

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

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

??? 22?? ?????????? 2017 (*)

«????????????? ?????????? – ????? ?????? ?????? ?????????????????? ?????? (???) – ????? ??????? 77/388/?? – ????? 4, ?????????? 3, ?????????? ??, ??? ?????? 13, B, ?????????? ?? – ?????????? ??? ???? ??? ?????? ??? ?? ?????????? ?????? ?????? 4, ?????????? 3, ?????????? ??, ?????????? ?????? ??? ?????????? ?????? ??? ?????? ?????? – ?????????? ??? ?? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? – ?????????? ??? – ?????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????»

???? ?????? C-251/16,

? ? ?????????? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ??? ?????? ?? Supreme Court (????????? ??????????, ?????????) ?? ?????? ??? 21?? ?????????? 2016, ? ?????? ?????? ??? ?????????? ??? ?????????? ??? 2 ?????? 2016, ??? ?????? ??? ??????

Edward Cussens,

John Jennings,

Vincent Kingston

????

T. G. Brosnan,

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

????????? ??? ??? T. von Danwitz (?????????), ?????? ???????, C. Vajda, E. Juhász, K. Jürimäe ??? ?. ???????, ???????,

????????? ??????????: M. Bobek

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

????????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ??? 27?? ??????? 2017,

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

– ?? ?. Cussens, J. Jennings ??? V. Kingston, ?????????????? ??? ??? D. Lynch ??? J. O'Malley, solicitors, ??? ??? ??? B. Murray, SC, ??? F. Mitchell, barrister,

– ? ???????, ?????????? ??? ??? E. Creedon ??? J. Quaney, ????? ??? ??? A. Joyce, ?????????? ??? N. Travers, SC,

– ? ??????? ????????, ?????????????? ??? ?? G. Palmieri, ?????????????? ??? ?? G. Galluzzo, avvocato dello Stato,

– ? ?????????? ????????, ??????????????? ??? ??? M. Owsiany-Hornung ??? ??? R. Lyal,
???? ?????? ??? ?????? ?????????? ??? ???????? ??? ?????????? ??? ??? ?? ??????????
??? 7?? ??????????? 2017,

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

????????

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

2 ? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ????????, ??????, ???
E. Cussens, J. Jennings ??? V. Kingston ???, ????????, ??? T. G. Brosnan, Inspector of Taxes
(???????????, ??????????, ???????), ?? ?????????? ??? Office of the Revenue
Commissioners (????????? ??????? ??????) (?? ????: ????????????, ???), ??? ?????
?? ????????, ??? ??? ??????? ?? ??????? ????????

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

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

3 ????? ?? ?????? 2, ?????? 1, ??? ????? ????????, ??? ????? ?????????????? ????
????????? «?? ?????????? ?????? ??? ?? ?????? ??????????, ??? ?????????????????? ??
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ???, ??? ?????? ???
??? ?????? ??? ??????».

4 ????? ?? ?????? 4. ??????????? 3. ??? ?? ????? ???????;

«?? ?????? ??? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ??
????????????? ?? ?????????????? ??' ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????????????? ??
????????? ?? ?????????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ??????;

?? ?????? ??? ?????? ?? ?????????? ?? ?????????????? ?? ?????? ??????????, ?? ?????? ?? ?????????????? ??
????????? ??????????????, ?? ?????? ?? ?????????? ?? ?????????????????? ?? ?????????? ??????????????
????????? ?? ?????? ?????????? ?????????????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????????? ??
?? ?????????? ?? ?????????????????? ?? ?????????? ?? ?????????????? ?? ?????? ?? ?????? ?? ??????
????????????? ?? ?????? ?????? ?? ?????????? ?? ?????????????????? ?? ??????????????, ??' ?? ?????? ?? ?????????? ??
????????????? ?? ?????????????? ?? ?????? ?? ?????? ?? ?????? ?? ??????????????

?? “???????” ??????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ??????????.

[...]»

5 ?? ?????? 13, B, ?????????? ?, ??? ?????? ??????? ?????????? ?? ????:

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

[...]

) ??? ??????????? ??????? ? ?????? ??????? ??? ??? ?????????????? ?? ????,
 ???? ??? ?????????????? ??? ?????? 4, ?????????? 3, ?????????? ??».

6 ?? ?????? 94 ??? ?????????????? ?????????????????? ??? ?????????????????? ?????????????????? ?? ????:

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

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

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

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

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

7 ? Value Added Tax Act 1972 (????? ?? 1972 ??? ????? ??????????????? ??), ??
????? ??? ????? ?? ?????????????? ?????????????? ?? ?????????? ?? ?????? ?? (??
????: ?????? ?? ??), ?????????? ?? ?????? ?? 4, ?????????? 1, 2 ?? 4 ?? ?????:

«(1) a) ?? ?????? ?????? ?????????????? ??? ???????;

[...]

b) ??? ?????? ????, ?? “??????”, ?? ?????? ?? ???????, ?????? ?????? ?????? ???? ?????? ?????? ???, ??? ?????? ?????? ???, ??? ?????? ?????? ??? [...], ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? [...]

[...]

(2) [...] ??? ??? ????? ??????? ??? ?????????? ??????, ?????????? ??? ??????????????????

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

[...]

(4) ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????? ????????, ??? ?????? ?? ?????? ???? ?????? ??? ?????? ?????????, ?????????? ?? ??????
????????? ??? ?? ??? ?????? ????????, ?????????? ?????? ?????????? ?????????? ??? ?? ??????
?????????, ??? ?????? ?? ?? ?????? ?????? ?????????? ?????????? ???, ??? ?????? ?????? ??? ??????
3, ?????????? 1, ????????? f, ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?????, ??? ??????????, ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ??????????????..»

8 ?? ????? 4, ?????????? 6, ?????????? ?, ??? ?????? ?????? ?????? ?????????? ??? ???
????????? ??? ?, ?????? ???, ?????? ???, ? ?????? ????

«?? ?????? ?? ?? ?????? ??? ?????????? ?????????? ?????????, ?????? ??? ?????? 12, ??? ??
????????? ??? ?????????????? ??? ?????????, ??? ?????? ?????????? ?????? ??? ?????????? ???
????????????? ??? ??? ?????? ?????????? ? ??? ?????????? ??? ?????????? [...]».

