

?????? C-35/05

Reemtsma Cigarettenfabriken GmbH

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Ministero delle Finanze

(?????? ??? Corte suprema di cassazione

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«?????? ??????? ??? — ????? 2 ??? 5 — ?????????????? ??? ????? ?? ?????????????? ???
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1. ?????????????? ?????????? — ?????????? ??? ?????????? — ????? ?????? ?????? —
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(?????? 79/1072 ??? ??????????, ??? 2 ??? 5)

2. ?????????????? ?????????? — ?????????? ??? ?????????? — ????? ?????? ?????? —
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(?????? 77/388 ??? ??????????, ??? 21, ??? 1)

3. ?????????????? ?????????? — ?????????? ??? ?????????? — ????? ?????? ?????? —
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(?????? 77/388 ??? ??????????)

1. ?? ??? 2 ??? 5 ??? ?????? ?????? ?????? ??? ?????????????? ??? ?????????????? ???
????? ??? ?????????? ?? ??? ?????? ?????? ?????? ?????? — ?????? ?????????? ??? ???
????????????? ??? ?????? ?????? ?????????????? ??? ??? ??? ?????? ??? ?????? ??????????????
??? ?????????? ??? ?????? ?????? ?? ?????????????? ??? ??? ?????? ??? ? ?? ?????????????? ???
?? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????????????? ???, ? ??????
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

? ?????? ??????, ? ??? ??? ?????? ??? ?????????? ?? ??? ?????? ??? ?????????????? ?? ?????? ???
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????? ??? ?????????? ?? ??? ?????? ?????? ?????? ??????????, ?????? ?? ?????????? ??? ??????
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????????? ??? ?????? ??? ?????? ?????????????? ??? ??? ?????? ?????? ??????. ? ?????? ???
?????????, ??????, ??? ?? ?????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
????? 17, ?????????? 3, ??? ?????? ??????. ?????????????, ?? ??? 2 ??? 5 ??? ??????
????????? ?????????????? ??? ?????? ??? ?????? 17 ??? ?????? ??????.

???? ???? ??????? ???? , ?????? ?? ??????? ??????? , ??? ???? ?????? ??? ?? ???
?????? 17, ??? ?????? ?? ?????????? ??? ????? ?????????????? ????? ???? ???? ?????? ???
????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? , ?????????? ???? ???? ??????
??? ???? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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(?? . ??????? 25-28, ????????. 1)

2. ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
?????? 21, ?????? 1, ??? ?????? ?????? 77/388 ??? ?????????? ??? ?????? ??? ?????????? ???
????? ??????, ??? ?????? ?? ??? ?????? ?????? ?????? ???????, ??? ?????? ?????????? ???
??? ?????? 92/111, ?????? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ???
??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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(?? . ?????? 33, ????????. 2)

3. ?? ?????? ??? ?????????? , ??? ?????????????? ??? ?????????? ??? ?????????? ???
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????? ?????? ??? ?????? ?????? ??? . ??????, ??? ?????? ?????? ??? ? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ?????? ?????? , ?? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
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????????? , ?????????? ??? ?? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?? ??? ?????? ???
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(?? . ??????? 42, 45, ????????. 3)

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?? 15?? ?????? 2007(*)

«????? ?????? ??? – ??? 2 ??? 5 – ?????????? ??? ?????? ?? ?????????????? ???
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????? ?????? C-35/05,

? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? 234 ??,
??? ?????? ?? Corte suprema di cassazione (??????) ?? ?????? ??? 23?? ?????? 2004, ?
????? ?????? ??? ?????? ??? 31 ?????? 2005, ??? ?????? ??? ??????

