

EXHIBIT 3

**CITED PORTIONS FROM THE TRANSCRIPT OF THE
DEPOSITION OF JOHN ROESLER**

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF ILLINOIS
 3 EASTERN DIVISION
 4 Civil Action No. 04 C 2249

5 BEST VACUUM, INC., :
 6 :
 7 Plaintiff, :
 8 :
 9 -V- :
 10 :
 11 IAN DESIGN, INC., :
 12 :
 13 Defendants. :

14 DEPOSITION OF: JOHN ROESLER
 15 SEPTEMBER 8, 2005

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Deposition of JOHN ROESLER, taken
 in the above-entitled matter before LORI JONES,
 a Certified Shorthand Reporter (License No.
 30XI00161900) and Notary Public of the State of
 New Jersey, taken at the law offices of NEWARK
 AIRPORT HILTON, 1170 Spring Street, Newark, New
 Jersey, on September 8, 2005, commencing at
 12:15 p.m., pursuant to notice.

LEGALINK CHICAGO
 230 West Monroe Street, Suite 1500
 Chicago, Illinois 60606
 (312) 263-3524

1 A P P E A R A N C E S:

2

3 DAVID M. ADLER, ESQUIRE

4 161 North Clark Street, #2500

5 Chicago, Illinois 60601

6 312-379-0236

7 Attorneys for the Plaintiff

8

9 LAW OFFICES OF CHARLES LEE MUDD, JR.

10 BY: CHARLES LEE MUDD, JR., ESQUIRE

11 3344 North Albany Avenue

12 Chicago, Illinois 60618

13 773-588-5410

14 Attorneys for Ian Design and John Roesler

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1 JOHN ROESLER,
2 92 Orchard Court, Toms River, New Jersey, having
3 been first duly sworn according to law, is
4 examined and testifies as follows:

5 EXAMINATION

6 BY MR. ADLER:

7 Q. This is the deposition of John
8 Roesler in the matter of Best Vacuum vs. Ian
9 Design, Docket No. 04 C 2249, United States
10 District Court Northern District of Illinois for
11 the Eastern Division. The witness has been
12 sworn. In the room today are Mr. Charles Mudd,
13 attorney for the Defendant; Mr. John Roesler
14 representing the Defendant, Ian Design; the
15 court reporter and myself, David Adler, attorney
16 for the Plaintiff, Best Vacuum.

17 Mr. Roesler, could you please state
18 your name and spell it for the record?

19 A. John Roesler, R-o-e-s-l-e-r.

20 Q. Mr. Roesler, you understand that I
21 am the attorney representing Best Vacuum. This
22 is a deposition which I will ask you questions
23 and you will answer them truthfully unless your
24 attorney tells you clearly and directly
25 otherwise. Although no judge is present, this

1 Q. Were you involved in any activities
2 on campus?

3 MR. MUDD: Objection to relevance
4 and --

5 MR. ADLER: I'll rephrase the
6 question.

7 BY MR. ADLER:

8 Q. Were you involved in any activities
9 involving marketing or business or things of
10 that nature while you were in college?

11 A. I was studying to be a painter,
12 which is kind of a contradiction.

13 Q. Turning to the business itself,
14 could you please state the assets of the
15 company, the business known as Ian Design, Inc.?

16 A. Probably an estimate would be an
17 inventory worth about -- retail about \$15,000
18 and a checking account with probably three to
19 \$5,000.

20 Q. No savings account?

21 A. No.

22 Q. No retirement account?

23 A. No.

24 Q. The inventory consists of?

25 A. Dyson vacuum cleaners.

1 A. What business am I in?

2 Q. Yes.

3 A. I'm in the retail sales business.

4 Q. Mr. Roesler, after incorporating
5 Ian Design, Inc., when did you start selling
6 vacuums?

7 A. As soon as I made a -- as soon as I
8 got permission from Dyson to sell their vacuums.
9 I incorporated with --

10 Q. Mr. Roesler, I understand that you
11 registered the domain named
12 BestVacuumCleaner.com November 6, 2003, do you
13 know about when you started selling vacuums
14 through that web site?

15 A. I think it was in January I
16 believe.

17 Q. Mr. Roesler, why did you choose the
18 name BestVacuumCleaner.com?

19 A. I was forced to. I had originally
20 had two names one of which I was going to use
21 which incorporated Dyson, they all of a sudden
22 came out with a paper or a decision that would
23 not allow the use of Dyson in a URL or web site
24 so I was in the process of trying to get one up
25 and I applied for and got that name in an hour

1 because I needed to have one quickly.