9 ?? ????? 4, ?????????? 9, ??? ?? ?????? ?????? ?????????? ?? ????:

«????? ? ??????? ?????????? ??? ?????????? ?????????? ?? ?????? ??? ?????? ?? ?????????? ???
??? ??? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
?? ??? ?????????? (?? ????, ??? ?????? ?????? ?????????: ?????????? ??? ??????), ???
????????? ?????????? ??? ??? ?????? ?????? ?????? ??? ?? ?????? ?????????? ??? ??????
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????????, ??? ??? ?????? ???
????????? ????, ??? ?????? ?? ?????? ?????? ?????????? ??? ??? ?????? ?????????? ???
????????? 6.»

10 ?? ????? 10, ?????????? 9, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ????. ?? ?????? 10, ?????????? 9, ?????????? ?? ??? ?,
????????? ?? ????:

«(a) [...] ? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ???
????????? ?????????? ??? ??????.

(b) ? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???
????????? [...].»

11 ??? ?? ????? 19, ?????????? 2, ?????? ??, ??? Value Added Tax Regulations 1979
(????????? ??? 1979 ??? ?????? ?????????? ???), ?? ?????? ?????? ?? ?????????? ??
????????? ??? 10, ?????????? 9, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? 20 ??? ?????? ???.

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

12 ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? (?????????), ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???

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

13 ??? ?? ??? ???? ??? ???????, ?? ?????????????? ??? ?????? ???
??????????????, ??? ?? ??? ?????? ??? ??? ?????? ??? 2002, ?????????? ??????????? ??
?? ?????????? ?? ??????? ???????, ?? Shamrock Estates Limited. ??? 8 ?????? 2002,
?????? ?? ??????? ??????? ?? ??? ?? ??? ?????? ???, ???, ??????, ??? ??????
????????? ?? ??? ??????? ??????? ?? ?????? ??? ?????? ?????? ??? ?????? ??????? ??
20 ??? ?? ??? ??? ?? ??? ?? ?????????? ?????????? (?? ????: ?????????? ????????)
???, ???????, ??????? ?????????? ?????????? ??? ?????????, ??? ?? Shamrock Estates,
??? ????? ?????? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??????? ??
????.

14 ??? 3 ?????? 2002, ?? ?? ??? ?? ?????? ??? ?????????? ?????????? ?? ???????
????????? ?? ???????????, ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ??
????????? ?? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????.

15 ??? ??? ?? 2002, ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?? ??????? ??
????????? ?? ??? ??????, ?? ?????? ?????????? ??? ?????? ?????????? ???.

16 ??? ?? ??????? ??? ??????????? ???, ???' ?????????? ??? ?????? 4,
?????????? 9, ??? ??? ?? ???, ??? ?????????? ??? ?? ??? ?? ??? ???????, ??????????
?? ?? ??????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ?? ??????????
????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??????.
?? ?????? ??? ?????? ??? ?????? ?????? ???????, ??? ? ?????? ?????????? ?? ?????? ???
????? ???.

17 ?? ??? ?? 27 ?????? 2004 ?????? ??????? ???, ? ?????????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ??? ?????????? ??????????
?? ?????????? ??? ?????? ??? ?????? ?????? ???????, ?? ?????? ?????????? ?? ?????? ???
????????? ??? ?????? ?????? ?????? ???????, ?????????? ??? ?????? ?????????? ??????????
????? ???????, ?????????? ?? ?????????? ? ?????? ?????? ?????? ??? ??? ??????????
????????, ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
?????.

18 ?? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? 27 ?????? 2004
????????? ??????? ??? ?????? ??? Appeal Commissioner (????????? ???????,
????????), ? ?????? ???????.

19 ?? Circuit Court de Cork (????????? ??? Cork, ???????) ??? ???
????? ??? ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? Appeal Commissioner (????????? ???????), ?????? ???, ??????
????????? ??? ?????????? ???, ?????? ?????? ?????? ??? ?????? ??? High Court
(????????? ???????, ???????), ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

20 ?????????? ??? ?????????? ???, ?? High Court (????????? ??????????) ??????? ???,
????????? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????????????, ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 21??
????????? 2006, Halifax ?... (C-255/02, ??? ????: ?????? Halifax, EU:C:2006:121).
??????????, ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ???????, ???

?????????? ?? ???? ?????? Halifax, ????? ?????? ?????????? ??? ?????????? ??? ?? ???????
?????????? ?? ?????????????????? ?????????????? ?????? ?????? ????? ??????????????,
????? ?? ?????? ?????? ?????? ?????????? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????.

21 ?? ??????????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? High
Court (????????? ??????????) ?????? ??? Supreme Court (????????? ??????????,
?????????). ?????????? ???, ???????? ?????? ?????? ?????? ?????????? ??? ?????? ???
????????? ?????? ?????????? ?????? ??? ?????????? ?????, ? ?? ??? ?????? ??? ?????? ???
????? ?????????? ?????????? ?? ?????????? ?? ?????????? ?????? ?????????? ??? ??? ??? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????, ?? ?????? ?????????? ???
????? 4, ?????????? 9, ??? ?????? ??? ????. ?????? ?????? ??? ?????????? ??? ?????????????? ???
??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????????? ?????? ??????????.

22 ???????, ??????????? ?? ?? ??????? ????? ????? ?????? ?? ???????????
????????? ??????? ?? ?? ?????? ?? ?????? ?? ?????? Halifax ?? ??????????? ??, ???'
??????, ?? ?? ????? ??????? ?? ?? ?????? ??????? ??????? ?? ?? ??????????? ?? ?? ??????
????????? ?? ?? ??????? ??????????? ??????????? ?? ?????? ?? ???????, ??????? ??????????? ??
?????? 4, ??????????? 9, ?? ?? ?????? ?? ?? ?? ?????, ?????? ???' ??????, ?? ?? ??????? ?? ??
?????????????? ??????. ???????????, ? ??????????????? ?? ?? ?? ?? ?????? ??????? ??????, ?
?????? ??????????? ?? ?? ?????? ?? ?? ??????? ?????? ?????? ?????? ?????? ??????? ?? ??
?????????????? ?? ?? ??????????? ??????, ?? ?? ??????????? ?????? ?????? ?????? ??????? ?? ??
???????. ? ??????????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ??????? ???????????????.