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Ministero delle Finanze,

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

?????????? ?? C. W. A. Timmermans, ?????? ???????, P. K?ris, J. Klu?ka, J. Makarczyk ???. ?????? (?????????), ????????,

?????? ??????????: E. Sharpston

?????????: L. Hewlett, ????? ??????? ??????????,

?????? ?? ?? ?????? ?????????? ??????????? ?? ??????? ?? ??' ?????????? ??????????? ?? 30?? ?????? 2006,

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

- ? Reemtsma Cigarettenfabriken GmbH, ?????????????? ?? S. Pettinato, avvocato,
- ? ??????? ??????????, ?????????????? ?? I. M. Braguglia, ?????????????? ?? G. De Bellis, avvocato dello Stato,
- ? ??????? ?? ?????????? ??????????????, ?????????????? ?? M. Afonso ?? M. Velardo ?? A. Aresu,

???? ??????? ?? ?????? ??????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? 8?? ?????? 2006,

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1 ? ?????? ?????????? ?????????????? ?????????? ?????? ?? ??????? ?? ?????? 2 ??? 5
?? ?????? ?????? 79/1072/??? ?? ??????????, ?? 6?? ?????????? 1979, ???
????????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?????? ??????
????????? – ?????? ?????????? ?? ?????? ?????????????? ?????? ?????? ?????? ?????????????? ???
???? ?? ?????? ?? ?????? ?????????????? ?? ?????????? ?? ?????? (?? ???. ???. 09/001, ?. 111, ???: ?????? ??????).

2 ? ?????? ?????? ?????? ?????????? ?? ?????? ?????????? ?????? ?? ?????? Reemtsma
Cigarettenfabriken GmbH (???: Reemtsma) ?? Ministero delle Finanze (?????????)
????????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ??
????? ?????????????? ?? (???: ???) ? ?????? ?????????? ?? ?????? ?????????? ??
????????? ?? ?????????? ?????????? ?? ?????????? ?? Reemtsma ??? ??????.

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3 ?? ?????? 2 ??? ?????? ?????? ??????:

«???? ?????? ?????? ?????????? ?? ??? ?????? ?????????? ?? ?????? ?? ?????? ?? ?????? ??
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??? ??? ???? ?????? ??? ?????????????? ????????, ??? ??? ???? ?????????????? ?????? ??? ?????????? ???
????????? ?? ??? ???? ??? ?????????????? ? ?????? ??? ??? ?????????????? ??? ?????????? ???
????? ??? ?????? ?????????????? ??? ?, ? ??? ?????????? ??? ?????????? ??? ?????? ??? ???,
??' ??? ???? ?? ?????? ??? ?? ?????????? ?????????????? ??? ??? ?????? ??? ??,
????????????? ??? ??? 17, ?????????? 3, ?????????? ?? ??? ??, ??? ?????? 77/388/??? ?
??? ??? ?????? ?????????? ??? ?????? 1, ?????????? ?.»

4 ?? ????? 5, ?????? ??????, ??? ?????? ??????? ??????????:

«??? ??? ???? ?????? ??? ?????? ???????, ?? ?????? ??? ?????? ?????????? ??? ??????
????????? ??? ??? 17 ??? ?????? 77/388/???, ??? ?????? ?????????? ???
????? ??? ??? ?????? ??? ???????.»

5 ?????? ?? ?? ????? 9, ?????????? 2, ????????, ??? ?????? ??????? 77/388/??? ???
??????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ??????? ?? ??? ?????? ?????? ?????? – ??? ?????? ?????? ??? ??????????????
?????: ?????????? ?????????? ??? (?? ????. ???.. 09/001, ?. 1), ??? ?????? ?????????????? ???
??? ?????? 92/111/??? ??? ??????????, ??? 14?? ?????????? 1992 (?? ????. ???.. 09/001, ?.
49, ??? ????: ??? ?????):

«????? ?????? ??? ?????? ??????????, ?? ?????? ?????????? [...] ?? ?????????? ???
???? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
??? ????????, ??? ???? ???? ??? ?????? ??? ?????????? ??? ?????????????? ??? ??????
??? ?????? ?????? ?????????? ??? ??? ??? ?????? ?????????? ??? ?????????? ???
????????? ?? ?????? ??? ?????? ??? ?????????? ??? ???? ?????????? ??? ?????????? ???:
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– ????? ?????????????? ????????,

[...]».

6 ?? ????? 17 ??? ?????? ?????? ??? ?? ????:

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

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

?) ??? ?????????? ? ?????????? ??? ?????????? ?????? ?????????? ??? ?? ??? ??
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3. ????? ?? ?????? ??? ?????? ?? ??? ?????? ?????????? ??? ?? ??? ?????? ???
??????, ??? ?????? 2, ?????? ? ?????? ??? ?????? ?????????? ??? ?? ??? ?????????? ???,
????? ??? ?? ?????? ??? ?? ?????? ?????? ?????????? ??? ?? ??? ??????????.

