

# EXHIBIT 8

FAYLIN MILLER  
August 21, 2006

1                   IN THE DISTRICT COURT OF THE UNITED STATES  
2                   FOR THE DISTRICT OF MASSACHUSETTS  
3  
4       STEPHANIE HOFER and DOUGLAS HOFER,  
5                   Plaintiffs,  
6           vs.   Case No. 05-40170  
7       THE GAP, INC., EXPEDIA, INC.,  
8       and TURTLE BEACH TOWERS,  
9                   Defendants.

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The Videotaped Deposition of FAYLIN MILLER,  
Taken at Turtle Beach Towers, Main Street,  
Ocho Rios, St. Ann, Jamaica, W.I.,  
Commencing at 10:02 a.m.,  
Monday, August 21, 2006,  
Before Rebecca J. Callow, CSR-5228, RPR.

FAYLIN MILLER  
August 21, 2006

1 APPEARANCES:

2

3 STEPHEN J. KUZMA

4 Stephen Kuzma Law Office

5 75 Federal Street

6 Suite 17

7 Boston, Massachusetts 02110

8 (617) 338-3020

9 Appearing on behalf of the Plaintiffs.

10

11 INDIA L. MINCHOFF

12 Russo & Minchoff

13 123 Boston Street

14 Boston, Massachusetts 02125

15 (617) 740-7340

16 Appearing on behalf of the Plaintiffs.

17

18 SCOTT D. FERINGA

19 Sullivan, Ward, Asher & Patton, P.C.

20 25800 Northwestern Highway

21 Suite 1000

22 Southfield, Michigan 48037

23 (248) 746-0700

24 Appearing on behalf of the Gap, Inc.

25

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1 THOMAS T. REITH  
2 Burns & Levinson, L.L.P.  
3 125 Summer Street  
4 Boston, Massachusetts 02110  
5 (617) 345-3000

6 Appearing on behalf of Expedia, Inc.

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8 ALSO PRESENT:

9 Lynsey Williams - Video Technician

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1 Ocho Rios, St. Ann, Jamaica, W.I.,

2 Monday, August 21, 2006

3 10:02 a.m.

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5 MARKED BY THE REPORTER:

6 DEPOSITION EXHIBIT NUMBERS 1-7

7 10:02 a.m.

8 VIDEO TECHNICIAN: We are now on the record.

9 This is the videotape deposition of Fay Miller being  
10 taken on Monday August 21st, 2006. The time is now  
11 10:02 and 11 seconds a.m. We are located at the  
12 Turtle Beach Towers in Ocho Rios Jamaica. This  
13 deposition is being taken on behalf of the defendants  
14 in the matter of Stephanie Hofer and Douglas Hofer  
15 versus The Gap, Incorporated; Expedia, Incorporated;  
16 and Turtle Beach Towers. This case number 05-40170  
17 FDS. This matter is being held in the United States  
18 District Court for the District of Massachusetts.

19 My name is Lynsey Williams, video  
20 technician. Will the court reporter swear in the  
21 witness and the attorneys briefly identify themselves  
22 for the record, please?

23 FAYLIN MILLER,

24 was thereupon called as a witness herein, and after  
25 having first been duly sworn to testify to the truth,

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1 the whole truth and nothing but the truth, was  
2 examined and testified as follows:

3 MR. FERINGA: Scott Feringa appearing on  
4 behalf of The Gap.

5 MR. REITH: Thomas Reith on behalf of  
6 Expedia, Inc.

7 MS. MINCHOFF: India Minchhoff for the  
8 plaintiffs.

9 MR. KUZMA: Steven Kuzma for the plaintiff,  
10 Stephanie Hofer.

11 MR. FERINGA: Good morning, Ms. Miller.  
12 A. Morning.

13 MR. FERINGA: Let the record reflect this  
14 deposition is being taken pursuant to Notice and may  
15 be used for all purposes as contemplated by the  
16 Federal Rules of Civil Procedure and the Federal Rules  
17 of Evidence.

18 MR. KUZMA: Before we begin, I just want to  
19 make a statement that I don't believe consular  
20 authority has been granted in the case, and we'd  
21 object to the taking of the deposition on that ground.