23 ?? ??????? ??????????? ?????????????? ??? ?????????????? ??? ??? ?????????????? ??? Circuit
Court de Cork (?????????????? ?????????????? ??? Cork), ?? ?????? ?????????????? ??? ????? 19
??? ??????? ??????????. ?????????????? ???, ??? ??????? ??? ?????????????? ??? ????? ????
?????, ? ??????????? ??? ????? ??? ??????????? ??? ?? ?????????????? ??? ?????? ???
????????? ????, ??? ??????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?? ??? ???????????
?? ?????????? ??? ?????? ?? ?????? ?????????? ?????????? ??????.

24 ??? ???. ????????, ?? Supreme Court (???????) ???????, ??
??????????, ?? ?????????? ???. ?? ?????????? ???. ?? ?????????? ???. ?? ?????????? ???. ??
?????????:

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

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

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

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

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

5) ?????? ?? ?????? 4, ?????????? 9, ??? ?????? ???? ??? ? ?????????? ?? ??????
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????, ???? ?? ??? ??????
????????? ?? ?????? ??? ?????? ??? ?????? 4, ?????????? 3, ??? ?????? ??????, ???' ????
????????? ?? ?????? ??? ?????? ?????????????? ?????????????? ??? ?????? ??? ?????? ???
?? ??? ?????? ??? ??? ??? ?????? ?????? ??? ?????? ??? ??????, ?? ?????????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???;

6) ?? ?????????? ?? ?????? 4, ?????????? 9, [?? ?????? ????] ?????? ??????
????? ??? ??? ?????, ?????????? ?? ?????????????? ?????????????? ??? ?? ??? ?????? ??????,
????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?? ??? ?????? ??????
Halifax;

7) ??????????, ?? ?????????? ??? ?? ?????? 4, ?????????? 9, ?????? ?????? ??? ??
????? ???, ?????????? ?? ?????????????? ?????????? ?????????? ?????????? ??? ?? ??? ??
????? ??? ?????? ???/? ??? ?????? 4;

8) ?????? ?? ?????? ??? ?????? 4, ?????????? 9, ??? ?????? ???? ??? ??
????????? ??? ?????? ??? ?????? ?????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? Halifax, ?????????? ??? ??
????????? ?????? ?? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ??? ?????? ???;

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

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

25 ?? ?? ?????? ??? ?????? ??????????, ?? ?????? ?????? ?? ?????????? ??? ??????, ??
????? ?????????? ???, ???' ??????, ?? ?????????????? ??? ? ???? ??? ?????? ??????????
????????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ???

?? ??? ?????? ?? ??? ????? ?????????? ?????? ???, ?? ?????????? ?????? ??? ?????????????? ??
??? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????? ??????, ??? ?? ?????? ??? ?????? ????.
????????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????????????? ??? ?? ??? ?????? ???
????????? Halifax, ?? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ???
????? ??? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???, ???, ??? ?????.
?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

26 ???????????????, ?????????????? ??? ?? ?????????? ??? ?????? ?????????????? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ????.
?? ?????????? ???, ?? ??? ?????????? ??? ?? ?????? ?????? ?????? ?????? ???, ??? ??????
??????????, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? (??.. ??' ?????? ??? ?????? ?????? ?????? ?????? ?????? 12??
????? ?????? ?????? 12?? ?????????? 2013, Portgás, C-425/12, EU:C:2013:829,
????? 18 ??? 22 ?????? ??? ?????? ?????????? ?????? ??????). ???????, ?? ?????????? ???
??? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ??? ??
????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????.

27 ????????, ?????? ?? ?????????? ??? ???? ??? ?????????? ?????? ?????????????? ??
?????????, ??? ?????????? ??? ?????? ??? ??? ?????? ??? ?????? ?????? Halifax, ???
????????? ???, ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??????????, ? ?????? ?????????? ??? ?????? 68 ??? 69 ??? ?????????? ?????? ?????? ???,
????? ??? ?????? ?????? ?? ?????? ?????? ?? ?????????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? (??.., ?????? ???, ?????? ?????? ??? 12?? ???
1998, ?????? ??., C-367/96, EU:C:1998:222, ??? 20, ??? 23?? ?????? 2000, ????????,
C-373/97, EU:C:2000:150, ??? 33, ??? 3?? 3?? ?????? 2005, Fini H, C-32/03,
EU:C:2005:128, ??? 32) ???, ???????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? (??.. ??' ?????? ??? ?????? ?????? ?????? ?????? ???
11?? ?????? 1977, Cremer, 125/76, EU:C:1977:148, ??? 21, ??? 3?? ?????? 1993,
General Milk Products, C-8/92, EU:C:1993:82, ??? 21, ??? 3?? 14?? ?????? 2000,
Emsland-Stärke, C-110/99, EU:C:2000:695, ??? 51).

28 ?????? ?? ?????????? ???, ??? ?????? 70 ??? 71 ??? ?????? Halifax, ??? ?
????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??,
????????? ??? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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29 ???????????, ???????????, ???, ??? ? ?????? ??? ?????? ??? ?????? ??? ??
27 ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??,
????, ?????? ???, ??? ?????? ??? ?????? (????????? ??? 12?? ??? 1998, ???????,
??., C-367/96, EU:C:1998:222, ??? 23?? 2000, ????????, C-373/97,
EU:C:2000:150), ??? ?????? ?????? (????????? ??? 11?? ?????? 1977,
Cremer, 125/76, EU:C:1977:148, ??? 3?? ?????? 1993, General Milk Products, C-8/92,
EU:C:1993:82, ??? 3?? 14?? ?????? 2000, Emsland-Stärke, C-110/99, EU:C:2000:695) ???
????? ??? ??? (????????? ??? 3?? ?????? 2005, Fini H, C-32/03, EU:C:2005:128).

30 ??????, ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ??

