

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FEDERAL COURT

STEPHANIE HOFER )  
 and )  
 DOUGLAS HOFER, )  
 )  
 Plaintiffs )  
 )  
 v. )  
 )  
 OLD NAVY, EXPEDIA, INC., and )  
 TURTLE BEACH TOWERS, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

COMPLAINT

05-40170 FDS

INTRODUCTION

This is a civil action arising from the negligence of the Defendants. Plaintiff, Stephanie Hofer ("Stephanie"), was injured on Defendant Turtle Beach Tower's ("the Resort") premises on March 18, 2004. As a result of the Resort's negligence in failing to maintain and/or keep its premises in a reasonably safe condition, negligence in failing to warn of a dangerous condition on the premises, and negligence in failing to maintain a safe premises, Stephanie sustained injuries when she slipped and fell into a turtle pond containing razor sharp coral and slate.

At the time of the incident, Stephanie was wearing newly purchased footwear from Defendant Old Navy. The sandals, which had never before been worn, broke causing Stephanie to lose balance.

As a result of Stephanie's multiple injuries, Plaintiff, Douglas Hofer ("Douglas") has suffered the loss of companionship of his wife, Stephanie.

RECEIPT # 40410108  
 AMOUNT \$ 250.00  
 SUMMONS ISSUED   
 LOCAL RULE 4.1   
 WAIVER FORM   
 MCF ISSUED   
 BY DPTY. CLK. S. Jones  
 DATE 9-27-05

**PARTIES**

1. Plaintiff, Stephanie Hofer, is an individual residing in Leominster, Worcester County, MA.
2. Plaintiff, Douglas Hofer, is an individual residing in Leominster, Worcester County, MA and is married to Stephanie Hofer.
3. Defendant, Turtle Beach Towers, is a lodging establishment located in Jamaica.
4. Defendant, Expedia, Inc., is a corporation with headquarters in Washington and conducts business throughout the United States; it is a wholly owned subsidiary of IAC/InterActive Corp.
5. Defendant, Old Navy, is a corporation that conducts business throughout the United States; it is wholly owned by The Gap Stores, Inc., which is organized under the laws of California.

**JURISDICTION**

6. Federal Court has jurisdiction pursuant to the long arm statute.

**FACTUAL ALLEGATIONS**

7. On March 15, 2004, Stephanie and a friend reserved a travel vacation to Jamaica through Expedia.com ("Expedia"). Expedia is an agent for Turtle Beach Towers in that it advertises the Resort in its airfare/lodging vacation packages over the Internet.
8. The Resort does not have its own Internet website and all access to its information on the Internet is via hypertext links, such as the one provided through Expedia.
9. Upon arrival in Jamaica on March 18, 2004, Stephanie and her companion took a shuttle to the Resort and obtained their room assignment. Stephanie later went to

- the Resort's Lobby to obtain tourist information to plan an agenda for the next day.
10. Stephanie had never previously stayed at the Resort before.
  11. The only way to access the Resort's lobby was by a series of steps. The stairway was very dimly lit and did not contain guardrails.
  12. Located on each side of this stairway were turtle ponds, which contained several inches of water, turtles, coral, and slate.
  13. While walking down the stairway, on her return from the lobby, Stephanie's footwear, newly purchased Old Navy sandals, became unhinged from the front. The unhinging of the sandal caused Stephanie to lose her balance while maneuvering down the stairway. Since there were no rails on the stairway for Stephanie to use to balance herself, Stephanie fell approximately four feet into one of the turtle ponds.
  14. Stephanie's left leg landed directly onto the coral and slate protruding from the turtle pond and was consequently gouged open down to the bone. The resulting injuries included severe lacerations to her left shin, ankle, and foot, severing of a major artery in her left leg, tearing of muscles and tendons in her left leg, and permanent damage to the nerves in her left leg and foot.
  15. Stephanie was treated initially in Jamaica before being air lifted to Massachusetts General Hospital where she remained as an in-patient for fifteen (15) days.
  16. Since the incident, Stephanie has undergone three surgeries.
  17. Today, more than one year after the accident, Stephanie takes twenty-seven medications daily and continues to treat regularly with surgeons, infectious

disease associates, her attending physician, neurology, psychology, pain management, and physical therapists.