2 Q. So when Dyson instructed you to
3 change your domain name because they objected to
4 use of the name Dyson in the domain name, you
5 complied?

6 A. That's correct.

7 MR. MUDD: Objection to the extent
8 that it assumes facts in evidence. I don't
9 think that he testified that he actually
10 obtained the Dyson domain name.

11 THE WITNESS: Yeah, I had.

12 BY MR. ADLER:

13 Q. Just to make sure we're clear, you
14 had registered the domain name that had Dyson in
15 the name?

16 A. I had actually two domain names
17 that incorporated Dyson.

18 Q. And I don't believe you answered
19 the question. You had registered two domain
20 names with Dyson in the name. After you
21 received notice from Dyson not to use those
22 names, you complied?

23 A. Complied with?

24 Q. You didn't use those names?

25 A. Yes, and I went out and looked for

1 and decided on another name which was
2 descriptive of what I was going to do, I chose
3 Best Choice Vacuums.

4 Q. Focusing --

5 A. Actually at the time it was Best
6 Vacuum Cleaners, and I think I had also Best Vac
7 which I chose not to use.

8 Q. Did you do anything to investigate
9 the availability of the name
10 BestVacuumCleaner.com other than trying to
11 register it?

12 A. Other than the information which
13 was provided by the registering agency, you
14 know, when you did a search to see what was
15 available, no.

16 Q. Did you do a general internet
17 search for availability of the name Best Vacuum
18 Cleaner?

19 A. Yes, that was part of it. In other
20 words, you can't register one until you know
21 it's available.

22 Q. Let me be more specific. Did you
23 search using a typical search engine, search the
24 web for availability of the name Best Vacuum
25 Cleaner?

1 A. No.

2 Q. Did you investigate the trademark
3 office to find out whether anybody had
4 registered the name?

5 A. No.

6 Q. So if I understand you correctly,
7 you really did nothing other than try and
8 register the domain?

9 A. That's correct. I was under the
10 impression that was all I needed to do. The
11 name was available.

12 Q. So you never checked the internet
13 for the name Best Vacuum?

14 A. No, I did not.

15 Q. Why did you choose
16 BestVacuumCleaner.com and not BestVacuum.com?

17 A. Because that's the name I ended up
18 choosing. Why did I name my son Baron as
19 opposed to Martha, you know, it appealed to me
20 at the time.

21 Q. Mr. Roesler, going back to your web
22 design marketing class, did you ever discuss the
23 impact of the domain name on web design?

24 MR. MUDD: Objection to the extent
25 that it's vague and ambiguous as to what you

1 want but go ahead and answer.

2 THE WITNESS: I'm sure that in the
3 course of that, of a couple of classes, it would
4 have been mentioned in terms of and in depth
5 discussion as to, you know, we discussed the,
6 you know, brand names, we discussed
7 availability, there were some discussions
8 surrounding names and URLs.

9 BY MR. ADLER:

10 Q. Was there any discussion as to the
11 length of the name, the length of a particular
12 domain name?

13 A. Not that I recall.

14 Q. In your opinion is there any
15 advantage to having a shorter domain name than a
16 longer domain name?

17 A. For my purposes, no.

18 MR. ADLER: Could you mark this as
19 Exhibit 1, please?

20 (Exhibit 1, printout of the About
21 Us page of BestVacuumCleaner.com,
22 was marked for identification.)

23 BY MR. ADLER:

24 Q. Mr. Roesler, do you recognize that?

25 A. Yeah.

1 Q. Could you please describe it?

2 A. It's a description that I presented
3 on the web indicating who and what we were.

4 Q. Do you recall approximately when in
5 time this was put up on the web?

6 A. This would have been -- I am not
7 sure which particular permeation this is. I
8 would assume that this is based on what I'm
9 looking at here, this was when the web site was
10 through Stores Online and this could have been
11 any time between December and probably August of
12 2003 I guess, 2004.

13 Q. Would it be fair to say this was
14 one of the earlier pages of your web site?

15 A. Yes, it was.

16 Q. Could you please read the first
17 paragraph there at the top of the page?

18 A. "BestVacuumCleaner.com is wholly
19 owned and operated by Ian Design. Ian Design is
20 a sales and marketing organization originally
21 founded in 1987, which specializes in the
22 promotion of those" -- let me know when you want
23 me to stop. "Those consumer items, identified by
24 Ian Design, has providing superior performance,
25 and which demonstrate the potential for both

1 substantial and sustained market growth."