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??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ?? ???
????????? ? ?????????? ?????? ?????????? ??? ?????? (??., ???? ????) ??
????????? ??????, ???? ?????? ??? 3?? ?????????? 1974, van Binsbergen, 33/74,
EU:C:1974:131, ??? 13, ??? ?? 9?? ?????? 1999, Centros, C-212/97, EU:C:1999:126,
????? 24), ?? ?????????? (????????? ??? 6?? ?????? 2006, Agip Petroli, C-456/04,
EU:C:2006:241, ?????? 19 ??? 20, ?????? ??? 13?? ?????? 2014, SICES ???., C-155/13,
EU:C:2014:145, ?????? 29 ??? 30) ? ?? ?????? (??., ?????????? ?? ??? ???, ???? ??????????
?? 3?? ?????? 2005, Fini H, C-32/03, EU:C:2005:128, ??? 32, Halifax, ?????? 68 ??? 69,
????? ??? ?? 13?? ?????? 2014, FIRIN, C-107/13, EU:C:2014:151, ????? 40). ???????,
????????? ??? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?? ?????????? ??? ??
????????? ??? ??? ?????? ??????????.

31 ? ???? ??? ?????????? ?????????????? ???????????, ??? ?????????????? ??? ??
??? ?? ??? ?????? ??? ?????????? Halifax ???????, ??? ???????, ?????? ?????????? ??
?????, ?? ?? ??? ?????? ???, ??????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? (??.,
??' ????????, ??????? ?? 15?? ?????? 2009, Audiolux ???., C-101/08, EU:C:2009:626,
????? 50).

32 ?????? ?????? ?? ?????????? ???, ??? ?? ?????????? ??? ???????????, ? ??????
????????????? ?????????? ? ?????????? ??? ?????????????? ??? ?????????????? ?????????? ??
????????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ??
????????????? ???, ?? ?????????? ?????? ??? ?????? ?????????? ???????????, ?? ??????????????
????????????? ??? ?????? ?? ?????????? ??? ??? ?????????? ??? ?????? ??????????
????????????? ??? ?????????? ?????? ??? ???, ???????, ?????? ?????? ???
????????????? ?????? ?????? ??? (??., ??' ???? ??? ??????, ?????????? ??? 14??
????????? 2000, Emsland-Stärke, C-110/99, EU:C:2000:695, ??? 56, Halifax, ??? 93, ??
?? 4?? ?????? 2009, Pometon, C-158/08, EU:C:2009:349, ??? 28).

33 ??????, ? ???? ??? ?????????? ?????????????? ?????????? ??? ??????? ?? ??????????
?? ?????????? ??? ?????????? ??? ?????????? ?? ??? ?? ?????????? ?? ?????????? ??????????
??? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??????
????? (??., ??' ???? ??? ??????, ??????? ??? 18?? ?????????? 2014, Schoenimport
«Italmoda» Mariano Previti ???., C-131/13, C-163/13 ??? C-164/13, EU:C:2014:2455, ??? 62).

34 ?????? ??? ?????????? ?? ?????????? ??? ?????????????? ??? ?????? ??? ??????, ?? ??????
?? ? ?????? ??? ??? ?????? ?????????? ? ?????????? ??? ?????????????? ?????? ??????????
????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
?????????. ???????, ??? ?????????? ??? ??? ?????? 56 ??? 57 ??? ??????????
?? 18?? ?????????? 2014, Schoenimport «Italmoda» Mariano Previti ??. (C-131/13, C-163/13
?? C-164/13, EU:C:2014:2455), ?? ??????????, ?????????? ?? ?????????? ??? ??????????
?? ?????????? ??? ?????????? ???, ?????????? ??? ?????? ??? ?????? ?????? ?????? ???, ?
????? ?????????? ??? ?????? 27 ??? 32 ??? ?????? ?????????? ??? ?????? ??? ?????? ??????
????? ??? ?????????? ?????????? ??? ??? ?????????? ??? ?????? ?????? ??????????????
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35 ? ?????????? ??? ?????????? ?? ?????????????? ??? ?????????? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? 33 ??? ?????? ??????.

36 ????????, ?????? ?? ?????????? ??????, ??? ?????? 87, 90 ??? 91 ??? ????????
Halifax, ???, ??????? ?????????? ??? ?????? ?????????? ?? ??? ?????????? ??? ???,

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

37 ?? ?????????? ??? 13?? ??????????? 2014, Maks Pen (C-18/13, EU:C:2014:69), ??? ??
12?? ??????????? 2015, Surgicare (C-662/13, EU:C:2015:89), ??? ?? ??????????????? ???
?????? ???? ?????? ?????????????? ??? ???? ??????, ?????? ??????, ??? ?????????? ??? ?
???????? Halifax ??? ?????????? ??? ?????????????? ?????, ??? ?????????????? ?????????
??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ????
??? ??????? ??????? ?? ?????????? ?????????????? ??? ?????? ?????? ?????????????? ??????
(?????? ??? 13?? ??????????? 2014, Maks Pen, C-18/13, EU:C:2014:69, ????? 39) ??? ??
?????????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ???????????????
??? ?????????? ??????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????????? ??????, ??? ??
????????? ??? ??????? ?????????? (?????? ??? 12?? ??????????? 2015, Surgicare, C-662/13,
EU:C:2015:89, ????? 34).

38 ?????, ??? ?????? ??? ??????? ??? 5?? ?????? 2007, Kofoed (C-321/05,
EU:C:2007:408), ??? ?? ?????? 38 ?? 48 ??? ?????? ?????????? ??? ?? ?????????? ??????????
??? ?? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????????? ?????????????? ??????????????
??????????, ??? ?? ??? ?????? ??? ?????????????? ?????????? ?????????????? ?????????? ???
????????????? ?? ?????????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ???? ?? ???
????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ????
?? ?????? ??????, ?? ?? ??? ??? ??? ?????? ??????? ???, ??? ?????????????? ??? ?????? ??? ?????? ???
??? ??????????. ?????? ?? ??????????, ??? ?????? 48 ?? ?????? ?????????? ?????????, ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???????????, ???
????? ?? ?? ???????????, ?? ?????? ?????? ?? ?????????? ??? ?????????? ???????????, ?? ?? ???
????????? ??? ?????? ??? ?????????????? ?????? ??? ?????????? ??? ?????????? ???, ??? ?????? ???
????????? ??? ?????? ??? ?????????????? ?????? ??? ?????????? ??? ?????????? ???, ??? ?????? ???.

