

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

M. POIARES MADURO

??? 25?? ???? 2005 1(1)

?????? C-435/03

**British American Tobacco International Ltd,**

**Newman Shipping & Agency Company NV**

????

**Ministerie van Financiën**

[?????? ??? Hof van beroep te Antwerpen (??????) ??? ??? ?????? ?????????????? ??????????]

«???? ??????? ??? – ??? 2, ?????? 1, 5, ?????????? 1, ??? 27, ?????????? 1 ??? 5 – ???  
????????? – ?????????????? ??? ????? – ?????????? ?????? ?? ?????????? ?????? – ???  
????? ?????????????? ?????????? ?????????? ?????????? ?? ?????? ?????? ?????? ?????????? – ???  
????????? ?????? ???»

1. ?? ??? ??? ????? ?????? ??? ??? ?????? ?????????????? ?????????? ?? Hof van beroep  
te Antwerpen (?????? ???????) (??????) ?????????? ??? ?????????? ??????????????  
????????? ??????? ?? ??? ?????????? ??? ?????? ?????? 77/388/??? ??? ???????????, ???  
17?? ??? 1977, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???, ??? ?????????? ??  
????? ?????? ?????? ?????? – ??? ?????? ?????? ??? ?????????????? ?????: ??????????  
????????? ??? (2) (?? ????: ??? ?????).

I – ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??  
????????? ??? ?????????? ??? ?????????? ??? ?????????? ???

2. ? ?????? Newman Shipping and Agency Company (?? ????: Newman) ??????????????  
??? ?????????? ??????? ??? ???????, ??? ?????????????? ?????? ?????????? ???  
????????? ??????? ??? ?????? ?????????? ??? ??? ?????? British American Tobacco  
International Ltd, (?? ????: ????) ??? ?????? ??? ??????. ??? ??? ?????????????? ?????? ???  
????? ?????????? ??? ?????? ?????????? ????.

3. ?????? ?????????? ??? ??? ?????? ??? 4 ?????????? 1995 ??? ??? 29 ??????????  
1996, ??? ??? ?????? ??? ?? ??????? ??? 14?? ??? ??? 15? ?????? 1998. ? ??????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ?????? ?????? ?????????????? ???  
??, ?????? ?? ?? ?????? ??? ??? ?????? ??? ?????? ??? ?????? 58, ?????????? 1 ??? ??????

??? ??? ?? ?? ?????? 1 ??? ??????????? ?????????????? ????. 13 ??? 29?? ?????????? 1992, ???  
????? ??? ??? ??? ???? ? ?????????? ?? ?? ?????????????? ???? ??? ??? ??????????  
????????????? ?? ??? ????? ?????? ????? ?????????????? ??? ??, ?????????? ??? ?? ?????????? ???  
????????????? ????? ?????????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ???  
??? ??????? ????????, ??? ????? ?????????? ??? ? ???.

4. ??????? ?? ?? ?????? 58, ?????????? 1, ??? ?????????? ??????? ??? 1969:

«????? ??? ?? ??????????? ?????? ??? ??????????, ???????????, ???? ??? ?????? ???  
?????? 25ter, ? ?????????? ??? ?????, ?????????? ??? ?? ??? ?????? ??? ?????????? ???  
??? ?????, ?????? ?????????? ? ?????????? ?????? ?????? ?? ??? ?????????? ??? ?? ??????????  
????????? ?????, ?????? ?? ?????????? ?????? ?????? ?????? ??????????????.

[...]

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

5. ??????? ?? ?? ?????? 1 ??? ?????????? ?????????????? ????. 13 ??? 29?? ?????????? 1992,  
????? ??? ?????????? ??? ?????????????? ?????? ??? ?????? ?? ??? ?????????? ??? (*Moniteur  
belge* ??? 31?? ?????????? 1992, ?. 28086, ??? ????: ?? ?????? ??????) «? ???  
????????????? ??? ?? ??? ?????????????? ?????? [...] ??? ????? ?????????? ?????????? ??  
??? ?????? ??? ??????????».

