

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

)	
STEPHANIE HOFER and DOUGLAS HOFER,)	
)	
Plaintiffs,)	
)	Civil Action
v.)	Docket No. 05-40170 FDS
)	
OLD NAVY, EXPEDIA, INC. and)	
TURTLE BEACH TOWERS,)	
)	
Defendants.)	
)	

ANSWER OF DEFENDANT EXPEDIA, INC.

Defendant Expedia, Inc. ("Expedia"), by its undersigned counsel, answers the Complaint of the Plaintiffs Stephanie Hofer and Douglas Hofer, as follows:

As To The Introduction

The allegations of the paragraph entitled "Introduction" merely summarize the Plaintiffs' characterization of the action they have brought against the above-named Defendants. To the extent a response is required, Expedia denies the allegations of the paragraph.

As To Parties

1. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 1, are therefore denies same.
2. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 2 to the Complaint, are therefore denies same.
3. Expedia admits the averments of Paragraph 3 to the Complaint, upon information and belief.

4. Expedia admits the averments of Paragraph 4 to the Complaint.

5. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 5 to the Complaint, and therefore denies same.

As To Jurisdiction

6. Expedia denies the averments of Paragraph 6 to the Complaint. By the express terms of the governing agreement, jurisdiction over the Plaintiffs' claims against Expedia, as well as proper venue for same, lies exclusively with the courts in King County, Washington, United States of America.

As To the Factual Allegations

7. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of the first sentence in Paragraph 7 to the Complaint, and therefore denies same.

Expedia admits that it advertises Turtle Beach Towers and Turtle Beach Tower's airfare/lodging vacation packages over the Internet, but denies the remainder of the second sentence in Paragraph 7 to the Complaint. Expedia denies that it is or ever has been an agent of Turtle Beach Towers.

8. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 8 to the Complaint, and therefore denies same.

9. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 9 to the Complaint, and therefore denies same.

10. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 10 to the Complaint, and therefore denies same.

11. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 11 to the Complaint, and therefore denies same.

12. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 12 to the Complaint, and therefore denies same.

13. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 13 to the Complaint, and therefore denies same.

14. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 14 to the Complaint, and therefore denies same.

15. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 15 to the Complaint, and therefore denies same.

16. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 16 to the Complaint, and therefore denies same.

17. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 17 to the Complaint, and therefore denies same.

18. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 18 to the Complaint, and therefore denies same.

19. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 19 to the Complaint, and therefore denies same.

20. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 20 to the Complaint, and therefore denies same.

21. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 21 to the Complaint, and therefore denies same.

22. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 22 to the Complaint, and therefore denies same.

23. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 23 to the Complaint, and therefore denies same.

24. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 24 to the Complaint, and therefore denies same.

25. Expedia is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 25 to the Complaint, and therefore denies same.

As To Count I - Negligent Maintenance
Turtle Beach Towers

26. Expedia repeats and incorporates by reference its responses to Paragraphs 1-25 of the Complaint.

27. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 27 to the Complaint, and therefore denies same.

28. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 28 to the Complaint, and therefore denies same.

29. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 29 to the Complaint, and therefore denies same.

30. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 30 to the Complaint, and therefore denies same.

As To Count II - Negligent Failure to Warn
Turtle Beach Towers

31. Expedia repeats and incorporates by reference its responses to Paragraphs 1-30 of the Complaint.
32. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 32 to the Complaint, and therefore denies same.
33. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 33 to the Complaint, and therefore denies same.
34. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 34 to the Complaint, and therefore denies same.
35. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 35 to the Complaint, and therefore denies same.
36. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 36 to the Complaint, and therefore denies same.

As To Count III - Negligent Infliction of Emotional Distress
Turtle Beach Towers

37. Expedia repeats and incorporates by reference its responses to Paragraphs 1-36 of the Complaint.

38. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 38 to the Complaint, and therefore denies same.

39. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 39 to the Complaint, and therefore denies same.

40. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 40 to the Complaint, and therefore denies same.

41. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 41 to the Complaint, and therefore denies same.

As To Count IV - Loss Of Consortium
Turtle Beach Towers

42. Expedia repeats and incorporates by reference its responses to Paragraphs 1-41 of the Complaint.

43. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 43 to the Complaint, and therefore denies same.

44. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 44 to the Complaint, and therefore denies same.

As To Count V - Negligent Failure to Warn
Expedia, Inc.

45. Expedia repeats and incorporates by reference its responses to Paragraphs 1-44 of the Complaint.
46. Expedia denies the averments of Paragraph 46 to the Complaint.
47. Expedia denies the averments of Paragraph 47 to the Complaint.
48. Expedia denies the averments of Paragraph 48 to the Complaint.
49. Expedia denies the averments of Paragraph 49 to the Complaint.
50. Expedia denies the averments of Paragraph 50 to the Complaint.