?) ??????? ??? ?? ????????, ?????????? ??? ?????????????? ?????????????? ???
????????????? ??? ?????? 4 ?????????? 2, ?? ?????? ? ? ?????? ?????? ?????? ???, ???
????? ?????????????? ??? ?????? ??? ??????.

[...]».

7 ??????? ?? ?? ????? 21, ?????? 1, ??? ????? ??????:

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

1) ??? ?????????? ??????:

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

?) ??? ??? ?????? ??? ?????????? ??? ?????????? ?? ?????? 9 ?????????? 2, ?????????? ?, ?
??? ??? ?????????????? ?? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ??????
????? ?????????? ??? ?????? 28?, ?????? ?, ? ??? ?, ??? ? ?????? ?????????? ??????????
??? ?????????? ??? ?????? ?????????? ??? ?????????? - ??????????, ?? ?????? ???
????????? ?? ?????????? ??? ??? ? ?????? ??? ?????? ?????? ?????????? ?????????? ?????????? ???
??? ?????? ??? ??????.

?) ??? ?????? ??? ?????????? ??? ?????? ?????????????? ?????? ?? ?????????? ? ???
?????? ??? ?????? ??? ??????????».

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

8 ?? ????? 17, ?????????? 1, ?? ?????????? ??? ?????????? ?? ?????????????? ???.
633, ?? 26?? ?????????? 1972, ?? ?????? ??? ?????? ??? ?????? ?????????????? ???
(?????? ??????????, GURI ????. 1, ?? 11?? ?????????? 1972, ?. 1, ?? ????: ??????????
????????? 633/72), ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????:

«????????? ??? - ? ????? ?????????? ??? ?????? ?????????????? ??????????????
????????? ??? ? ????? ?????????? ?????? ?????????? ??????????, ?? ?????? ??????????
?? ??? ?????????? ??? ??????, ?????????? ??? ?????? ??? ?????????????? ??????
?? ??? ?????????? ??? ?????? 19, ?????? ?? ??? ?????????? ??? ?????? ?????????? ??? ??? ????
????? ??? ?????? II.»

9 ?? ????? 19, ?????? ??????, ?? ?????????? ?????????? 633/72 ??????:

«? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????????? ?? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? [...]».

10 ?? ????? 38 ter ?? ?????????? ?????????? 633/72 ??? ????:

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

????????????? ??????????? ???????????, ?? ?????? ??? ?????????????????? ?????? ??? ???.
?????? ??? ?????? 35 ter ??? ?????? ?????????? ?????????????? ??? ??? ?????? ??? ???.
17, ??????? ??????, ??? ?? ?????? ?????????????? ??? ?????? ??????? ??? ???.
????????? ?????? ??? ??????, ?????????? ?????????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ??????
????????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?????? 9 ??? ???.
????????? ?????? ?????? 7, ??????? ??????, ??????? ??, ??????
?? ????????, ??? ?????? ?????? ?????????? ?????? ??? ??????, ??? ?????????? ????
?????, ?????? ?????? ??????????, ?????? 19, ??? ?? ?????????? ? ??????????????
????? ?????? ??? ?? ?????????? ?????? ??? ?? ?????????? ??? ?? ?????? ??? ???.
????? ??? ?????? ????. [...]»

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

11 ?? ?????????? ???????????, ??? ?????????? ??? ??????? ???????????,
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12 ? Reemtsma ?????? ??????? ??? ??????? ??? ??????? ??? ?? ?????? ??????
????????? ????. ?? 1994 ?????? ??????? ??? Reemtsma ??????????
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? 175 022 025 ITL.

13 ? ??? ???????? ?? Reemtsma ??? ?????????? ??? ?????? ??????.

14 ? Reemtsma ?????? ?? ?????? ?????????? ??? ?????? ??? ?? ?????? ?????? ??
???? 1994, ?? ?????? ??????? ??? ?????????? ?????? ??? ?? ?????? ??????
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?? ??? ?????? ??????
?? ?????????? ??? ???????, ?????? ? ?? ?????? ?????? ??? ?????? ?????? ???.