6. ?????? ??? ?? ?????? ?????? ?????????? ???????????, ? Newman ??????? ??  
?????????? ??? ?? ??? ?????????? ??? ?? ??? ?????????? ??? ?? ??? ?????????? ??? ?? ??? ?? ??? ?? ??? . ?  
BATI ??????? ??? ?? ??? ?????? Newman.

7. ? Newman ??? ? BATI ??????? ?????? ?????? Recharge van Eerste Aanleg te  
Antwerpen (?????????? ???????) ??????? ??? ?????????? ??? ?????????????? ????. ?  
????? ??? ?????????? ?? ??????? ??? 4?? ??????? 2001, ?? ??? ??? ?????? ??????? ???  
????????? ?????? ??? ?????? ?????????? ??? ?? ??????????, ???? ??? ??????, ??????????  
??? ???, ?? ?? ??????, ??????? ??? ?????? 58, ?????????? 1, ??? ?????? ??? ?? ???  
?????? 1 ??? ??????? ??????????, ?????????? ??? ?? ??? ?? ??? ?? ??? ???????????.  
??????, ?? Rechtbank van Eerste Aanleg ?????? ??? ?? ?????????? ?????? ?????????? ???  
?????????? ??? ?????????? ??? ??????? ???, ???????, ??? ?????????? ??? ?? ??? ?? ??? 27 ???  
??????.

8. ??? 7 ??? 2001 ?? Newman ??? BATI ??????? ?????? ??? ?????? ?????????? ???  
?????? ??? Hof van beroep te Antwerpen, ?? ?????? ?????????? ?? ?????????? ??? ??????????  
?? ??????? ?????????? ???????:

«1) ??? ?????? ?? ??? ?????? ?????? ???????, ???? ??? ?????? ??? ?? ???  
??????, ?? ??????? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????????????? ????:

- ??? ?? ?????? ?????? ??? ?????? ??????? ? ?????? ??? ?????? ??? ??????;
- ??? ?? ?????? ?????? ??? ?????? ??????? ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
??????;
- ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???;

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

3) ?? ?????????? ??? ?????????????? ?????? ?????? ?????????????? ??? ??? ?????????? ??  
????????? ??? ??? ?????, ????, ?? ??? ?????? ?????????? ?????? ?? ??? ?????? ???;  
??? ?????? ?????? ? ?????? ?????????? ?????? ?????????????? ???;

4) ??????? ?? ??? ?????? ?? ?????????????? ??? ?????????? ??? ?????????? ??  
????? ??? ?????????????? ??? ?????? ?????? ?????? ?? ?????????? ??? ??????  
27, ?????????? 2 ? 5, ??? ?????? ??????, ?????????? ??? ??? ?????? ??? ??????  
????????????? ????, ?? ?????? ??????, ?? ?????????? ?????? ?????? ?????????? ?? ????  
???? ?????????????? ?????????? ?????? ?????????????? ?????? ???? ???? 2 ??? ????  
????? ??? ??????????;»

5) ?? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? 27, ?????????? 5, ??? ????  
???????, ?????????? ? ??? ?????? ?????? ??? ?????????? ??? ?????? ??????????????  
????? ??? ?????????? ????, ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ??  
????????? ??? ?????????? ??? ?????? ?????? ?????????????? ?????? ?????? ?????????? ???,  
?? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????;»

9. ??? ?? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ? ?????????? ??????????  
????????? ??? ?????? ??????, ????, ?????? ?????, ??? ?????? 2, ??? ???? ???? ?????? ??????????  
«????? ??? ?????????? ??? [...] ?? ?????????? ?????? ??? ???? ?????? ?????? ??? ???? ???? ???? ???? ????  
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ????  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????;».

10. ??????, ?? ??? 5, ?????????? 1, ??? ?????? ?????? ?????? ??? «?? “?????????  
?????” ?????????? ? ?????????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ??? ???? ????  
?????».

