

EXHIBIT 9

Page 239

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3 NO. 05-40170 FDS
4

5
6 STEPHANIE HOFER and)
7 DOUGLAS HOFER,)
8 Plaintiffs,)
9)
10 vs.)
11)
12 THE GAP, INC., EXPEDIA, INC.)
13 and TURTLE BEACH TOWERS,)
14 Defendants.)
15)

16
17 VOLUME II
18 PAGES 239 - 354
19

20
21 CONTINUED VIDEOTAPED DEPOSITION OF
22 STEPHANIE A. HOFER
23 MONDAY, 10 JULY, 2006
24 9:25 AM
25

Page 240

1
2
3 CONTINUED VIDEOTAPED DEPOSITION of
4 STEPHANIE A. HOFER, called as a witness by and on
5 behalf of The Gap, Inc., pursuant to the applicable
6 provisions of the Federal Rules of Civil Procedure,
7 before P. Jodi Ohnemus, Notary Public, Certified
8 Shorthand Reporter, Certified Realtime Reporter and
9 Registered Merit Reporter, within and for the
10 Commonwealth of Massachusetts, at the offices of
11 Morrison, Mahoney, LLP, 250 Summer Street, Boston,
12 Massachusetts, on Monday, 10 July, 2006, commencing
13 at 9:30 a.m.
14
15
16
17
18
19
20
21
22
23
24
25

Page 241

1 APPEARANCES:

2
3 LAW OFFICES OF RUSSO & MINCHOFF
4 BY: India Minchoff, Esq.
5 123 Boston Street
6 First Floor
7 Boston, MA 02125
8 617 740-7240
9 India@russominchofflaw.com
10 For the Plaintiffs
11

12
13 SULLIVAN, WARD, ASHER
14 & PATTON, P.C.
15 BY: Scott D. Feringa, Esq.
16 1000 Maccabees Center
17 25800 Northwestern Highway
18 Southfield, MI 48075-1000
19 248 746-2727
20 Sferinga@swappc.com
21 For The Gap, Inc.
22
23
24
25

Page 242

1 APPEARANCES: (CONT'D)

2
3 BURNS & LEVINSON, LLP
4 BY: Thomas T. Reith, Esq.
5 125 Summer Street
6 Boston, MA 02110
7 617 345-3258
8 Treith@burnslev.com
9 For Expedia, Inc.
10

11 ALSO PRESENT:

12
13 Ralph Scopa, Videographer
14
15
16
17
18
19
20
21
22
23
24
25

Page 243

I N D E X

1		
2		
3	EXAMINATION OF:	PAGE
4		
5	STEPHANIE HOFER	
6	(Cont'd by Mr. Feringa)	245
7	(By Mr. Reith)	305
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Page 244

E X H I B I T S

1			
2			
3	EXHIBITS	DESCRIPTION	PAGE
4			
5	8	Deposition Notice	246
6	9	Copy of photograph	259
7	10	Diagram	274
8	11	Complaint	345
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Page 245

1 VIDEO OPERATOR: We are now on the record.

2 This is the videotape deposition of Stephanie Hofer

3 being taken on July 10th, 2006. The time is 9:30

4 a.m. We are located at Morrison Mahoney, 250

5 Summer Street, Boston. This deposition is being

6 taken on behalf of Stephanie Hofer, Plaintiff, in

7 the matter of Hofer versus The Gap, Incorporated,

8 Expedia, Incorporated, Turtle Beach Towers, Case

9 No. 05-40170 FDS. This matter is being held at the

10 -- for the US District Court, District of

11 Massachusetts. My name is Ralph Scopa, videotape

12 operator. Will the court reporter swear in the

13 witness and the attorneys briefly identify

14 themselves for the record, please.

15 MS. MINCHOFF: Attorney India Minchoff for

16 Stephanie Hofer.

17 MR. FERINGA: Scott Feringa for the Gap.

18 MR. REITH: Thomas Reith for Defendant

19 Expedia, Inc.

20 STEPHANIE HOFER,

21 having first been duly sworn,

22 testified as follows to

23 continued direct interrogatories

24 BY MR. FERINGA:

25 Q. Good morning, Mrs. Hofer.

Page 246

1 A. Good morning.

2 Q. I'm going to show you what I've marked as

3 Exhibit No. 8, which is a copy of the notice of

4 deposition for today.

5 (Deposition notice marked Exhibit 8.)

6 Q. Did you ever receive a copy of Exhibit 8?

7 A. (Witness reviews document.) Yes.

8 Q. All right. At your last deposition that

9 took place on June 29, we had asked for you to

10 bring groups of documents, and no -- you didn't

11 produce any documents. And so my question is, for

12 example, you have -- you had photographs on your

13 camera on your -- on your computer. You said that

14 you took approximately two photographs a month over

15 a six to eight-month period of time. You only

16 produced a portion of those. I was hoping that you

17 would bring the rest of those today. Did you?

18 A. I produced those to my attorney, and upon

19 review, I assume that they will be presented.

20 Q. So they haven't been brought here today?

21 A. No, I did not bring them today.

22 Q. All right. We also asked you to produce

23 today, as well as on June 29, your employment and

24 personnel records from the dental office at which

25 you served as a dental assistant. Did you bring

Page 259

1 circumstances of your injury or this deposition
2 between June 29 and today?
3 MS. MINCHOFF: Objection.
4 A. No.
5 Q. Have you had any communications with Ms.
6 LaBelle between June 29th and today?
7 A. Yes, I have.
8 Q. All right. And how -- what communications
9 have you had with her?
10 A. She got married.
11 Q. Okay. And were you at her wedding?
12 A. Yes, I was.
13 Q. Okay. Did you talk to her at all about
14 the -- this lawsuit between June 29th and today?
15 A. No.
16 Q. Did you provide her with any documents,
17 including a copy of your deposition transcript?
18 A. No.
19 Q. All right. I want to ask you some
20 questions to go back over the fall, the
21 circumstances of the fall. I've handed you what
22 I've specifically marked Exhibit No. 9, which is a
23 copy of the photographs that were part of the
24 initial -- initial document production.
25 (Copy of photograph marked Exhibit 9.)