15 ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ? Reemtsma ??????????
??? ?????? ??? ?????? ??? ?????? ?????? ?????????? . ? ?????? ??? ?????????? ???
????????? ??? ?? ???' ?????, ??? ??? ??? ?? ?????????? ?????????? ??????????
????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ??????????
??? ?????????? ?????????? ??? ?????? ?? ?????? ?????? ?????? ?????????? ??? ??????
????????? ?? ??? ?????? ???.

16 ? Reemtsma ?????????? ??? ?????? ??? Corte suprema di cassazione ?? ???,
????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????
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«1) ?? ?? ??? 2 ??? 5 ??? ?????? ?????? [...] ???' ? ?????? ?????????? ??? ??????????
????? ??? ?? ?????????? [??? ??????] ?????? ?????? ? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?? ?????????? ?????? ??? ?????????? ?????????? ??? ??
????, ??? ??? ?????? ??? ?????? ?????????? ?????? ??? ?? ?????????? ??? ?????????? ??? ?? ??????
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ??.

2) ??, ?? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? /????????? - ??
????????? ??? ?? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
??? ??, ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ??? ??.

????????? ??? ??????????? ???????, ??? ??????????? ??? ??????? ??????? ??????/?????????, ?
?????? ??? ????? ??????????? ??? ?? ???? ????? ? ??????? ?????????? ??????? ?? ???????
??? ??????????? ??????????? ??? ?????????? ??? ?????, ??? ?????????? ??? ?? ???????
?????? ?? ??????? ??????????? ??????????? ??? ?????????? ??? ?????????? ??? ?? ???????
???? ?? ??????? ??? ??????????? ?????????? ??? ?????????? ??? ?????????? ??? ?? ???????,
????????? ??? ?????????? -??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ???????,
????????? - ?????????? ??? ?????????? ??? ?????/????????? ??? ?????????? ??? ?????????? ??? ???????
????????? ??? ?????? ??? ?????????? ??? ?????/????????? ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????, ??? ?????????? ??
????????? ??? ????? (????????????? ??? ??????????) ?????????????? ??? ??????????
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17 ?? ?? ?????? ???????, ?? ?????? ?????????? ?????? ???' ?????? ?? ?? ?????? 2 ??? 5
??? ?????? ??????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ? ?? ?????????? ??? ??
?????? ?????????????? ??? ??? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
?????? ??? ?????? ??? ?????????????? ??? ?????????? ???.

18 ??????????, ?????? ?? ?????????? ??? ?? ?????? ?????? ??? ?? ?????? ?????????? ??? ??
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19 ?? ?????????? ??? ?????? ?????? ??? ?????????????? ??? ?? ?????????????????? ??? ??
Reemtsma ??????, ??? ?????????? ??? ?????????? ?????????????? ??? ?????????? ??? ??
????????? ?? ??? . ??????????????, ?????? ?? ?? ????? 9, ?????????? 2, ?????????? ??, ???
????? ??????, ??? ?????? ?????? ??? ?????????????? ?????????? ?? ?????? ?????? ?????????? ??
????????? ?????????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??????????, ?????? ?? ?????? ??? ?????? ??? ?????????? ?????????????? ???
????????? ? ??? ?????? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??
????????? ??????. ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?? ??? ?????? ???.
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20 ?? ?????? 2 ??? ?????? ??????? ?????????? ??? ? ?????????? ???? ?? ?????????? ???? ??
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????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ?????, ??? ?????? 17, ?????????? 3, ??????? ??, ??? ?????? ??????. ??????? ?? ??
????? 5, ?????? ?????, ??? ?????? ??????, ? ?????? ?????? ?????? ?????????? ?????? ??? ?????? 17
?? ?????? ??????, ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