22 MR. FERINGA: We've received consular  
23 authority from the Consulate of Jamaica.

24 MR. KUZMA: Okay. I'd like to see it.  
25 That's all I need.

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1 MR. FERINGA: I think we've provided that  
2 with the motion. You saw that letter from the  
3 Consulate, from Jamaica.

4 MR. KUZMA: If that's so, I waive my  
5 objection.

6 MR. FERINGA: Let's go off the record.  
7 Somebody's at the door.

8 VIDEO TECHNICIAN: We are going off the  
9 record. The time is 10:04 and 7 seconds a.m.

10 (Discussion off the record at 10:04 a.m.)

11 (Back on the record at 10:05 a.m.)

12 VIDEO TECHNICIAN: Back on the record. The  
13 time is 10:05 and 37 seconds a.m.

14 MR. FERINGA: Just back on the record in  
15 response to Mr. Kuzma's objection, we had supplied  
16 with a petition to the Court as Exhibit D, a letter  
17 that was faxed to us from the Embassy of Jamaica on 27  
18 July 2006 from Mr. Cythe, C-y-e-t-h, Denton, first  
19 secretary/consul, advising that the Embassy -- that  
20 Jamaica has no objection to the taking of the  
21 depositions here. So we'll use that as part of the  
22 record.

23 EXAMINATION

24 BY MR. FERINGA:

25 Q. Can you give us your full name, please?

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1 A. I'm Faylin, F-a-y-l-i-n. Miller, M-i-l-l-e-r.

2 Q. Mrs. Miller, we were introduced before we started this  
3 deposition. My name is Scott Feringa. I'm going to  
4 be asking you some questions today. The ladies here  
5 will be taking down everything that we say.

6 A. Sure.

7 Q. Additionally, it's a fairly artificial way of talking,  
8 because two of us can't talk at the same time. That  
9 way, if we talk at the same time, our court reporter  
10 will not be able to take us down both together. So if  
11 you can wait until I'm finished and I'll wait until  
12 you're finished, that will be translated well on our  
13 record then, please.

14 A. Okay.

15 Q. Additionally, Mrs. Miller, if you have any questions  
16 about what I have asked you, if I'm unclear in any  
17 way, please tell me and I'll be more than happy to  
18 rephrase the question. All right, ma'am?

19 A. Sure.

20 Q. Mrs. Miller, we're at the Turtle Beach Towers in Ocho  
21 Rios, Jamaica. Is that correct?

22 A. Yes, we are.

23 Q. And, Mrs. Miller, what is your position here?

24 A. I'm general manager for the apartments.

25 Q. And how long have you been general manager for the



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1 Q. The towers that we're involved in, how many towers are  
2 there?

3 A. There are four towers.

4 Q. And then where they first built? Do you know?

5 A. Oh, they are, I would say, 40 years old.

6 Q. The reception area, is that at Tower Number 4?

7 A. It is.

8 Q. And is that the location where guests actually check  
9 in?

10 A. Yes. That's right.

11 Q. I'm going to show you what we have marked as Exhibit  
12 Number 1. And this a photograph of Tower 4 and the  
13 reception area. This is the same photograph that has  
14 been used at the deposition of Ms. LaBelle and  
15 Mrs. Hofer.

16 MR. FERINGA: Counsel?

17 MR. KUZMA: I object to the form.

18 BY MR. FERINGA:

19 Q. Is this is a photograph of Tower Number 4 and the  
20 reception area?

21 A. Yes, it is.

22 MR. KUZMA: Objection.

23 BY MR. FERINGA:

24 Q. And will you hold that up for the camera? Now, with  
25 respect to that photograph, where is the reception

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1 area located?

2 A. Inside the lobby. Inside here. Open the door and you  
3 go in. It's right in there.

4 Q. And in March of 2004, was the reception area in that  
5 same location?

6 A. That's never changed for 30 years.

7 Q. Okay. So the photograph that --

8 MR. KUZMA: Objection. Move to strike.

9 BY MR. FERINGA:

10 Q. So the photograph that you have in front of you is an  
11 accurate representation of how the property looked in  
12 March of 2004?

13 A. Exactly.

14 MR. KUZMA: Objection to the form.

15 BY MR. FERINGA:

16 Q. Now you can answer.

17 A. Exactly.

18 Q. Now, how many steps lead up to the landing?

19 A. Three.

20 Q. If you look in the picture.

21 A. One, two. Two.

22 Q. Two. And if you show that the -- to all of us,  
23 please.

24 The doors -- if you can keep that photograph  
25 up, Mrs. Miller, if you could. The doors, is there a

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1 single door or two doors?