11. ??????, ?? ????? 10, ?????? ???:

«1. ?????????? ??:

?) “????????????? ??? ?????? ??? ?????”: ?? ?????? ?? ???? ?????? ?????????????? ?? ??????  
????????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????.

?) “????????? ??? ?????”: ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ??? ?????? ??? ??????.

2. ? ?????????????? ??? ?????? ?????????? ??? ???? ?????? ?????????? ??????????, ??? ???? ???? ????  
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????;»

12. ??????, ?? ????? 27, ?????? ?? ???? ?????? ?????????? (3), ?????? ???:

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

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

[...]

5. ?? ????, ?? ?????? ?????? 1?? ?????????? 1977 ?????? ????, ????  
?? ?????????? ?? ??? ?????? 1, ?????????? ?? ?? ???????????, ??? ??? ?? ??? ?? ?? ??  
?? ?????????? ?? ??? ?????? ?? 1?? ?????????? 1978 ?? ?? ??? ?????????? ??,  
????????? ?? ??? ?????? ?????? ?????????? ?? ??? ??? ?????????? ?? ??? ?????????? ?? ??? ?? ??,  
?? ??? ?????? ?? ??? ?????? ?????? ?? ??? ?????????? ?? ??? ?????????? 1.»

13. ???' ?????????? ?? ?????????? ?? ???, ?? ?????? ?????????????? ?? ??? ??????????, ??? 19  
????????? 1977, ?? ??? 58, ?????????? 1, ??? ?????? ??????? ??, ?????? ?? ??  
????????? ?? ??? 13, ??? 3?? ?????? 1970 ?????? ?? ?? ??? ?????????? ??????????????  
????? ?? ??? ?????? ?? ??? ?????? ?????????????? (Moniteur belge ?? 5?? ?????? 1970, ?. 6103),  
????????? ?? ???, ??? ?????? ?? ??? ?????? ?? ??? ?????? ?? ??? ?????? ?? ??? ?????? ?? ????:

«B. ?????????? ?? ??? ????.

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

??? ?? ?????????? ?? ??? ?????? ?? ??? ?????????? ?? ??? ???, ? ??? ?? ?????????? ?? ??? ??  
????????? ?? ??? ?????? ?? ?????????? ?? ??? ?????????? ?? ???, ???????????, ??? ??  
????? ?? ?????? ?? ?????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? ?????? ?????????? ?? ???  
?????????????, ??? ?? ?????? ?????????? ?? ??? ?????????? ?? ??? ??? ?????????? ?? ??? ??  
?????????. ??? ?? ?????? ?????????? ?? ??? ?????????? ?? ??? ?????? ?? ??? ?????? ??????????  
????????. ??? ?? ??? ?? ?????????? ?????????????? ?? ??? ?????? ?? ??? ?????? ?? ??? ??????  
????????, ?????????????????? ?? ??? ??? [...].»

II – ??????

14. ?? ?????????? ?? ??? ?????? ?????????? ?? ??? ?????? ?? ???, ???' ??????,  
??????, ?? ?? ?????? ?? ??? ?????? ?????? ?? ??? ?????? ?????????? ?? ??? ?????? ?? ???  
????????????? ?? ?????????? ?? «????????? ?? ?????? ?? ?????????? ?? ???», ??????? ?? ??  
????? 2, ?????? 1 ?? ??? ?????? ??????, ???, ??? ??????, ?? ?????????? ?? ??? ??????,  
?? ?????????? ?? ?? ??? ?????? ?? ??? ?????? ?????? ?? ??? ??????, ?? ?????????? ?? ??? ??  
????????? ??????????, ??? ?????? ??????, ???' ??? ???, ?? ?????????? ?? ??? ??  
????????, ?? ?????????? ?? ??? ?????? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?? ??  
????????? ?? ??? ?????? 27 ??? ?????? ??????.