39 ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??? ?????? ???
????????? ??????? ??? ?? ?????????? ??? ?????????????? ??? ?????????????? ?????????????? ? ??????????
??? ?????? ??? ?????????????? ?????????????? ??????????, ??? ?????? ?????????? ??? ???
???????? Halifax, ??? ?? ?????????? ??? ?????? ??? ??????, ?? ?????? ?????????????? ??? ???
??? ??? ?????? ??? ?? ??? ?????? ??????.

40 ? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ?? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??????????????
????????????? (?? .??' ?????? ??? ?????, ?????? ???, ?????????? ??? 22?? ??????????)
2015, Balazs, C-401/13 ?? C-432/13, EU:C:2015:26, ?????? 49 ?? 50 ??? ??? ??? ???
????????????? ??????????, ??? ??? 19?? ?????? 2016, DI, C-441/14, EU:C:2016:278,
?????? 38 ?? 40).

41 ???????, ? ??????? ??? ?????? ?????? ?? ?????????? ?? ?????? ??? ?????? ???
??????, ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? 267 ???,
?????????? ??? ???????????, ?????? ?????????? ???, ?? ?????? ??? ?? ?????????? ??? ????
??? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ????
????????? ??? ?????? ??? ?? ??? . ???????, ??? ?????? ?????????? ???????????, ???
?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???, ???? ?????? ??? ?????? ???

42 ??????????????, ?????????????? ??? ??? ???? ????? Halifax ?? ?????????? ??? ??????????
???? ????? ?? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????????? ??????????????
????????? ??? ????? ???. ??????? ?????????????? ??????? ?? ?????? ?????? ?????? ??? ?? ????
????????? ?? ??? ????? ?? ?????????? ?????????????? ??? ??? ?????????? ???????????, ??? ?? ?
????????? ??????? ??? ??? ?????????????? ??? ??????? ?????? ??? ??? ?????? ?????? ??? ?? ?
????????? ??? ??????? ??? ?????????????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?
??? ?????????? ?????? (??., ??' ?????? ??? ??????, ?????????? ??? 6?? ?????? 2007,
Meilicke ??., C-292/04, EU:C:2007:132, ??? 36, ??? ?? 23?? ?????????? 2012,
Nelson ??., C-581/10 ?? C-629/10, EU:C:2012:657, ??? 91).

43 ????????, ??? ????? ?? ??? ?? ?????????????????? ??? ?????? ?????? ?????? ????????, ???
?????? ?? ??????? ?? ?????? ?????, ?? ?????????????? ??? ?????? ??? ?????? ???????????
?????? ?? ?? ??????????? ?? ?????????????? ?????????????? ?????????????? ?????????????? ??
?????????? ?? ?? ?????? ??????????? ??, ?? ?????????????? ???, ?????????????? ??, ??? ??????
??????????, ?????? ??? ??????????? ?? ?????? ?????????????? ??? ?????????????? ??? ??????????? ??
?????????? ??????????? ?? ?????? ?????????????? ? ????????, ??? ??????? ?? ??????????? ??
??? ?????? ?????? ?? ?????????? ??? ?????? ?????????????? ??? ?????????? ?????????????? ???
????????? ??? ?????? ??? ?????????????? ??? ?????????? ?????????? (??., ??' ?????? ???
??????, ?????????? ??? 8?? ??????? 2000, Breitsohl, C-400/98, EU:C:2000:304, ????? 38,
Halifax, ????? 84, ????? ??? ??? 18?? ?????????? 2014, Schoenimport «Italmoda» Mariano
Previti ?.??., C-131/13, C-163/13 ??? C-164/13, EU:C:2014:2455, ????? 60).

44 ??????? ???. ????????, ??? ?????? ??? ??????????? ??????? ?? ?????? ? ?????????? ??? ?
????? ??? ?????????????? ?????????????? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ???????,
????????????? ??????? ??????? ??? ?? ??? ?????? ?? ?????? ??? ?????? ?????????? ??????? ???, ??
????????????? ?????? ?????????????? ?? ??? ?????? ?????????? ??? ??? ?????? ?????????? ????????,
????? ?? ??????? ?????? ???, ?? ?????? ?????????????????? ??? ??? ??? ?????? ?????? ??? ??? ???????,
????????? Halifax, ????. ?? ?????????????? ?? ??? ?????? ??? ?????????? ??????? ??? ??????? ??? ???
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45 ?? ?? ?????? ???. ????????, ?? ?????? ??????????? ??????, ???' ??????, ??
????????????? ???. ?????? ???. ??????????? ??. ?????? ?????? ??????????? ???. ???????????, ????
????????? ???. ???. ???. ?????????? ???. ???. ?????? ???. ?????? ??????????????? ???. ???' ??????????
???. ?????? ???. ?????????? ???. ?????????? ???. ??????, ???. ?????? ???. ?????? ?????????? ???.
????????? ???. ?????????? ???. ???. ???. ???. ?????? ???. ?????? ???. ?????????? ???. ?????????? ???.
?????????.

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

????? ??? ??????, ??????? Halifax, ??????? 92, 94 ??? 98, ????? ??? ?? 22?? ?????????? 2010, Weald Leasing, C-103/09, EU:C:2010:804, ?????? 48 ??? 52).

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

48 ????????, ? ???? ??? ?????????????? ?????????????? ?????????? ?????????? ???
?????? ?????, ???' ??????, ?? ?????????? ?? ?????? ?????????? ?????? ??? ?????? ??????
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49 ?? ???????????, ????. ?????????? ?? ?? ?????? ?????????? ?????????????? ??? ??
????????? ?????????? ??? ?????????? ?? ?? ?????????? ?? ?? ?????????? ??? ?? ?????? ???
????????? ?????????? ?????????? ??, ????. ?????? ?????? ?? ?? ??? ?? ?????? ?????????? ???
??? ?? ?????? ?? ?????????? ??? ?????? ?????? ??, ????. ?????????? ?? ?? ?????????? ???
????????? ?????? ??????. ???????, ? ????. ?????? ??? ??????, ???????, ???????, ??
????????? ?????????? ??? ?????? ?????? ??, ????. ???????, ??? ?????? ?? ?? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? (??., ??' ?????? ??? ??????,
????????? ??? 21?? ?????????? 2017, DNB Banka, C-326/15, EU:C:2017:719, ??? 41 ???
???? ?????????????? ??????????).