2 A. Two doors.

3 Q. And has it always been two doors?

4 A. Always been two doors.

5 Q. There is in the right side of that photograph a bench.

6 You're familiar with that bench?

7 A. Yes, I do.

8 Q. How long has that bench been there?

9 A. For 20, 30 years. 20 years.

10 Q. As long as you can --

11 A. -- can remember, yes.

12 Q. And in back of that bench, what is there?

13 A. A turtle pond.

14 Q. How long has that turtle bond pond been there?

15 A. It has been there the same, about 20 years.

16 Q. Is there any other turtle pond on the property of  
17 Turtle Beach Towers?

18 A. No. No. Never been.

19 Q. And on March 18, was this the same -- strike that.

20 On March 18, was there any difference in the  
21 turtle pond as --

22 A. No.

23 MR. KUZMA: Objection.

24 BY MR. FERINGA:

25 Q. Was there any difference in the turtle pond?

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1 Exhibit Number 4. Can you tell us what that  
2 photograph is?

3 A. That's the front desk area.

4 Q. And does it show any evidence of a turtle pond?

5 A. Yes. Right here.

6 Q. Can you show it to the members of the jury?

7 So what you're pointing to with your finger  
8 is the turtle pond.

9 A. The turtle pond. Correct.

10 Q. Thank you.

11 MR. REITH: If you don't mind me asking,  
12 Scott.

13 If you don't mind, Ms. Miller, if you can  
14 speak up just a little bit.

15 A. Okay.

16 MR. REITH: We want to make sure we get it.  
17 My hearing must be shot from the flight, so...

18 A. Okay.

19 MR. REITH: Thank you.

20 BY MR. FERINGA:

21 Q. And I'm just going to show you what we've marked as  
22 Exhibit Number 5, and ask whether you can identify  
23 that photograph as well.

24 A. That's the turtle pond.

25 Q. And is this the -- was this turtle pond the same as it

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1 was in 2004?

2 A. It is.

3 Q. Thank you.

4 A. It was.

5 Q. I'm going to show you what has been marked at a  
6 previous deposition as Hofer Exhibit Number 5, and  
7 it's a drawing that Ms. Hofer made in her deposition  
8 in March -- I mean, on June 29, 2006, and purported to  
9 be the layout of the lobby and turtle pond area.

10 A. There was not two turtle ponds, just one.

11 Q. And my question is --

12 MR. KUZMA: I move to strike.

13 BY MR. FERINGA:

14 Q. The question I have, Mrs. Miller, is is this an  
15 accurate representation of what the property was like  
16 on March 18, 2004?

17 A. No. It hasn't been changed from that.

18 Q. Can you --

19 A. No. It has not been changed. This is not. This is  
20 saying one, two, three, steps there, not four steps.  
21 This is saying two turtle ponds, we only had one  
22 turtle pond.

23 Q. And in terms of the door area, if it has been  
24 represented by Ms. Hofer that that door was a single  
25 glass door, was that --

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- 1 Q. I'm sorry?
- 2 A. Which of them?
- 3 Q. The photographs that you have in your left hand, do  
4 you still have those that he showed you? You still  
5 have them?
- 6 A. Yes. Yes, I do.
- 7 Q. Okay. How long have you worked here?
- 8 A. For 30 years.
- 9 Q. 30 years. And fair to say that you've walked up and  
10 down those stairs that we see in those photographs --
- 11 A. Every day.
- 12 Q. -- thousands of times?
- 13 A. Every day of the week. I'm here seven days of the  
14 week.
- 15 Q. So you've walked up and down those --
- 16 A. Yes.
- 17 Q. -- and you're very familiar with those stairs and the  
18 entryway?
- 19 A. Yes, I am.
- 20 Q. When Mr. Feringa asked you how many steps lead up to  
21 the landing, you first said three steps. Correct?
- 22 A. Yes, but I have -- yes, but --
- 23 Q. You did say three. Right?
- 24 A. Yes, I did say three.
- 25 Q. Okay. And then you changed your answer to two.