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

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

16. ??? ?? ? ??????? ??? ?????? ? ??????? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ??????  
?????? ??? ?????????? ??? ?????? ??????? ?? ?? ??? ????? ??????? ?? ?????? ??  
????????? ?????? ?????????? ?? ?????? ?? ?????????? ??? Newman ??? ??? BATI ???  
????????? ??? ?????????? ??? ??, ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????  
?? ??????????. ?????? ?????? ?? ??????????, ???????, ???, ?????? ??? ?? ?????, ???  
????? ??? ?? ?????? ?????????? ????.

17. ??????, ? ??????? ?????????????? ??? ?????? ??? ?? ?????? ??????????, ???, ?.?,  
?? ??? ?? ??????? ??? ?????? ????? ?????????? ??? ?????? ?????? ?????????????? ??? ??  
??????, ??????? ??' ?????? ??????? ??? ?????? ??? ?????? ?????? ?? ?????????? ??  
??? ?????? ??? ??????????. ?????????? ??? ?? ?????????? probatio diabolica, ??????  
????????? ??? ?? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ???  
????????????? ??? ?? ?????????? ???.. ???????, ?? ?????????? ??? ?? ??? ?? ??????  
?? ?????????? ??? «????? ?????????? ?? ?? ?????????? ?????? ??? ?? ?????? ????  
????????? ??? ?? ?????? ?? ?????????? ?? ?????????? ?????????? ??? ?????????? ??? ??  
????????? ??? ?? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?? ?????????? ???  
????????? ??? ?????» (4).

18. ??? ?? ???? ?? ???? ?? ???? ???????, ??? ?? ??????? ??? ?????? ?????????? ???  
??? ??????? ?????????? ??? ?? ??????? ?????? ?????? ?????? ?????????? ??????????. ?? ??  
??? ?? ??????? ??? ?? ??? ?? ?????? ??? ?????????? ?? ?????? ??? ?????????? ??????  
????????? ??????? ??? ?? ??? ?? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ??  
????????? ??? ?? ??????? ??? ?? . ??? ?????? ?????? ?????????? ?????????? ???, ??? ??  
????????? ??? ?? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???, ??? ??  
?? ?????????? ??? ??????.

19. ??? ?????? ??? ?? ???? ???? ???? ?????? ??? ?? ?????????? ??? ?? ??? ?? ??????  
????????? ?????????? ??? ?????? ?? ?? ?????????? ??? ?? ?????? ???, ?????? ?????? ??  
????????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??????????.

? – ?????? ??????? ?????, ??? ???????, ??? ?????????? ??? ?????????? ??? ?? ?????? ???  
????????? ?????????? ?? ?????????? ?? «????? ??????» ?? ?????????? ??????, ???  
??? ?????? ??? ?????? 2, ??? 1, ??? ?????? ?????? ???, ??? ?????? ???, ?? ?????????? ??  
??; ??;

20. ? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??  
«????????? ?????? [...] ?? ?????? ??? ??????» ??? ?? ?????? ??? ?????? 2, ??? 1, ??? 5,  
????????? 1, ??? ?????? ????.

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

22. ??? ?????, ????, ??? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??  
????????? ?????????? ?? ?????????? ??? ?????, ?? ?????????? ??? ?????? ?????????????? ?? ?? ??  
????????? ??? ?? 3? ?????? 1994, Tolsma, ??? ?????? ?????????? «????????????????? ??  
?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? 2, ?????????? 1, ??? ?????? ??????, ???,

?????????, ????? ????????????, ????? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ??????????  
??? ??? ????? ???? ????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???  
????????? ???????, ? ?? ?????? ??? ?????????? ? ?????? ??? ?????? ??? ?????? ?????? ???  
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? » (5). ?????? ???  
??????????, ??? ?? ?????? ???, ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????????  
?????.

23. ?? ??? ??????? ??????, ?? ?????????? ?????????????? ??? ?????? ?????????????? ???  
????????????????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?? ??? ?????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
«????? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ???  
????????? ??? ?????? » (6). ?? ??? ?????? ??? 1?? ?????? 1982, Hong-Kong Trade  
Development Council, ?? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ??????  
??????????, ??? ?????? ??? ?????????? ??? ??? ??? ??? ?????? ???????????,  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
???? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? » (8).