21 ? Reemtsma ??????? ??? ?? ??????? ??? ?? ?????????? ?????????????? ?????????????? ???
????????? ??? ?? ??????? ??? ?? ?????????? ????? ?? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ???
????????? ??? ??, ??? ?? ????? ???????, ??? ?? ?????????? ?? ?? ?? ?????? 21, ?????????? 1,
????????? ??, ??? ?? ????? ???????, ??? ?? ?????????? ?? ?? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? C-
141/96, ??? 17?? ?????????? 1997, Langhorst (?????? 1997, ?. I-5073), ????? ??????
???? ?? ?? ????? ??????? ?? ?? ?????? ?? ?????????? ????? ?????? ?????????? ?????????? ?????
????????????? ????? ?????????????? ??????. ?????? ?? ?? ?????????? ????? ?????? ??? ?? ?????? ??? ??
???? ?? ?? ????? ??????? ?? ?? ?????????? ????? ?? ?? ?????????? ????? ?? ?? ?????????? ??? ?? ?????? ???
????????????? ??? ?? ?? ?????????? ?? ?? ?????????? ????? ?? ?? ?????????? ??? ?? ?????????? ??? ??

22 ????????, ? ??????? ?????????? ??? ?? ?????????? ??? ?? ?????????? ????? ?????????? ??????????
??? ?? ?? ?????? ?? ?????????? ??? ?? ?????? 2 ?? 5 ?? ?????? ?????? ?????? ?? ?? ?????? ?? ??????????
????????? ??? ?? ?????? ?????????? ???, ?????????? ??? ?? ?? ?????????? ?????????? ???
????????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?? ?? 17, ?????????? 2, ??? ?? ?????? ??????
??? ??????????. ???????????, ? ??????? ??? 13?? ?????????? 1989, C-342/87, Genius
Holding (?????? 1989, ?. 4227), ?????????? ?? ?? ?????????? ?????????? ??? ?? ?????? ??????
????????? ?? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??

23 ????????, ??????? ?? ?????????? ???, ?? ?? ?????? 13 ??? ?????????????? ??????
????????? Genius Holding, ?? ?????????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ??????????
????????????? ?????????? ??? ?? ?????????? ???, ?????? ?????? ??? ?? ?????????? ?????????? ???
????????????? ?? ?? ?????????? ??? ?? ?????????? ??? ?? ?? ?????? ?????????? ??? ?? ?????????? ???
????????????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ???
?????????, ??????? ?? ?? ?? 21, ?????????? 1, ?????????? ??, ??? ?? ?????? ???????,
????????????? ??? ?? ?????? ?????? ?????????? ??? ?? ?????????? (??., ?????? ???, ??????
Genius Holding, ???????????, ??? 19). ???????, ?? ?????????? ??????????
????????????? ?? ?? ?????????? ??? ?? ?? ?????????? ??? ?? 19?? ?????????? 2000, C-454/98,
Schmeink & Cofreth ??? Strobel (?????? 2000, ?. I-6973, ??? 53), ??? ?? 6?? ??????????
2003, C-78/02 ??? C-80/02, ?????????? ?. (?????? 2003, ?. I-13295, ??? 50).

24 ??? ?? ??????? ??????, ??????? ?? ?????????? ?? ?? ?????????? ????? ??????????????
????? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??

25 ??????, ??????? ?? ?????????? ??? ?? ?????? ?????? ??? ?? ?????????? ??? ?? ?????? ???
????????? ?? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????? ??? ?? ?????? (??., ??????
????, ??????? ??? 26?? ?????????? 1996, C-302/93, Debouche, ??????? 1996, ?. I-4495,
???? 18).

26 ????????, ? ?????? ?????? ?????? ??? ?? ?????????? ??? ?? ?????? ?????????? ??? ?? ???
????????? ?? ?? ?????? ?????? ?? ?? ?????????? ??? ?? ?????? ??? ?? ?????? ?????????? ??? ??
????? ?????? ??????. ? ?????? ??? ???????, ??????, ??? ?? ?????????? ??? ?? ??????????
????????? ??? ?? ?????? ?????? ??? ?? ?? ?? 17, ?????????? 3, ??? ?? ?????? ?????? (??.,
????? ???, ??????? ??? 13?? ?????? 2000, C-136/99, Monte Dei Paschi Di Siena, ??????
2000, ?. I-6109, ??? 20). ???????????, ??? ?? ?????????? ??? ?? ?? 20 ??? ??????
?????????, ?? ?? ?? 2 ?? 5 ?? ?????? ?????? ?????????? ?????? ??? ?? ?????? 17 ???
????? ??????.