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- 1 Correct?
- 2 A. I know it's two, but, you know, walking up, three.
- 3 Yes.
- 4 Q. So you changed your answer from three steps to two.
- 5 Correct?
- 6 A. Uh-huh. Yes.
- 7 Q. And, again, it's fair to say that you're very familiar
- 8 with --
- 9 A. Yes, I am.
- 10 Q. -- those stairs?
- 11 A. Yes, I am.
- 12 Q. All right. And you're very familiar with the
- 13 reception --
- 14 A. Yes, I am.
- 15 Q. -- area beyond those stairs?
- 16 A. Yes.
- 17 Q. And as to enter the lobby, there's a reception desk on
- 18 the left-hand side of the lobby. Correct?
- 19 A. Yes.
- 20 Q. And on the right-hand side of the lobby there's seats?
- 21 A. Yes.
- 22 Q. From the vantage point behind the reception desk, is
- 23 it fair to say that you can't see the turtle pond
- 24 which is shown in those photographs?
- 25 A. No. But there's a glass with the mirror there, or

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1 picture on the wall. You can stand at that desk and  
2 you see anybody coming from that angle.

3 Q. All right. My question is not whether you can see  
4 anyone coming from that angle, but can you see the  
5 turtle pond from behind the reception desk through  
6 that mirror down below. Can you see it?

7 A. No. No.

8 Q. Thank you. Is it fair to say, Ms. Miller, that you  
9 try to maintain a safe resort?

10 A. Yes, I do.

11 Q. And you feel that you do maintain a safe resort?

12 A. Yes, I do.

13 Q. So if any stairs were chipped, that would not be a  
14 safe condition. Correct?

15 A. Right.

16 Q. You would agree with that?

17 A. I would.

18 Q. You've stated to counsel that you conducted an  
19 investigation. Correct?

20 A. Yes, I did.

21 Q. How many times over the course of your employment  
22 history here have you conducted an investigation  
23 regarding an accident which occurred here?

24 A. We've not had an accident. This is the first major  
25 report we have.



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- 1 Q. This is the first in 28 years?
- 2 A. Yes. Uh-huh.
- 3 Q. So is it fair --
- 4 A. You will have like little things like in the room like  
5 they bump their feet beet on the table, they bounce  
6 off the glass of the table or something. But away  
7 from that, this is the biggest major one I've ever  
8 had.
- 9 Q. All right. Is it fair to say that based upon your  
10 testimony anyway that this was the first accident of  
11 this type --
- 12 A. Yes.
- 13 Q. -- that this is the first investigation that you've  
14 conducted. Correct?
- 15 A. No. I have like daily reports that I have to make, if  
16 something happened. Like, as I said, if a glass is  
17 broken, if somebody walk like in the glass door or  
18 something like that, then I have to make a report.
- 19 Q. I specifically asked you whether this is your first  
20 investigation. Do you understand me?
- 21 A. Um-hmm.
- 22 Q. "Yes"?
- 23 A. No. I investigate other cases. Yes. Other cases I  
24 have.
- 25 Q. But this is the first type of --

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1 Q. Forgive me. How many years have you worked here?

2 A. About 28, 30 years.

3 Q. I know you answered it a couple times. I just want to  
4 make sure I got it right. 28 or 30 years?

5 A. Yes.

6 Q. And in those 28 or 30 years, how many times has there  
7 then an incident such as the one that Ms. Hofer argues  
8 happened in the Turtle pond?

9 MR. KUZMA: Objection.

10 A. That the first one.

11 BY MR. REITH:

12 Q. That's the first one?

13 A. First one.

14 Q. That's the first time someone alleged that they fell  
15 into a turtle pond was this past -- this case?

16 A. Yes.

17 MR. KUZMA: Objection.

18 Q. Is it fair to say that Expedia -- strike that.

19 Is it fair to say that no one from Expedia  
20 has issued an inspection report about the turtle pond?

21 A. No.

22 Q. No one has?

23 A. No one has.

24 Q. Is it fair to say that no one from Expedia has asked  
25 you or anyone from your resort to fix anything with

EXHIBIT NO. 1  
Miller  
Date: 8-21-06  
Rebecca Callow  
CSR, RPR



EXHIBIT NO. 5  
Miller  
Date: 8-21-06  
Rebecca Callow  
CSR, RPR