18. Despite her surgeries and aggressive treatment regiment, Stephanie's left leg functions only ten percent of its capacity and requires constant bandaging. Stephanie also bears large permanent scars from the incident and has irreparable nerve damage in her left leg.
19. In the future, Stephanie will require reconstructive and plastic surgery in her left leg.
20. Stephanie, who worked as a dental hygienist and a part-time manicurist earning an annual salary of \$28,000, has not been able to return to work for the past seventeen months as a result of her injuries.
21. Stephanie's condition and medications have made it impossible for her to work.
22. In addition, Stephanie can no longer enjoy the normal daily activities that she once did which included, but are not limited to, exercising, walking the dog, and going to the movies.
23. Furthermore, Stephanie and her husband, Plaintiff, Douglas' plans to expand their family by having children have been rendered impossible as a result of Stephanie's injuries. Stephanie's doctors have advised her against becoming pregnant while she continues her medications; Stephanie will have to continue taking medications and undergoing spinal treatments long term.
24. Due to her injuries, Stephanie has also been diagnosed with multiple mental illnesses including Post Traumatic Stress Disorder, anxiety, severe depression, insomnia, and restless leg syndrome as a result of her multiple injuries.

25. Stephanie's medications, inability to exercise and function in daily activities, inability to expand her family, inability to work, and the resulting depression, have also caused Stephanie to gain weight: Stephanie has gained seventy-five (75) pounds in one year.

**COUNT I-NEGLIGENT MAINTENANCE**  
**TURTLE BEACH TOWERS**

26. Plaintiff restates and re-alleges the contents of paragraphs 1-25 as if set forth fully herein.
27. The Resort owed a duty to Stephanie as an invitee to observe due care in keeping its premises in a reasonably safe condition.
28. The Resort breached its duty to Stephanie by failing to install handrails on both sides of the stairway from which Stephanie fell, thereby not using due care in keeping the stairway in a reasonably safe condition.
29. The lack of handrails was a proximate cause in Stephanie's injuries because she could not catch herself as she fell from the stairway.
30. Stephanie's numerous injuries were a proximate cause of the Resort's breach of duty to her.

**COUNT II-NEGLIGENT FAILURE TO WARN**  
**TURTLE BEACH TOWERS**

31. Plaintiff restates and re-alleges the contents of paragraphs 1-30 as if set forth fully herein.
32. The Resort owed a duty to Stephanie as an invitee to warn her of any dangers known to it.

33. The Resort knew or should have known that the lack of handrails on the stairway caused a dangerous condition.
34. The Resort knew or should have known that the coral and slate contained in the turtle ponds also caused a dangerous condition particularly with the lack of handrails on the stairway.
35. The Resort breached its duty to Stephanie by failing to warn her of the dangerous conditions of the stairway and of the coral and slate contained in the coral ponds.
36. Stephanie suffered numerous injuries as a proximate result of the Resort's failure to warn her.

**COUNT III-NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
**TURTLE BEACH TOWERS**

37. Plaintiff restates and re-alleges the contents of paragraphs 1-36 as if set forth fully herein.
38. The Resort was negligent in failing to install guardrails on each side of the stairway, failing to provide adequate lighting for the stairway, and maintaining sharp coral and slate on both sides of the stairway.
39. As a result of the Resort's negligence, Stephanie suffered multiple injuries.
40. Stephanie has also suffered from depression, anxiety and insomnia as a result of the Resort's negligence.
41. A reasonable person would have suffered emotional distress under similar circumstances.

**COUNT IV-LOSS OF CONSORTIUM**  
**TURTLE BEACH TOWERS**

42. Plaintiff restates and re-alleges the contents of paragraphs 1-41 as if set forth fully herein.
43. Turtle Beach Towers has committed a tortuous act that caused Douglas' wife, Stephanie, personal injury.
44. As a result of her multiple injuries, Douglas has suffered the loss of consortium of his wife.

**COUNT V-NEGLIGENT FAILURE TO WARN**  
**EXPEDIA**

45. Plaintiff restates and re-alleges the contents of paragraphs 1-44 as if set forth fully herein.
46. In conducting much of the Resort's Internet advertising and booking of reservations, Expedia is an agent for the Resort.
47. As an agent for the Resort, Expedia owed Stephanie a duty to warn her of dangerous conditions at the Resort.
48. Expedia knew or should have known of the conditions at the Resort.
49. Expedia breached its duty to Stephanie in failing to warn her of the stairway's dangerous condition.
50. Stephanie's numerous injuries were a direct result of Expedia's failure to warn her of the stairway's dangerous condition.

