

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

STEPHANIE HOFER and
DOUGLAS HOFER,

Plaintiffs,

vs.

FEDERAL COURT
Case No. 05-40170 FDS

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

Defendants.

**MEMORANDUM IN SUPPORT OF DEFENDANT THE GAP, INC.'S MOTION
TO BAR PLAINTIFF FROM PROVIDING ANY EXPERT TESTIMONY DUE TO
PLAINTIFFS' FAILURE TO COMPLY WITH THE CASE MANAGEMENT
ORDER OF FEBRUARY 3, 2006**

Defendant THE GAP, INC. files this motion pursuant to Federal Rule of Civil Procedure 37(c)(1). Plaintiffs have failed to comply with the Case Management Order, have failed to file their Rule 26 expert disclosures, thus placing the Defendant in the prejudicial position of having to file its response without knowing with specificity the nature of the allegations against it, the factual basis of those allegations, the facts, data, evidence and knowledge that the Plaintiffs' expert will be introducing at the time of trial and have prevented the Defendant from now engaging in expert discovery.

The 1st Circuit in the case of Gagnon v. Teledyne Princeton, Inc., 437 F.3d 188 at 191 (1st Cir. 2005) stated in part:

“...expert preclusion orders[s] fall[] in the heartland of case management decisions – the area where a trial judge has the remorseless responsibility, evenhandedly and efficiently, to govern, monitor, and police the progress of an endless line of cases through the court.”

In this case Plaintiffs' counsel was reminded by correspondence that indeed they had missed the Case Management Order deadlines. No responses to that correspondence were received nor were there requests for extensions.

Therefore, counsel for Defendant GAP requests that this Court grant its motion for the reasons stated herein.

Respectfully submitted,

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

By: /s/ Scott D. Feringa
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Dated: October 23, 2006

PROOF OF SERVICE

I hereby certify that on the 23rd day of October, 2006, I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically.

By: /s/ Scott D. Feringa
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