50 ????? ??????????, ?? ??????? ????????????, ??? ?????? ??????????? ?? ?????????? ??
???????????, ??? ?????????? ?? ???? ?? ?????????? ?????? ??? ?????????? ?? ?????????? ? ???????
??? ? ?????????? ?????????? ???' ?????????? ???????, ??? ?? ?????????? ??? ??????
???? ?????????? ?????????? ?? ?????????? ??? ??????? ?? ?????????? ??? ?????? 4, ?????????? 1 ??? 2,
??? ?????? ??? ??, ?? ?????? ?? ???? ??????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
????????? ??? ??.

51 ????? ??????????, ??? ????? ??????? ??????? ?? ?????? ? ?????????? ??? ? ???? ??????
????? ??? ?????? ???, ??? ?????????? ??? ?? ???????? ?????? ?????? ?????? ?????
????????????????????? ???' ?????????? ??? ?????? ??? ?????????????? ??????????????
?????????, ??? ?? ?????? ??? ??????? ??? ?????????? ?????????????? ??????????, ?????????? ??
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52 ?? ?? ??????? ???. ??????, ?? ?????? ??????????? ?????, ???' ??????, ??
?????????????? ???. ???? ???. ?????? ?????????????? ?????????????? ?????? ??? ??????
???, ??????????? ???. ?????, ???. ?????? ???. ?????? 75 ??? ?????????? Halifax, ??? ? ??????
????? ???. ??????? ???. ?????? ???. ?????? ?????? ?????? ? ?????????? ??????????
??????????????, ?????? ???. ?????? ?????? ?????? ?????????? ? ?????? ??? ?????????? ??????????
???. ??????????? ???. ??????? ???. ?????? ???. ?????? ?????? ?????????? ?????????? ???.
????? ???. ???. ??? ?????? ??????? ???. ?????? ???. ??? ?????? ???????.

53 ???????, ?????? ??????? ?? ??????????????? ???, ?????????? ??? ???? ??? ???????????
?? ?????????????? ??? ?????? ??? ?????? ????? ?????????? ??? ?????????? ??? ?????? ???
??????????, ? ?????? Halifax ??? ??????? ?? ?????????? ??? ? ?????????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????? ????? ?? ?????????? ??????. ??? ??? ?? ?????? ??
??? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ??
????????? ??? ?????? ?? ?????? ??????????, ??? ???? ?????????? ??????, ??? ????? 45 ???

?????????? ??? ?? 21?? ?????????? 2008, Part Service (C-425/06, EU:C:2008:108), ??? ??
???? ?????? ??? ?????? ? ???????? ?????????? ?????????????? ?????? ? ?????? ???
??? ??????? ??????.

54 ??? ?????? ??? ??????? ?????? ??? ?????? ?? ?????????? ??? ? ??????? ??? ????
????, ?????????????? ???, ?????? ??? ?????????? ??? ?????????????? ??? ? ??????? ???
??????????, ?? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?? ?????????? ???
????????? ?? ?? ??? ?????? ?????? ?? ?????? ?????????? ?????? ?????????????? ???????, ???
???? ??? ?????????? ?????????? ??? ?????????? ?????? ??? ?????????????? ??? ????
????? ??? ??? Shamrock Estates ????? ???, ?????? ??? ?????? ??? ?? ??? ?????? ???,
???? ?????? ??? ?? ??? ?????? ??? ??????.

55 ??? ?? ?????? 2 ??? ?????? ??????? ?????????? ??? ??? ?????? ?????? ?????? ???
????????? ?????????? ??? ?????????? (????????? ??? 21?? ?????????? 2008, Part Service,
C-425/06, EU:C:2008:108, ??? 50 ??? ??? ?????????? ??????????, ??? ??? ??? 27??
????????? 2012, Field Fisher Waterhouse, C-392/11, EU:C:2012:597, ??? 14).

56 ?????? ?? ?????????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ??? ??
????????????? ??? ?????? ??? ?????? ??? ?????????? ???????, ?????????? ??? ????
????????? ?? ??? ??????? ??? ?????? ?????? ?? ?????????? ? ?????????????? ?????????? ???
??? ??? ?????? ??? ??????? ???, ??? ??? ?????? ?????? ???????, ??????? ?????? ???
????????????? ??? ?? ?????????? ?????????????? ?????????????? (??., ???, ?????????? ???
22?? ?????????? 2010, Weald Leasing, C-103/09, EU:C:2010:804, ?????? 10 ??? 15 ??? 31,
??? ??? 17?? ?????????? 2015, WebMindLicenses, C-419/14, EU:C:2015:832, ?????? 20 ???
43 ??? 45).

57 ????, ??????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ? ??????? ???
????????????? ?????????????? ?????????? ?????? ??? ?????? ??? ? ??????? ???
????????? ?????? ???????, ??? ??? ??? ?????? ??? ??? ?????????? ?????? ???????
????? ?? ?????????? ?? ?????????? ?????????? ??? ??? (?????? Halifax, ?????? 94 ???
97). ??? ? ??????? ??????? ??? ?????? ??? ?????????? ?????????????? ???????
?????????? ??? ?? ??????? ?????????? ??? ?????? ???.

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

59 ??? ?????? ?????????? ?????????? ?? ???????, ??????? ?? ??? ?????? ??? ?????? ???
?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ? ?????????????? ???
????? ??? ??????, ?? ??? ?????? ?????????, ??? ?????????? ??? ?????? ??? ?????? ???
?? ?????????? ?? ?????? ?????????? ?????????? ?????????? ???????, ???, ??
????????? ?????????? ??? ?????????? ?????????? ?????????? ??? ???????, ?? ?????? ??
????????? ?????? ??? (??., ???, ???, ???, ??? Halifax, ?????? 76 ??? 77, ???, ??? 17??
????????? 2015, WebMindLicenses, C-419/14, EU:C:2015:832, ??? 34).