As To Count VI - Product Liability
Old Navy

51. Expedia repeats and incorporates by reference its responses to Paragraphs 1-50 of the Complaint.
52. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 52 to the Complaint, and therefore denies same.
53. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 53 to the Complaint, and therefore denies same.
54. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 54 to the Complaint, and therefore denies same.

55. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 55 to the Complaint, and therefore denies same.

As To Count VII - Breach Of Warranty Of Merchantability
Old Navy

56. Expedia repeats and incorporates by reference its responses to Paragraphs 1-55 of the Complaint.

57. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 57 to the Complaint, and therefore denies same.

58. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 58 to the Complaint, and therefore denies same.

59. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 59 to the Complaint, and therefore denies same.

60. No response is required of Expedia. To the extent this Court deems a response necessary, Expedia states that it is without sufficient information to form a belief as to the truth or falsity of the averments of Paragraph 60 to the Complaint, and therefore denies same.

Affirmative And Other Defenses

First Defense

This Court lacks personal jurisdiction over Expedia.

Second Defense

Venue is not appropriate in the U.S. District Court, D. Mass.

Third Defense

The Complaint fails to state a claim against Expedia upon which relief may be granted.

Fourth Defense

The Plaintiffs are barred from recovery as they have no standing to pursue a claim against Expedia.

Fifth Defense

The Plaintiffs are barred from recovery by virtue of the terms of the operative agreement.

Sixth Defense

The Plaintiffs are barred from recovery by virtue of their breaches of the operative agreement.

Seventh Defense

The Plaintiffs are precluded from recovery by virtue of waiver.

Eighth Defense

The Plaintiffs are precluded from recovery by virtue of the doctrine of estoppel.

Ninth Defense

The alleged injuries and damages were caused wholly or partially by one or more persons for whose conduct Expedia is not legally responsible.

Tenth Defense

Recovery is barred or reduced by the conduct of Plaintiff Stephanie Hofer.

Eleventh Defense

Recovery is barred or reduced by virtue of the Plaintiff Stephanie Hofer's release of liability.

Twelfth Defense

The Plaintiffs are barred from recovery by virtue of their individual and collective failures to mitigate damages.

Thirteenth Defense

The Plaintiffs are barred from recovery as the damages claimed by the Plaintiffs, to the extent such damages occurred, were caused by intervening and superceding occurrences otherwise unrelated to Expedia, any act of Expedia, any inaction by Expedia, any alleged breach of contract by Expedia, or any alleged tortious conduct or failure by Expedia.

Fourteenth Defense

The Plaintiffs' damages are barred or reduced, because of Plaintiff Stephanie Hofer's own negligence.

Fifteenth Defense

The Plaintiffs are barred from recovery, because Expedia owed no duty at law or otherwise to the Plaintiffs, more specifically to Plaintiff Stephanie Hofer.

Sixteenth Defense

The Plaintiffs are barred from recovery, because Expedia did not breach any duty at law or otherwise allegedly owed to the Plaintiffs, more specifically allegedly owed to Plaintiff Stephanie Hofer.

Seventeenth Defense

The Plaintiffs are barred from recovery, because no action or inaction by Expedia caused the Plaintiffs, more specifically caused Plaintiff Stephanie Hofer, to be injured or damaged.

Eighteenth Defense

The Plaintiffs are barred from recovery, because even if Expedia owed the Plaintiffs any duty, which it did not, and Expedia breached that alleged duty, which it did not, the damages and injuries alleged by the Plaintiffs, more specifically those allegedly suffered by Plaintiff Stephanie Hofer, were not reasonably foreseeable.

Nineteenth Defense

Expedia states that the allegations of negligence (breach of duty to warn) brought by the Plaintiffs against Expedia via the present action are without good grounds and are otherwise wholly insubstantial, frivolous, and in bad faith; and having no basis whatsoever for asserting the claim that they are asserting against Expedia, the Plaintiffs should be held liable to Expedia for Expedia's costs and attorneys' fees.

Twentieth Defense

Expedia states that, pursuant to the governing agreement, Expedia is entitled to payment from Plaintiff Stephanie Hofer for the attorneys' fees and costs associated with Expedia's defense of the present action.

WHEREFORE, Expedia respectfully prays that this Court:

1. Dismiss the Complaint with prejudice;
2. Award Expedia its reasonable attorneys' fees and costs; and
3. Grant such other relief as may be deemed just and appropriate.

Respectfully submitted,
EXPEDIA, INC.,
By its attorneys,

/s/ Thomas T. Reith
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Dated: January 11, 2006

CERTIFICATE OF SERVICE

I, Thomas T. Reith, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 11, 2006.

/s/ Thomas T. Reith