2 Q. That's fine, thank you. You said
3 that or you read that Ian Design was first begun
4 in 1987?

5 A. Yes, it was.

6 Q. So you did business under that name
7 before incorporating as Ian Design, Inc.?

8 A. I did business under the name of
9 Ian Design Group which was a sole
10 proprietorship.

11 Q. What was the nature of that
12 business?

13 A. We were a marketing organization
14 and what I used to do was to provide sales
15 officers and market homes for large home
16 builders, track home builders.

17 MR. MUDD: Just to clarify, you are
18 going to give me copies of the exhibits?

19 MR. ADLER: Yes, I will get you
20 copies of all the exhibits before the end of the
21 deposition.

22 BY MR. ADLER:

23 Q. Mr. Roesler, if
24 BestVacuumCleaner.com was a good name, why
25 didn't you try and register BestVacuum.com?

1 MR. MUDD: Objection; asked and
2 answered previously but go ahead and answer.

3 THE WITNESS: I don't have an
4 answer for that. I don't remember what I was
5 thinking at the time, all I remember was that I
6 was looking for an available URL and I was in a
7 hurry and best, you know, Best Vacuum Cleaner
8 was available.

9 BY MR. ADLER:

10 Q. You also registered the domain name
11 BestChoiceVacuums.com; is that correct?

12 A. Yes, at some later date, yes.

13 Q. Is there any particular reason you
14 chose this domain name?

15 A. Is there any particular -- I
16 received a letter from yourself indicating that
17 there was a conflict and that Best Choice or
18 Best Vacuum was an entity and we were selling
19 the similar type of thing. I was aware -- I had
20 become aware of their existence originally when
21 I was looking for Dyson vacuums, which is what
22 my concern was, Best Vacuum was not a
23 representative or was not selling Dyson vacuums.
24 At any rate I chose Best Choice Vacuum because I
25 agreed to your requirement or your request to

1 abandon Best Choice Vacuums --
2 BestVacuumCleaners.com and at that point I chose
3 Best Choice Vacuums.

4 Q. You said that you were searching
5 for Dyson, could you be more specific? Were you
6 searching for retailers selling the Dyson?

7 A. I was searching for online
8 retailers.

9 Q. And during that search you came
10 across Best Vacuum?

11 A. No, I didn't. Ultimately I didn't
12 but not when I was originally looking for to
13 make arrangements with Dyson.

14 Q. Do you recall the first time you
15 became aware of Best Vacuum?

16 A. Yeah, somebody called me up and
17 said that they had erroneously purchased a
18 vacuum from or had purchased a vacuum from me
19 and they had not.

20 Q. So you received a phone call from
21 somebody who was confused as to whether you were
22 Best Vacuum?

23 A. Yes.

24 MR. ADLER: Can you mark that as
25 Exhibit 2, please?

1 (Exhibit 2, letter dated 2-15-04,
2 was marked for identification.)

3 BY MR. ADLER:

4 Q. Mr. Roesler, do you recognize that?

5 A. Yes.

6 Q. Can you please tell us what it is?

7 A. It's a letter whereas I mentioned
8 earlier I agreed to abandon the use of
9 BestVacuumCleaner.com.

10 Q. Can you read the second and third
11 sentence, please?

12 A. Second sentence, "I will accede to
13 your demand to cease doing business, now and in
14 the future, as BestVacuumCleaner.com. I concede
15 your client's prior claim, and decline to argue
16 the differences in our trade names."

17 Q. Thank you. So when you first
18 learned of Best Vacuum, you conceded that Best
19 Vacuum had the right, a prior right to use the
20 name?

21 MR. MUDD: Objection,
22 mischaracterization. I believe he said he first
23 learned of Best Vacuum when a consumer contacted
24 him and you're referencing the letter. He
25 responded to you.

1 MR. ADLER: I'll rephrase the
2 question.

3 BY MR. ADLER:

4 Q. When I wrote to you indicating my
5 client's concern about confusion between his
6 name Best Vacuum and your use of the name
7 BestVacuumCleaner.com, you conceded that my
8 client had a prior right to the trade name; is
9 that correct?

10 A. The basis of the representations
11 that you made in your letter that he had, in
12 fact, a trade name, which as I understand it was
13 not the case in terms of a federally registered
14 trade name which I assumed or your letter seemed
15 to indicate you had. So under those auspices,
16 yes, I assumed you had a prior right to that
17 name. On the other hand, I would not have -- I
18 was already --

19 Q. That's all.

20 MR. MUDD: He can answer the
21 question. Go ahead and finish speaking.

22 THE WITNESS: I had also received
23 -- I had a couple of situations where somebody
24 had erroneously -- I had spoken to had
25 erroneously purchased at Best Vacuum and

1 determined that it was -- I determined what the
2 client -- that it was Best Vacuum, they
3 cancelled their order at Best Vacuum and
4 purchased it from me, which was their original
5 intent. I also got a couple of complaints about
6 the lack of timely response so. . .