60 ??? ?? ?????????? ?? ?????????? ??? ?? ?????????? ??? ? ?????????? ??? ????
????? ??? ?????? ?????? ?????????? ?? ?????? ?????????? ???????, ?????? ???, ?? ???
????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????, ?????? ??? ?????? ?????? ???
????????? ???/? ?????????? ?????? ?????? ??? ?????????? ?????? (??., ??' ???, ??
??????, ??? Halifax, ?????? 75 ??? 81). ?????? ?????? ?????? ?????? ??? ?????? ???
?? ?????????? ??? ?????????? ?????????? ?????? ??? ?????? ?????? ??? ??????????

??????, ??? ???? ?????????? ???????, ?? ???????????, ??????????? ?????? (????????? ??? 21?? ??????????? 2008, Part Service, C-425/06, EU:C:2008:108, ????? 62).

62 ??????? ??? ???????, ??? ??????? ??????? ??????? ?? ?????? ? ??????? ?????? ??? ????
???? ?????????????? ?????????????? ?????????? ???, ?????????????? ?? ??????,
????? ??? ??????? 75 ??? ?????????? Halifax, ??? ? ?????? ??????? ??? ?????????? ??? ?????? ??????
???? ??????? ??? ? ?????????? ?????????? ?????????? ???????????????, ?????? ?? ?????? ??????
????????? ? ?????? ??? ??????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??????
???? ??????? ???????.

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

64 ??????? ?? ??????????? ???, ??? ??????? ??? ??????????? ??? ??????????? ?? ????
267 ????? ?????? ??? ??????????? ??? ????? ?????? ???????????, ? ?????? ??????? ??? ??
?????? ??????????? ?????????? ??? ??????? ??? ?????? ??????????? ?? ?????? ?? ??????????
???? ??????? ??? ??????????? ??????? ?? ?? ??????????? ??? ??????? ???????????
????????? ??? ??????????? ?????? ??? ?????? 94 ??? ??????????? ???????????, ?? ???
?????? ?? ??????? ?? ?????? ?????????? (??., ??' ????) ??? ??????, ?????????? ?? 5??
?????? 2016, Ognyanov, C?614/14, EU:C:2016:514, ?????? 18 ?? 19 ?????? ?? ???
?????????? ???????, ??? ?? 27?? ??????? 2016, Audace ?.??., C-114/15,
EU:C:2016:813, ????? 35).

65 ???, ????, ?????? ?????????? ??????????, ????, ?????? ?? ?????? 94, ?????????? ??, ???
?????????? ????????????, ? ?????? ?????????????? ?????????? ?? ?????????? ?????????? ?????? ???
????????? ?? ?????? ??????????? ?? ?????? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ? ?? ?????
?????????????? ?????????? ?? ?????? ?????????? ?? ??????, ?????? ?? ?? ?????? ?? ?????? ?? ?? ??????
????????? ?? ?????? ?? ?????????? ?????? ?? ?????????? ?????? ?? ?????? ?? ?????????? ?????? ?? ?? ??????
????? ???.

66 ?????, ????, ?????? ?? ??????? ???? ?? ????? ???????, ? ??????? ?????????????? ??????????
??? ?????????????? ?? ?????? ??? ???????????.

67 ????????, ? ?????? ?????????????? ??? ?????????????? ??? ?????? ?????? ??? ???
?????? ?? ?????? ?????????? ?????????? ?? ??? ?? ?????????? ??? ?????? 4,
?????????? 9, ??? ?????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????????????? ??? ?????? ???
????????? ??? ?????????????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???

??? ??? ??????? ???. ??? ?????? ??????. ????, ? ??????? ?????? ????? ??????????? ??? ?????? ??? ???
? ??????????? ??????????? ?? ???????????, ??? ?????? ?? ?????? ???????????, ??? ??
????? 4, ??????????? 9 ??? ?????? ??? ?? ?????? ?? ??????? ?? ??????????? ??? ??????????? ??? ??
????? ?????? ??? ??????????? ?????, ??? ?????? ?????? ??????? ?? ??????????? ??? ??????????? ??? ??
????????? ??? ? ??????????? ??? ?? ??????????? ?? ???, ????? ?????? ?? ?????? ?????? ???????????,
????? ?????????? ??? ?????????? Halifax ??????? ?? ??? ?????? ??? ??????????? ???
????????????? ??????????.

68 ??? ?????? ??? ???????, ??????????????? ??? ?? ?????? ??? ?? ??? ?????? ?????? ???
??????????.

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

69 ?? ?? ?????? ??????? ???, ?? ?????? ??????????? ????, ???' ??????, ??
????????????? ??? ? ??? ?????? ?????????????? ?????????????? ?????????? ??? ?? ???????
?? ?????????? ???????, ??? ?? ?????????? ??? ?????? ???, ????? ?? ?????????? ???
????????? ?????????? ?????????? ?????????????? ?????????? ??? ?? ?????? ??? ?????????? ???
????? ???????.

70 ???????, ???????????, ??????, ??? ?? ?????????? ????, ??? ?????? 74 ???
????????? Halifax, ??? ? ?????????? ??? ?????????? ?????????????? ?????????? ??? ?? ??????
?? ?? ???????, ??????, ?? ??????? ???????, ??? ?? ?????? ??????? ?????????? ???
?????????? ??? ?????????? ?? ??????? ?????????? ??? ?????? ??? ?????? ??? ??????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????, ?? ?????? ?? ??????????
??? ?????????? ?????????? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ???.

71 ???????, ?? ??? 13, ?, ??????? ??, ??? ??? ?????? ???????, ??????????? ??? ???????
?? ?? ??? 4, ?????????? 3, ??????? ??, ???, ?????, ?????????? ??? ?????????? ??? ??????? ?
????? ?????? ??? ?? ?????????? ??????? ?? ?????? ??? ?????? ??? ?????????? ??
????????? «?????? ??????????». ??? ?????????? ??? ? ?????? ?????????? ??? ??
????? 88 ??? ?????????? ???, ?? ??????? ??? «?????? ??????????» ?????????? ???
????????? ??? ??? ???????, ??? ?????? ??? ?????????? ??? ? ?????? ??? ?????? ??? ??????????
???? ??, ??? ?? ?????? ??????. ??? ?? ?????? ???, ?? ?? ??? ?????? ?????????? ?????????? ???
«?? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
??? ??? ?????? ??? ? ??????? ??????» (??. ??? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ???
????? ?????? ?????? [COM(73) 950 ??????, ??? 20?? ?????? 1973].

