????? ??????????????
-????????????????? ??? ?????????? ?????? - ??? ?????? ? ?????? ?????????? ???
??? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???,
??? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
?????????.

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

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

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35 ?????????? ??? ? ?????????? ???, ?? ??? ?????? ?????? ?????????? ??? ?????? ??????, ???
????????? ?????????????? ??? ?????? ?????? ??? ?????????? ?????????????? ,?' ???
????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
???? ?????????? ?????????? ??? ?????????? , ??? ??? ?????? ??? ?? ??? ?????????? , ???
?????????.

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

? ??????? ?????????? ??? ???????????? ??? ?? ??????? ??? ????? ? ?????????? ??
???????????, ?????? ?????????, ?????? ?????? ?????? ?????????? ?????????????? ??
????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ??
??? ??? ??? ??? ??? ?????? ??? ?????? 9, ?????????? 2, ??????? ??, ????
?????????, ??? ????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???
?????????? ??? ?????????? ??? ?????? ?????, ??? ?????? ?? ??? ??? ??????
????? ??????? - ??? ?????? ?????? ?????? ?????????????? ?????: ??????????
????????? ???, ?????????? ? ?????????? ??????????????, ?????? ? ??????
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(???????????)

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