27 ??? ?? ??????? ??????, ??????? ?? ?????????? ??????????, ??? ?? ?????? ?????? ??? ?? ???
?????? 17, ??? ?????? ?? ?????????? ??? ?? ?????? ??? ?? ?????? ?????? ??? ?? ?????????? ???
????????????? ??? ?? ?????????? ???, ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?? ???
????? ?? ?????????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????? ??? ??

28 ??????? ??? ??????????????, ??? ?????? ??????? ?????? ?? ?????? ? ??????? ??? ?????? ??
????? 2 ??? 5 ??? ?????? ??????? ?????? ?? ?????????????? ??? ?????? ?????? ??? ? ??
????????????? ??? ?? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ???, ? ?????? ???
????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??????, ??? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????????? ????.

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

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

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

31 ??????, ?????? ?? ?????????? ???, ?????? ?? ?? ????? 21, ?????????? 1, ???????
??, ??? ?????? ??????, «? ????? ?????????? ??? ?????? ?????? [...] ??? ??????????
????????? [...] ??? ??? ?????????? ??? ???? ???? ?????? ?????????? ??????????
????????? ?????? ? ?????? ?????????, ?????? ??? ?????? ?????????? ??? ?????????????? ???
????????? ???». ?? ?? ????? 21 ??????? ??? ?????? ?????? ?????? ?????? ??? ?? ???
????? ?????????? ??? ??? ?????? ??? ???? ???? ?????? ??? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ?????????? ????. ??????, ?????????? ??? ??? ?????? ???
????????????? ?????????? ??? ?????? ??? ?????? ??????, ?????? ?? ?????? ??? ??????????
??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? 27 ??? ?????? ??????. ???,
????? ? ?????????? ??? ?????????? ??? ?????? ? ? ?????? ??? ?????????? ??? ??????????
????????????? ??? ?????????? ??? ?????? ??? ??? ?????? ?????????????? ??? ?????????? ???
?????, ?? ?????? ??? ?????? ?? ?????????? ?????????? ?? ?????? ?????????? ??? ? ???
????????? ??? ?????? ???, ?? ?????? ?????? ?? ?????? ??? ?????? ?????????? ??? ??????????
?????????.

32 ??????, ?????? ??, ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? 9, ??????????
2, ??????? ?, ??? ?????? ??????, ? Reemtsma ?????? ?? ?????? ??? ?????? ???
??? ?? ?????? ??? ??? ?????? ???, ?????? ?? ?????????? ???, ??? ?????? ??? ?????? ???
????????? ?? ?? ?????? 77 ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
Reemtsma ??? ?????? ??? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?????????????, ?????? ?? ???????, ??? ??? ?? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ???
?????.

33 ??? ?????? ??? ?????? ??? ?????????? ?????????? ?????? ??? ?????? ? ?????????? ???,
????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? 1, ??? ?????? ??????, ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ??????.

34 ???????, ?? ?????? ?????????? ??? ?????? ?? ?????????? ?? ?? ?????? ?????? ???
??? ?? ?????? ??? ???????????, ??? ?????????????? ??? ?????? ??? ?????? ???

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

35 ? Reemtsma ?????? ??? ? ??? ???? ?????????????????? ?????????????? ??? ? ????
????????? ?????? ?? ??? ?????? ?????? ?????? ?????? ??? ?????????? ?????????? ???
????? ??? ?????????? ?? ??? ??? ?????? ?????? ??? ?????????? ?????? ??????????. ????????????, ?
?? ??? ??? ?? ?????? ?? ?????????? ?? ?????????? ?????? ?????????? ?????????? ??? ??????????
??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??? ??????????
?????????.

36 ? ?????? ?????? ??????, ????????, ??? ?????? ?? ??? ?????? ?????????? ?????????? ??????
????? ??? ??? ?????? ?????? ??????, ?? ?? ?????, ??????, ?????? ? ?????? ?????? ??? ??????????
??????, ???' ????, ?? ?????? ??? ??? ?????????? ?????? ??? ?????????? ??? ??? ??? ??,
????????, ? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????? ??? ?????????? ??? ??? ??????
??? ?? ?????????? ?????? ?????? ?? ??? ?????? ??? ?????????? ??? ?????? ?????? ??????.
??????, ?? ?????? ??? ?????? ?????? ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??????
????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??????
????? ??? ?????????????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??
????????? ?? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
?????????.