72 ?????? ?? ?????????? ??? ? ?????????? ??? ?????????? ??? ?????? 13, ?, ?????????? ??,
??? ?????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????????? ??? ???????
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

73 ??????, ??? ??????????? ??? ?????? 59 ??? ?????? ???????, ??? ??????
????????? ?????????? ?? ???????????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???, ???
????? ??? ?? ??????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? 70 ??? ?????????? ???
????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 4, ?????????? 3,
????????? ??, ??? ?????? ???.

74 ??????????, ??? ? ?????????? ??? ?????????????? ??? ?????? ??? ???????????, ??
??????? ??? ???? ??? ???? ??? ?????????? ?????????? ?? ?????????? ??? ??????????
?????????. ??? ???? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ???
????? ?? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ?????????? ???
????? ?? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ?????? ?????? ???
????? ?? ?????? ?????? 94 ??? ?????????? ???, ?????????? ??? ???? ?????? ?????? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ??? ?????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ??? ?????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ??? ?????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ??? ?????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ??? ?????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????? ???.

75 ?????? ??? ??????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ??? ? ?????? ??? ????
????????????? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??????????, ???
?? ?????? ??? ?????? ???, ?????? ?????? ?? ?????? ?? ?????? ??? ?????????? ??? ??????????
????????? ?????????????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??????
????? ?? ??? ?????? ?????? ??? ?????, ??? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??????
????????? ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???.

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

76 ?? ?? ?????? ?????? ???, ?? ?????? ?????????? ?????, ???' ??????, ??
????????????? ?? ???? ??? ?????? ?????????????? ?????????? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ???? ?????? ??? ?????? ?????? ???, ? ?????? ?????? ??? ??????????
????????? ??? ??? ??? ?????? ?????????? ??????.

77 ??????, ?????? ?? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ???? 2, ?????? 1,
??? ?????? ??????, ???? ??? ?????? ? ?? ?????????? ??? ?????? ?????? ?????? ???
????????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ????. ????????, ????????,
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ???.

78 ??? ?????????? ??? ??? ??? ???, ?? ?????? 13, ?, ?????? ??, ??? ?????? ??????
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ? ?????? ?????? ??????
??? ??? ?????????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? 4, ?????????? 3,
????????? ??, ??? ?????? ??????, ??? ??? ?????? ?????? ??? ?????? ?????? ???
????????????? ??? ??? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??????.

79 ??????, ?????? ? ?????? ?????? ?????? ? ?????? ? ?????? ?????? ?????? ??????, ????????,
????? ???, ?? ?? ?????????? ???, ?????????? ?? ?????? ??? ?????? ?????? ?????? ? ??????,
????? ?? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ???
????? ? ?????? ?????? ??? ? ?????????? ?????? ?????????? ??????.

80 ?????? ??? ??????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ? ?????? ?????? ??? ????
????????????? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????? ? ?????? ??? ?????? ???, ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ??? ??? ???.

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

81 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ??? ?????? ?????
??? ?????????? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????????, ?? ???
????????????? ?? ?????????? ??? ?? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
???? ?????????? ?????????????? ??? ?????????? ?????, ??? ?? ??? ?????? ??????????, ??? ?????????????.

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

1) ? ??? ?????? ??? ?????????????? ?????????????? ?????????? ??? ?????? ??? ?????? ???
????????, ?????????????? ?????????? ?????? ??? ?? ??? ?????? ?? ?????? ??? ?????? ??????????
????? ???, ?? ?????????? ?????? ?????????????? ?? ??? ?????? ?????????? ?????????? ??? ??
??? ?????????? ?????????, ??? ?? ?????????? ?????? ?????? ?????? ???, ?? ??????
????????????????? ??? ?? ??? ?????? ??? ?????????? ??? 21?? ??????????????
2006, Halifax ?.?. (C?255/02, EU:C:2006:121), ?????? ?? ?????????????? ?? ??? ?? ???
??? ?????????? ?????????? ??? ?? ??? ?????????? ??? ?????????????? ??????????????.

2) ? ??? ?????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???
????????????? ??? ?????????? ??? ?????? ???, ??? ?????????? ?? ??? ?????? ??????
????????? ?????? - ??? ?????? ?????? ?????? ?????????????? ?????: ??????????
????????? ???, ??? ?? ?????? ???, ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
???? ?????? ?????????????????? ???' ?????????? ??? ?????? ??? ?????????? ??? ??
????????????? ?????????, ??? ?? ?????? ??? ?????????? ??? ??????????
????????????? ?????????? ?????????? ?? ?????????? ??? ?????? ??? ?????????????? ???
????? ??? ?????????? ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?????????????? ???
????????.

3) ? ??? ?????? ??? ?????????????? ?????????????? ?????????? ??? ?????? ??? ?????? ???,
????????? ???, ??? ?????? ??? ?????? 75 ??? ?????????? ??? 21?? ??????????????
2006, Halifax ?.?. (C-255/02, EU:C:2006:121), ??? ? ?????? ?????? ??? ?????????? ???
????? ??? ?????? ?????? ??? ? ?????????? ?????????? ?????????????? ??????????????, ??? ??
????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????????? ?????.

4) ? ??? ?????? ??? ?????????????? ?????????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? 77/388, ?????? ?? ?? ??? ?????? ???
????, ??? ?? ?????? ??? ?????? ??? ?? ??????, ?????????????? ?????????????? ??? ??
????????? ??? ?????? ??? ?????? ????. ??? ?????? ?????????? ?????????????? ??? ??
????????? ??? ? ?????????? ?????? ??? ?????????? ?????????????? ??? ?????????? ???.

5) ? ??? ?????? ??? ?????????????? ?????????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ???, ? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????????
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(?????????)

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