24. ??? ?? ??? ??? ?????????? ????, ?????????? ? ?????????? ??? ?????? ??? ?????? ??? ?  
????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???  
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ???' ??? ?????? ?????????? ???' ?????? ??? ?????? ??? ?????? ??? ?????? ??? (9).

25. ??????, ??????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????????? ???, ??  
????????? ??? ?????? 6 ??? 7 ??? 5 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
(????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (10).

26. ?? ??? ??????? ??? ?????? ?? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ???  
????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 5,  
????????? 6 ??? 7, ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ??????.

27. ??????, ?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (????? ?? . ??????????)  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (11). ?????? ??  
?? ?????? ???, ? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? (12). ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?? ?????? ???, ??? ??  
?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? (13).

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

? ?????????? ??? ? ??????????, ?? ??????????, ?????? ??????????: ?????????? ??? ?? ??????  
??? ??? ?????????? ??????, ??? ?????????? ??? ??? ??? ??? ???, ?????????? ?? ???.  
??????, ???????, ? ??? ? ??? ??? ??? ?????????? ??????? ?? ??????? ???????, ??? ??  
????? ??? ????? 2, ?????? 1 ??? ????? ??????.

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

30. ?????? ??? ???????, ?????? ??? ?? ?????????? ?????? ?? ?????? ??? ??????  
?????????? ??? ??????? ?? ?????? ?????? ?????????? ?? ?????????? ?? ??????? ????  
?????????? ??? ?????? ?? ??????? ?? «????????? ?????? [...] ?? ??????? ??????», ???  
??? ?????? ??? ?????? 2, ?????? 1, ??? ????? ??????.

? – ?????? ???????, ???' ??? ???, ?? ?????????? ?????? ??? ?????? ?????????????? ?  
????????? ??? ?????? ?????????? ?????? ?????????????? ?? ?????? ?????? ???' ?????????? ???  
????? 27 ??? ?????? ??????;

31. ?????? ?? ?? ?????? 27 ??? ?????? ???????, ?????? ?? ?????????? ?? ??? ?? ?????? ????  
? ??? ??????? ??????, ??? ?????????? ?? ??? ??? ?????? ??????, ?? ?????? ??? ??????????  
??? ?????????? ??? ?????? ?? ??? ?????? ?????????? ?????????? ?????????? ????  
??????????.

32. ?? ??????? ?? ?? ?????? 27, ?????????? 5, ??? ?????? ???????, ?? ?????? ??????????  
?? ??????? ??? ?? ?????? ?? ??? ??? ?????????????? ?????? ?????????? ?????????? ??  
????? ??????? ?????? ??????????????. ?? ?? ??????, ?? ?????????? ?? ?????????? ??????  
????? ??? ??? ?????? ?????? ?? ??? ?? ?????????? ?? ?????????? ??? ?????????? ???  
??? ?????????? ??? ??? ?????????? ??? ?????? ?????????? ?? ?????????? ???.

33. ?? ?????? 10 ??? ?????? ??????? ?????????? ?? ??? ?????? ?????????? ?? ??? ??????????  
?????? ??? ??????? ??????? ??? ?? ??? ? ???, ?????? ?? ?????????? ?? ??? ??????????  
??? ?? ?????????? ?????? ??? ??? ?????? «?? ??????, ?? ?? ?????? ??????????????  
?? ?????? ???????????, ?? ?????? ?????? ?????????? ?? ??? ?? ?????????? ?????????? ??  
?????».

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

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

36. ???, ??? ??? ??????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ???  
????? ??? ?????? ??? «??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ???, ?? ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???, ???,  
????????? [...], ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???, ??? ??? ??????  
????????? ??? ?????? ??? ??? ?????? ??? ?????? » (14).

