

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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

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

For all of the reasons stated in *Defendant The Gap, Inc.’s Motion To Bar Plaintiffs From Providing Any Expert Testimony Due To Plaintiffs’ Failure To Comply With The Case Management Order of February 3, 2006* (“*Motion to Bar*”), which Defendant The Gap, Inc. filed with this Court on October 23, 2006, Defendant Expedia, Inc. (“Expedia”) hereby joins in said *Motion to Bar*.

In further support of the *Motion to Bar*, Expedia states as follows:

1. On October 12, 2006, just as Defendant The Gap, Inc. had done on October 10, 2006 and October 12, 2006, Expedia alerted the Plaintiffs of their failure to comply with their obligation to designate expert witness(es) by October 2, 2006, as required by the February 3, 2006 Case Management Order. See the October 12, 2006 letter from Attorney Thomas T. Reith to Plaintiffs’ counsel appended hereto as Exhibit A¹; see also Exhibit 1 and Exhibit 2 to The Gap,

¹ Expedia refers to the February 3, 2006 Case Management Order as the “Scheduling Order” in Exhibit A.

Inc.'s memorandum in support of the *Motion to Bar*, which memorandum The Gap, Inc. filed on October 23, 2006.

2. Further, Expedia reminded the Plaintiff that their counsel stated in open Court on September 8, 2006 that the Plaintiffs would designate their expert(s) as required under the February 3, 2006 Case Management Order. See Exhibit A hereto.

3. Moreover, Expedia informed the Plaintiffs that their failure to comply with the February 3, 2006 Case Management Order and their counsels' express assurances to the Court would prejudice Expedia's ability to satisfy its related obligations under the February 3, 2006 Case Management Order. See Exhibit A hereto.

4. The Plaintiffs did not request any extension from Expedia within which to make the Plaintiffs' required and assured designations, did not petition the Court to amend the Court's February 3, 2006 Case Management Order, did not reply in any fashion to Expedia's October 12, 2006 letter or otherwise offer any explanation for their knowing and willful disregard of their obligations under February 3, 2006 Case Management Order.

5. There is no reason for the Plaintiffs' lack of designation or lack of explanation as to the lack of designation. Plaintiffs' counsel assured the Court at the September 8, 2006 Status Conference that the Plaintiffs' expert designations would not be impacted by any then-outstanding discovery. Indeed, the issues for which any expert might be necessary have been well defined since the inception of this case.

6. The Plaintiffs knowing and willful disregard of their obligation to designate their expert witness(es) is but the latest in a line of the Plaintiffs' election not to comply with the governing rules of civil procedure or Court orders.

WHEREFORE, Expedia respectfully prays this Court to:

1. Bar Plaintiffs from presenting any expert testimony in support of their case against Expedia;

OR IN THE ALTERNATIVE, AND TO THE EXTENT THE COURT ELECTS NOT TO SO BAR THE PLAINTIFFS,
2. Order the Plaintiffs to present their full and complete expert disclosure(s) no later than October 30, 2006; that Plaintiffs be required to present all of their experts for depositions no later than November 30, 2006 at Plaintiffs' counsels' expense; and that Expedia then be permitted to file its expert disclosure(s) by December 15, 2006;

AND
3. Award any and all other relief that this Court deems just and warranted.

Respectfully submitted,

EXPEDIA, INC.,
By its attorneys,

/s/ Thomas T. Reith
Lawrence G. Green, BBO #209060
Thomas T. Reith, BBO #648671
Burns & Levinson LLP
125 Summer Street
Boston, MA 02110
(617) 854-4000

Dated: October 26, 2006

L.R. 7.1 CERTIFICATE

I, Thomas T. Reith, hereby certify that the Plaintiffs' counsel did not respond to Expedia's October 12, 2006 notification as to Plaintiffs' failure to designate their expert witness(es). The Plaintiffs' counsels' refusal to respond to both Expedia's and The Gap, Inc.'s notices of designation non-compliance and the Plaintiffs' lack of attempt to comply with their designation obligations or to explain their lack of designation compliance rendered, in this instance, L.R. 7.1 (A)(2) futile.

Dated: October 26, 2006

/s/ Thomas T. Reith

CERTIFICATE OF SERVICE

I, Thomas T. Reith, hereby certify that on this 26th day of October 2006, a true and accurate copy of the above document was served upon the attorney of record for each other party electronically, as evidenced by the Notice of Electronic filing of the same date.

/s/ Thomas T. Reith

EXHIBIT A

BURNS & LEVINSON LLP

THOMAS T. REITH
617-345-3258
TREITH@BURNSLEV.COM

125 SUMMER STREET BOSTON, MA 02110
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October 12, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

India L. Minchoff, Esq.
Law Offices of Russo & Minchoff
123 Boston Street, 1st Floor
Boston, Massachusetts 02125

Re: Stephanie Hofer and Douglas Hofer v. Old Navy, Expedia, Inc.,
and Turtle Beach Towers, C.A. 05-40170

Dear Attorney Minchoff:

Please execute the *Consent Protective Order* and forward same to Attorney Feringa for filing. (Attorney Feringa had not yet received Attorney Kuzma's signature page, so I faxed it to Attorney Feringa to expedite this process.) Again, once all counsel have executed the *Consent Protective Order*, and it has been filed, I will immediately forward Expedia, Inc.'s confidential and proprietary documents.

Also, Expedia, Inc. notes that the Plaintiffs' have failed to identify their expert(s) within the Scheduling Order time standards, as they assured the Court at the September 8, 2006 Scheduling Conference they would. The failure to do so will prejudice Expedia, Inc.'s ability to satisfy its related obligations under the Scheduling Order. Thus, Expedia, Inc. reserves its rights to object to and/or to move to strike the Plaintiffs' expert designation(s).

Thank you.

Very truly yours,



Thomas T. Reith

cc: Lawrence G. Green, Esq.
Stephen J. Kuzma, Esq.
Scott D. Feringa, Esq.
Sean J. Milano, Esq.

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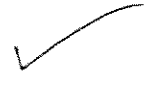
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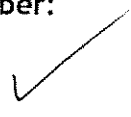
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