

SULLIVAN, WARD, ASHER & PATTON, P.C.

ATTORNEYS AND COUNSELORS AT LAW



1000 MACCABEES CENTER
25800 NORTHWESTERN HIGHWAY
SOUTHFIELD, MICHIGAN 48075-1000

TELEPHONE: (248) 746-0700

FAX: (248) 746-2760

WEB SITE: www.swappc.com

ROBERT E. SULLIVAN, SR. (1922-1998)
DAVID M. TYLER (1930-2002)
RICHARD G. WARD (RETIRED)

Scott D. Feringa
sferinga@swappc.com
(248) 746-2727

May 23, 2006

India Minchoff
Russo & Minchoff
123 Boston Street
Boston, MA 02125

Stephen J. Kuzma
75 Federal Street, 17th Floor
Boston, MA 02110

RE: HOFER, STEPHANIE/DOUGLAS V. THE GAP, INC., ET AL
OUR FILE NO. PAG-121179

Dear Ms. Minchoff and Mr. Kuzma:

I have enclosed a draft of an Agreement for you to produce one pair of the exemplar sandals that was agreed upon in principal during our recent telephone conversation of Thursday, May 11, 2006. Would you please look at the Agreement and provide me with any modifications or suggested changes. If there are none, please sign the document and return it to me so that I can sign it. I will then forward a copy of the signed document to you, at which point you can forward the exemplar sandals to me.

I do thank you for your anticipated cooperation in this matter.

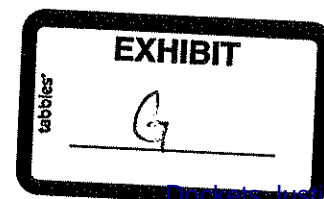
Very truly yours,

**SULLIVAN, WARD,
ASHER & PATTON, P.C.**


Scott D. Feringa

SDF/sav
Enclosures
W0443010.17

cc: Sean J. Milano, Esq. (w/enc)
Thomas T. Reith, Esq. (w/enc)



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STEPHANIE HOFER and
DOUGLAS HOFER,

Plaintiffs,

FEDERAL COURT

vs.

Case No. 05-40170 FDS

THE GAP, INC., EXPEDIA, INC.
and TURTLE BEACH TOWERS,

Defendants.

AGREEMENT TO PRODUCE ONE PAIR OF EXEMPLAR SANDALS FOR EXAMINATION ONLY

Based upon the representation by plaintiffs' counsel and photographs produced by way of discovery that plaintiffs maintain that they have secured three sets of exemplar sandals which they represent to be reasonable exemplars of the sandals which are the subject matter of this litigation, plaintiffs' counsel and counsel for defendant The GAP, Inc. (hereinafter referred to as "GAP") have agreed to the following terms and conditions for production of a single pair of the exemplar sandals to counsel for defendant GAP:

1. That plaintiffs' counsel shall identify one pair of exemplar sandals and shall send that pair to counsel for defendant GAP by a recognized delivery service such as Federal Express, UPS or DHL and supply counsel for defendant GAP with the tracking number for said package.
2. That the sandals shall be sent to Scott D. Feringa, Sullivan, Ward, Asher & Patton, P.C., counsel for defendant GAP at the following address: 25800 Northwestern Highway, 1000 Maccabees Center, Southfield, MI 48075-1000.
3. That no destructive testing or destructive examination shall be performed on the sandals by any individuals without such destructive testing or destructive examinations being the subject matter of a protocol to be agreed upon and approved by all parties to this litigation.
4. That any and all photographs taken by any individuals of the exemplar sandals which are the subject matter of this Agreement shall be made available to all counsel, with each counsel being responsible for reasonable reproduction costs of said photographs.
5. That counsel for defendant GAP is permitted to have the subject matter sandals examined and photographed by a consultant or consultants of his choosing. It is agreed and understood that any individual who may be retained by counsel for defendant GAP as a consultant to examine said exemplar sandals will be bound by the terms and conditions of this Agreement and shall

agree to not perform any destructive testing or destructive examinations of any sort subject to the terms and conditions of this Agreement as identified herein.

6. That plaintiffs' counsel and counsel for defendant GAP hereby agree that since plaintiffs' counsel has three sets of exemplar sandals, which plaintiffs maintain reasonably represent the subject matter sandals which are identified in Plaintiffs' Complaint, that in the event that the exemplar sandals produced in accordance with the terms and conditions of this Agreement are lost, that no spoliation claims may be made by any party or individual against any other party or individual in this litigation, nor can any references to said loss or spoliation be made by any individual or party to this litigation pursuant to the Massachusetts case law concerning spoliation of evidence. It is specifically acknowledged by the parties that since there exists two other exemplars, that the loss of the exemplars which are the subject matter of this Agreement would not be prejudicial in any way to any party.

7. That counsel for defendant GAP may retain the sandals which are the subject matter of this Agreement for sixty (60) days at which point in time they are to be returned to plaintiffs' counsel, India Minchoff, Law Offices of Russo & Minchoff, 123 Boston Street, 1st Floor, Boston, MA 02125, unless there is an agreement between the parties to extend or shorten said time which will then be an amendment to the instant Agreement.

India L. Minchoff (BBO #652456)
Law Offices of Russo & Minchoff
Attorney for Plaintiff
Dated: _____

Scott D. Feringa (P28977)
Sullivan, Ward, Asher & Patton, P.C.
Attorney for Defendant GAP, Inc.
Dated: _____

Stephen J. Kuzma #547522
Co-counsel for Plaintiff
Dated: _____