7 BY MR. ADLER:

8 Q. Thank you. It's not relevant.

9 MR. MUDD: He's answering your
10 question.

11 THE WITNESS: At that point I
12 conceded -- I concluded that I did not want to
13 be associated or presumed or give the appearance
14 of being associated with Best Vacuum, and I was
15 considering at the time that I received your
16 letter changing the name of the site and if you
17 read the letter on further, you will determine
18 that I also was of the opinion and still am that
19 the name of the site had no relevance to the
20 success of the site.

21 BY MR. ADLER:

22 Q. So it's your testimony today that
23 you have actually spoken with several customers
24 who have confused you with Best Vacuum?

25 A. Two that -- yes, I spoke to two

1 customers who confused me with Best Vacuum,
2 couple of customers who confused Best Vacuum
3 with me and probably a dozen or so customers who
4 confused me with other online retailers who sold
5 Dyson vacuum who had entirely dissimilar names.
6 So the closeness of the name didn't appear to
7 have any relevance whatsoever.

8 Q. That's your opinion, correct?

9 A. That is my opinion.

10 Q. Mr. Roesler, after receiving my
11 letter asking you to cease using the name
12 BestChoiceVacuums.com, did you try contacting me
13 or my client in any way?

14 A. Yes, I wrote you that letter.

15 MR. MUDD: Objection. I want to
16 clarify are you talking about the letter that
17 you originally sent regarding Best Vacuum
18 Cleaner or are you talking about a subsequent
19 letter regarding Best Choice Vacuums?

20 MR. ADLER: I'm talking about my
21 first letter.

22 MR. MUDD: And that was with Best
23 Vacuum Cleaner?

24 MR. ADLER: Dot com.

25 THE WITNESS: And that was my

1 response so I did, in fact, respond.

2 BY MR. ADLER:

3 Q. And you did change your name to
4 BestChoiceVacuums.com at that time, correct?

5 A. Within a reasonable time frame.

6 Q. Shortly thereafter?

7 A. Shortly thereafter. In other
8 words, the logistics to make that change.

9 Q. Do you recall how long you have
10 been doing business under the name
11 BestVacuumCleaner.com?

12 A. A matter of a couple months.

13 Q. Was the business successful?

14 A. Yes, it was.

15 Q. Do you recall, and you can give an
16 estimate, about how many customers you had in
17 that time?

18 MR. MUDD: What time?

19 MR. ADLER: The time frame between
20 switching the name or, I'm sorry, the time
21 between starting the business and changing the
22 name.

23 THE WITNESS: My conclusion was
24 when I switched the name, I did not notice a
25 decrease in business. I don't remember

1 BY MR. ADLER:

2 Q. Mr. Roesler, I'd like to turn now
3 to your marketing efforts for the web sites
4 located at BestChoiceVacuums.com and
5 BestVacuumCleaners.com. Are you still using the
6 domain name BestVacuumCleaner.com?

7 A. No.

8 Q. No?

9 A. No.

10 Q. If that domain name is typed into a
11 web browser, what would happen to the best of
12 your knowledge?

13 A. I don't know what would happen,
14 presumably if you typed it in -- I honestly
15 don't know. At one point it would have taken
16 you to the current site but it no longer does,
17 that much I know. I don't know what would
18 appear.

19 Q. Could you please explain what steps
20 you plan to take to market your business located
21 at BestChoiceVacuums.com?

22 MR. MUDD: Objection -- strike
23 that. Can you rephrase the question or can you
24 repeat the question?

25 MR. ADLER: Certainly.

1 vacuum, Dyson vacuum cleaner, the various
2 models, DC14, DC15, DC07, DC07, low reach, full
3 gear, the various models which there are four
4 basic models. Dyson vacuum cleaner, everything
5 was related specifically to Dyson.

6 Q. Did you ever purchase the key word
7 Best Vacuum?

8 A. No, don't think so.

9 Q. You don't think so or you never
10 did?

11 A. To the best of my knowledge I never
12 did.

13 Q. Other than Yahoo and Google, are
14 there any other search engines that you
15 purchased paper click advertising on?

16 A. I used an article insider which was
17 they produced articles, you know, that were
18 about related items and they had a link that
19 would take two to, you know, to my site as being
20 representative of an expert in that particular
21 field. They had a system that did, in fact,
22 generate key words as a matter of fact much to
23 my dismay because of all of a sudden I began to
24 receive billing for key words that I had neither
25 chosen nor wanted so when I say to the best of