**COUNT VI-PRODUCTS LIABILITY**  
**OLD NAVY**

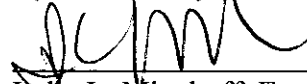
51. Plaintiff restates and re-alleges the contents of paragraphs 1-50 as if set forth fully herein.

52. The sandal manufactured by Old Navy was defective by manufacture and/or by design.
53. The sandal was defective when it left Old Navy's control.
54. Stephanie purchased the sandal in the ordinary course of business.
55. Stephanie's multiple injuries were proximately caused by the defective sandal.

**COUNT VII-BREACH OF WARRANTY OF MERCHANTABILITY**  
**OLD NAVY**

56. Plaintiff restates and re-alleges the contents of paragraphs 1-55 as if set forth fully herein.
57. Old Navy owed Stephanie an implied warranty of merchantability when she purchased the sandal.
58. Risks due to the sandal's defectiveness were reasonably foreseeable to Old Navy at the time of sale and/or discoverable by reasonable testing prior to marketing the sandal.
59. Old Navy breached its warranty to Stephanie by selling her defective footwear.
60. Stephanie's numerous injuries were proximately caused by Old Navy's breach of warranty of merchantability.

Respectfully submitted,  
Plaintiff,  
By her attorney,



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India L. Minchoff, Esq. (652456)  
Law Offices of Russo & Minchoff  
123 Boston Street, 1<sup>st</sup> Floor  
Boston, MA 02125  
617/740-7340 telephone  
617/740-7310 facsimile



JS-44 (Rev. 3/99)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b>                  Hofer, Stephanie A. and                  Hofer, Douglas</p> <p>(b) County of Residence of First Listed Plaintiff: <u>Worcester</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p><b>DEFENDANTS</b>                  Old Navy, Expedia, Inc., and                  Turtle Beach Towers</p> <p>County of Residence of First Listed: <u>San Francisco, CA</u>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p>
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<p>(c) Attorney's (Firm Name, Address, and Telephone Number)                  Law Offices of Russo + Minchoff                  Attorney India L. Minchoff                  123 Boston St.                  Boston, MA 02125 (617) 40-7340</p>	<p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <p>Citizen of This State: PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1</p> <p>Citizen of Another State: <input type="checkbox"/> 2 <input type="checkbox"/> 2</p> <p>Citizen or Subject of a Foreign Country: <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 3</p> <p>Incorporated or Principal Place of Business In This State: PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4</p> <p>Incorporated and Principal of Business In Another State: <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</p> <p>Foreign Nation: <input type="checkbox"/> 6 <input type="checkbox"/> 6</p>
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**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p><b>LABOR</b></p> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<p><b>PRISONER PETITIONS</b></p> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judge

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)


Personal injury resulting from the negligence of Defendants.

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23

Two million dollars CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE: \_\_\_\_\_ DOCKET NUMBER: \_\_\_\_\_

DATE: 9, 23, 05 SIGNATURE OF ATTORNEY OF RECORD: 

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

05-40170 FDS

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Hofer v. Old Navy

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \* Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)). N/A

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?  
YES  NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC 2403)  
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?  
YES  NO   
YES  NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284?  
YES  NO

7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL DIVISION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)).  
OR IN THE WESTERN DIVISION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)?(SEE LOCAL RULE 40.1(D)).  
YES  NO   
YES  NO

8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN DIVISIONS OF THE DISTRICT?  
YES  NO   
(a) IF YES, IN WHICH DIVISION DOES THE PLAINTIFF RESIDE? Worcester

9. IN WHICH DIVISION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? \_\_\_\_\_

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE  
CENTRAL DIVISION; YES  NO  OR WESTERN DIVISION; YES  NO

11. ALTERNATIVE DISPUTE RESOLUTION - IS THIS CASE SUITABLE FOR ADR? IF SO, BY WHICH ADR?  
EARLY NEUTRAL EVALUATION  MEDIATION  SUMMARY JURY/BENCH TRIAL   
MINI-TRIAL  OTHER

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Attorney India L. Minchoff

ADDRESS 123 Boston St. Boston, MA 02125

TELEPHONE NO. (617) 740-7340