37. ?????? ?????? ?? ?????????? ??? ?????? ?? ?? ?????????? ??? ?????? ??? ?????????? ???  
?? ?? ??? 27, «????? ??? ?????? ?????????? ???, ??? ?? ?????????? ??? ?????? ???  
????????? ??? ? ?????????? ??? ?????? ?? ?????????? ??? ?????? » (15). ?? ?????? ???  
????????? ?????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ???  
?? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???  
????????? ???, ??? ?? ?????? ??? ?????? ??? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ?????????? ?? ?? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???  
????????? ??? ?? ??? ?? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???  
????????? ??? ?? ??? ?? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ??  
????????? ??? ?? ??? ?? ?????? ???, ? ?????? ??? ?????? ??? ?? ?? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???  
????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???,  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???  
????????? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ??? ?????? ???.

38. ?? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????????? ???, ??? ?? ??? 27, ?????????? 5, ??? ??  
????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?? ??? ??? ?????? ???  
?? ??? ??? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

39. ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? (16). ?????? ?? ?????? ???, ?? ?????? ???, ? ?????? ??? 13??  
????????? 1985, Direct Cosmetics, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? «????????? ?? ?? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? 27, ?????????? 1, ???, ?????? ???, ??? ??????  
????????? ??? ?????? » (17).

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

41. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ??? 27 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? (18), ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???, «???

????? “????????? ??? ??????? ??? ?????? ??? ?????????????? ??? ?????????????? ?????? ???  
????? ?????????? ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ?????? ??? ?? ?????? ???  
????? ??????» (19). ?? ??? ??????, ?? ??? ?????? ?????????? ??? ?????? ?????? ?????? ???  
????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ???  
????????? ? ?????????? ?????? «????? ??? ?????? ??? ?????? ?????? ??????»  
????? ??? ?? ?????????? ??? ?????? ??????» (20) ??? ? ?????????? ??? ?????? ?????? «??  
??? ?????????? ??? ?????? ??? ?????? 27, ?????????? 1, ??? ?????? ??????, ?????? ???  
????? ?????? ??? ?????? ??????» (21).

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

### III – ??????

43. ??? ?? ??? ?? ?????? ?????????? ?????????? ??????????, ?????????? ??? ?????????? ??  
????????? ??? ?????????? ??? ?? Hof van beroep te Antwerpen ?????????? ?????????? ??  
????:

«1) ? ?????? ??? “????????? ??? ?????? [...] ??? ?????????????? ?? ?????? ?????? ???”,  
????????? ?? ?? ?????? ??? ?????? 2, ?????? 1, ??? ?????? ?????? 77/388/?? ?? ??????????,,  
??? 17?? ????? 1977, ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ???, ??? ??????  
?? ??? ?????? ?????? ?????? – ?????? ?????? ?????? ?????????????? ??????: ??????????  
????????? ???, ?????? ?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???  
????? ??? ?????? ??????????.

2) ? ?????????? ?? ?????? ?????? ???, ??? ?????? ?????????? ?????????? ???  
?? ?????? 27, ?????????? 5, ??? ?? ??? ?????? ?????? ??? ?????????? ?????? ?????? ??????????  
?? ?????????? ??? ?? ?????? ?????? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????? ??? ?????? ?????? ?????? ??????.

1 – ?????? ??? ??????????: ? ??????????.

2 – ?? ??. ???. 09/00, ?. 49.

3 – ??? ?????? ??? ?? ?????????? ??? ?????? ?? ??? ?????? 2004/7/?? ??  
????????? ??? 20?? ?????????? 2004 (?? L 27, ?. 44).

4 – ?????????? ??? 9?? ?????????? 1983, 199/82, San Giorgio (????????? 1983, ?. 3595, ???  
14), ??? ??? 9?? ?????????? 1999, C-343/96, Dilexport (????????? 1999, ?. I-579, ??? 48).

5 – ?????? C-16/93, ?????? 1994, ?. I-743, ?????? 14, ? ?????????? ?????? ??? ??????.

