

EXHIBIT 5

AFFIDAVIT OF JOHN ROESLER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BEST VACUUM, INC,)	AFFIDAVIT OF JOHN ROESLER
)	
Plaintiff,)	
)	JUDGE HART
v.)	
)	Civil Action No. 04 C 2249
IAN DESIGN, INC.)	
)	
Defendant.)	JURY TRIAL DEMANDED

AFFIDAVIT OF JOHN B. ROESLER

I, JOHN B. ROESLER on behalf of Defendant IAN DESIGN, INC., being duly sworn and under oath, do hereby declare, testify and state as follows:

1. I am a citizen of the United States.
2. I am over 18 years of age, am of sound mind and could testify competently to the facts stated herein.
3. I am President of Ian Design, Inc. (“Ian Design”).
4. Based upon my understanding, neither Ian Design nor Best Vacuum, Inc. (“Plaintiff”) manufactures its own vacuum cleaners.
5. Ian Design registered the domain name “bestvacuumcleaner.com” on November 6, 2003.
6. At the time Ian Design registered the domain “bestvacuumcleaner.com,” it had no knowledge of Plaintiff Best Vacuum, Inc. of Chicago, Illinois or www.bestvacuum.com.
7. At the time Ian Design registered the domain “bestvacuumcleaner.com,” it had no intent to infringe any mark of Plaintiff or any other party. In fact, Ian Design chose

“bestvacuumcleaner.com” for the express purpose of avoiding infringement of any party’s trademarks.

8. Ian Design registered the domain “bestchoicevacuums.com” on February 15, 2004.

9. Ian Design states explicitly on its “bestchoicevacuums.com” website that “bestchoicevacuums.com is wholly owned and operated by Ian Design, Inc.”

10. Shortly after obtaining the domain name “bestchoicevacuums.com,” Ian Design ceased using the domain “bestvacuumcleaner.com.”

11. In fact, Ian Design has not used “bestvacuumcleaner.com” since 2004.

12. Ian Design did not adopt and/or register the domain names “bestvacuumcleaner.com” and “bestchoicevacuums.com” to trade on the alleged fame and goodwill associated with Plaintiff’s use of the term “best vacuum.”

13. Ian Design did not adopt and/or register the domain names “bestvacuumcleaner.com” and “bestchoicevacuums.com” to dilute Plaintiff’s alleged mark “best vacuum.”

14. Ian Design did not adopt and/or register the domain names “bestvacuumcleaner.com” and “bestchoicevacuums.com” to dilute the ability of Plaintiff to use “best vacuum” to identify and distinguish its products.

15. Ian Design did not adopt and/or register the domain names “bestvacuumcleaner.com” and “bestchoicevacuums.com” for purposes of causing consumer confusion, mistake or deception.

16. Ian Design has not caused consumer confusion, mistake or deception.

17. Ian Design has not used and does not use the domain names “bestvacuumcleaner.com” and “bestchoicevacuums.com” with any knowledge, intent and/or purpose of diluting any mark; diluting any ability of Plaintiff; causing consumer confusion, mistake or deception; and/or trading on any alleged fame or goodwill of Plaintiff in the term “best vacuum.”

18. Although Ian Design marketed its business with the purchase of “key word” advertising, it has not elected to or knowingly purchased the key word “best vacuum” to the best of my recollection.

19. Ian Design has never used the domain name “bestvacuum.com” or represented itself to be Best Vacuum, Inc.

20. Ian Design has never represented itself to be affiliated with the domain name bestvacuum.com or Best Vacuum, Inc.

21. Ian Design has no intention to ever use the domain name bestvacuum.com.

22. Ian Design never has had any intent to copy any marks of Plaintiff.

23. Many individuals and entities use the term “best vacuum” on the Internet. In the vacuum market, “best vacuum” is used to describe a particular vacuum as being the best of its kind. This term can be used by manufacturers, distributors, retailers, online merchants, consumer organizations, trade publications, and consumers to describe and/or market a vacuum as being the best without any relation to Plaintiff.

24. “bestchoicevacuums.com” is not confusingly similar to “bestvacuum.com.”

25. “bestchoicevacuums.com” and “best vacuum” are not similar in appearance or sound.