37 ?????, ??? ?? ?????????? ???, ??????? ?????????? ?????? ??? ?????????? ?????????? ??? ??
????????? ?????????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????
????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??
????????? ??????????, ??? ??? ?????????? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ??? ?????????? ?????????? ???, ???, ??????, ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? (??., ????, ????, ?????? ??? 17?? ?????? 2004, C-30/02, Recheio – Cash
& Carry, ?????? 2004, ?. I-6051, ??? 17, ??? ??? 6?? ?????? 2005, C-291/03, MyTravel,
????? 2005, ?. I-8477, ??? 17).

38 ???? ?????? ?? ?????????? ??? ???? ?????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ????
?????????????, ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ??
????????? ??? . ? ??? ?????? ??? ?????? ???, ??? ?????? ??? 20, ??? ?????????? ??? ??
????? ?? ?????????? ??? ?? ?????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????????????? ??????????. ??' ??? ?????? ??? ???????, ??? ?????? ??? ?????? ?????? ???, ??'
????, ?? ?????????? ??? ?????????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????????
??? ?????? ?????????? ??? ?????????? ??? (?. ?????? Schmeink & Cofreth ??? Strobel,
?????????????, ?????? 48 ??? 49).

39 ??? ??? ?????????? ?? ??? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ???, ???' ????, ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????, ????, ?,
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ??? ???, ???????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????????.

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

40 ?????? ?????????? ?? ?????????? ???, ??? ?????? ??????????, ?????????? ??????????
????????? ?????? ?????????? ??????, ?? ?????????? ?????? ?????????? ??? ?????? ?????? ??
????????? ??? ?????????? ??? ?????????? ?????? ?? ?????? ?????? ??? ?????? ?? ?????? ??
????? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
?? ?????????? ?????? ?????? ?????? ?????? (??., ?????? ???, ?????????? ??? 16??
????? 2000, C-78/98, Preston ???., ?????? 2000, ?. I-3201, ??? 31, ??? ??? 19??
????????? 2006, C-392/04 ??? C-422/04, i-21 Germany ??? Arcor, ??? ??? ??? ??????
????????? ??? ??????, ??? 57).

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

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

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

44 ??????, ?????? ? ?????????? ???, ??? ?????? ?????????? ??? ?????????? ??? ???? ?????
????????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ???, ? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?????????? (??., ?????? ???, ?????????? ??? 18?? ?????? 1994,
C-309/89, Codorniu ??? ???????, ?????? 1994, ?. I-1853, ??? 26, ??? ??? 17??
????? 1997, C-354/95, National Farmers' Union ???., ?????? 1997, ?. I-4559, ??? 61).

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

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

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

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

1) ?? ?????? 2 ??? 5 ??? ?????? ?????? 79/1072/???, ?? ???????????, ?? 6??
????????? 1979, ??? ??????????? ?? ?????? ?????? ?????? - ?????? ??????????? ?? ?????? ???
????????? ?? ?????? ?????? ?????? ?????? - ?????? ??????????? ?? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?? ??????????? ?? ?????? ???
?? ? ?? ??????????? ?? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??????, ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??.

2) ??????????? ?? ??????????? ?? ??????????? ?? ?????? ?????? ?? ??????????? ???
?????? 21, ??? 1, ?? ?????? ?????? 77/388/???, ?? ???????????, ?? 17?? ???
1977, ??? ??????????? ?? ?????? ?????? ?? ?????? ??????, ??? ?????????? ?? ???
????? ?????? ?????? - ?????? ?????? ?????? ?????? ?????????????? ?????: ??????????
????????? ???, ??? ?????? ?????? ?????? ??? ?????? ?????? 92/111/???, ???
?????????, ??? 14?? ?????????? 1992, ??? ?????? ?????? ??? ?????? ?????? ???
????????? ?? ?????????? ?? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??.

3) - ?? ?????? ??? ???????????, ??? ?????????????????? ???
????????? ??? ??????????? ?? ?????? ?????? ?????? ?????? ???????????, ??? ?? ???
????? ???, ??? ?????? ?? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ???
????????? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ???
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??.
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??.

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

(?????????)

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