6 – ? ?????????? ??? 5 ?????? Tolsma, ?????? 13 (? ?????????? ???  
?? ??????)- ?????? ??? 5?? ?????? 1981, 154/80, Coöperatieve  
Aardappelenbewaarplaats (????????? 1981, ?. 445, ?????? 12)- ??? 23?? ?????????? 1988, 230/87,

Naturally Yours Cosmetics (???????, 1988, ?. 6365, ???? 11) ??? ??? 8?? ?????? 1988, 102/86, Apple and Pear Development Council (???????, 1988, ?. 1443, ???? 12).

7 - ??????? 89/81, ??????? 1983, ?. 1277, ??????? 9 ??? 10.

8 – ??????, ??? 10.

10 – ?????? ?????? ?? ??????????? ??? ?? ?????????? ??? ?????????? ??? 13?? ???????????  
1989, C-342/87, Genius Holding (?????? 1989, ?. 4227, ???? 18), ??? ??? 6?? ???????  
2003, C-78/02, C-79/02 ??? C-80/02, ????????????, Petrova ??? ?????? (??? ??? ??? ??? ????  
???????????, ??? ???????, ??????? 50 ??? 52) ????? ??????? ??????????????? ??? ???  
?????????. ??? ?????????? ???????, ??????? ??? ??? ??? ????? ??????????? ??? ?? ???  
????????? ??? ?????????? ??? ???????????????, ?? ????. ??? ?????????? ??? ??????????  
??? Genius Holding, ?? ?????????? ?????????? ??? «? ?????? ??? ?????????? ??? ??????????  
??? ?????????? ? ??? ?????? [...] ??? ?????????? ??? ??? ??? ?????????? ?????????? ???  
??? ?????? ?????? ?????????? ??? ??????????».

11 – ?. ?.?, ??? ?????? ?? 29?? ?????? 2000, C-455/98, Salumets ?.?. (?????? 2000, ?. I-4993, ???? 24).

12 – ?????????? ??? 5?? ??????? 1988, 269/86, Mol (??????? 1988, ?. 3627, ????? 18)- ??? 5?? ??????? 1988, 289/86, Happy Family (??????? 1988, ?. 3655, ????? 20)- ??? 2?? ???????? 1993, C-111/92, Lange (??????? 1993, ?. I-4677, ????? 16)- ??? 28?? ????? 1998, C-3/97, Goodwin ??? Unstead (??????? 1998, ?. I-3257, ????? 9)- ??? 29?? ???????? 1999, C-158/98, Coffeeshop «Siberië» (??????? 1999, ?. I-3971, ??????? 14 ??? 21), ????? ??? ?????????????? ??????? Salumets, ????? 19).

13 – ??????? ??? 11?? ??????? 1998, C-283/95, Fischer (?????? 1998, ?. I-3369, ??????? 19  
??? 23 ??? 28).

14 – ???. ??????? ?????? 13- ? ?????????????? ?????? ??? ???????.

15 – ??????? ??? 29?? ????? 1997, C-63/96, Skripalle (?????? 1997, ?. I-2847, ????? 24).

????????? ??? ???, ??? ? ???? ??????????? ?? ?????????????? ?? ?????????????? ???  
??????????????, ?????????? ????? ?????????????? ??????? ??? ?? ?????? 27, ??????????? 1.

17 – ??????? 5/84, ??????? 1985, ?. 617, ????? 24, ??? ??????? ??? 6?? ??????? 1995, C-  
62/93, BP Soupergaz (?????? 1995, ?. I-1883, ??????? 22 ??? 23).

18 – ???. ??????? ?????? 37.

19 – ?????????? ??? 19?? ??????????? 2000, C-177/99 ??? C-181/99, Ampafrance ??? Sanofi  
(?????? 2000, ?. I-7013, ????? 43), ??? ??? 29?? ??????? 2004, C-17/01, Sudholz (??? ???  
???? ??? ??????????? ??? ???????, ????? 46).

20 – ??????? ??? 10?? ??????? 1984, 324/82, ??????? ??? ??????? (?????? 1984, ?.  
1861, ????? 29).

21 – ? ??????????????? ??? ??????????? 19 ??????? Sudholz, ????? 45.