Page 261

1 foot?
2 A. I can't remember that.
3 Q. What was happening? In terms then of
4 Exhibit No. 9, can you -- you told us before that
5 you fell into the turtle pond as a result, you say,
6 of the flip-flop falling, correct?
7 A. That's what I said.
8 Q. All right. Your intention was to head
9 down the stairs, correct?
10 A. That would be correct.
11 Q. So how is it then that you fell to your
12 right?
13 A. I couldn't really answer that.
14 Q. All right.
15 A. I lost my balance.
16 Q. I recognize that. But you were -- you
17 were in the process of walking, correct?
18 A. I was in the process of leaving the door
19 to turn around to walk.
20 Q. Okay. I'm going to show you what we
21 marked as Exhibit No. 7 at the previous deposition,
22 okay. When you say you were in the process of
23 leaving the door to turn around to walk, are you
24 talking about the glass doors that show up in
25 Exhibit No. 7?

Page 260

1 Q. And I will --
2 MS. MINCHOFF: I'm sorry. Did you just
3 say a copy of a photograph that was part of the
4 initial document production?
5 MR. FERINGA: I misspoke. The -- a copy
6 of the photograph that was produced at the last
7 deposition on June 29th.
8 Q. You would indicate that just before the
9 fall you looked down and saw your flip-flop had
10 separated, correct?
11 A. Yes.
12 Q. And looking at this photograph, Exhibit
13 No. 9, and looking at Exhibit No. 9, where do you
14 think you were in relationship to the turtle pond,
15 which is shown --
16 A. I don't know.
17 Q. When you were -- looked down and saw the
18 toe of -- toe piece of your flip-flop, your left
19 flip-flop -- strike that. Was it your left or your
20 right?
21 A. It was my right flip-flop.
22 Q. Your right flop-flop. When you looked
23 down and saw your right flip-flop had separated,
24 had you just taken a step onto the right foot or
25 had you taken -- were you stepping onto your left

Page 262

1 A. I can't recall that.
2 Q. Well, what door are you talking about if
3 it's not those glass doors?
4 A. I have a memory of a door --
5 Q. Okay.
6 A. -- that doesn't look like that.
7 Q. What --
8 A. I don't recall if this is where I fell.
9 Q. What shows up in Exhibit No. 7 you're now
10 saying you don't recall whether Exhibit No. 7 or
11 what is depicted in Exhibit No. 9 is actually where
12 you fell?
13 A. I am not sure if this is the area where I
14 fell (indicating).
15 Q. Right. Was the -- have you -- are there
16 pictures of any other places on Turtle Beach Towers
17 in the property of Turtle Beach Towers upon which
18 there is a door and then a series of steps and a
19 turtle pond?
20 A. Can you repeat that question --
21 Q. Sure.
22 A. -- in a different way, please.
23 Q. Sure. Is there another door and building
24 with a turtle pond that existed on the Turtle Beach
25 Towers property --

Page 271

1 MR. FERINGA: I think we have and -- and
2 she can --
3 MS. MINCHOFF: Well, 7 had a few.
4 MR. FERINGA: No, this is --
5 MS. MINCHOFF: You've asked her about
6 Exhibit No. 7 for the last few questions.
7 MR. FERINGA: It's the one -- it's the one
8 with the mark -- actually the exhibit on it --
9 exhibit sticker on it, but if you'll hold it up.
10 MS. MINCHOFF: You're the only one that
11 has the exhibit sticker.
12 MR. FERINGA: No, it was copied attached
13 to all copies of the deposition when it was --
14 MS. MINCHOFF: I didn't get the
15 deposition, so I'm going off of the exhibits you
16 handed out on the 29th.
17 MR. FERINGA: Got it.
18 VIDEO OPERATOR: Yes.
19 MS. MINCHOFF: That's fine.
20 MR. FERINGA: That's fine. Thank you.
21 Q. All right. You saw the flip-flop -- the
22 right flip-flop separate before you reached the
23 stair, correct?
24 A. I can't recall if it was before I reached
25 the stair or as I was going down. I can't recall.

Page 273

1 struck what first.
2 Q. Do you remember your right or left leg
3 impacting the side of the turtle pond?
4 A. No, I do not.
5 Q. You do remember that the turtle pond was
6 encased in some sort of concrete rectangle,
7 correct?
8 A. I was under the impression it was a stone
9 wall type.
10 Q. So what appears on Exhibit No. 9 does not
11 appear to look like the turtle pond into which you
12 fell?
13 A. No, it does not.
14 MS. FERINGA: Let's go off the record,
15 because I'm going to ask you to draw what you
16 remember the turtle pond looked like, okay?
17 VIDEO OPERATOR: Off the record at 10:04.
18 (Discussion off the record.)
19 VIDEO OPERATOR: On the record at 10:08.
20 Q. While we were off the record, Ms. Hofer, I
21 asked you to draw the turtle pond. Have you done
22 so?
23 A. To the best of my ability.
24 Q. All right. I'm going to reach over and
25 place an exhibit sticker, No. 10, on it, and I'm

Page 272

1 I know I saw it, but I don't know when.
2 Q. Did you have time to stop?
3 A. No, I did not.
4 Q. So tell me, as best as you can recall, the
5 configuration of your body as you fell.
6 A. I don't know.
7 Q. Did you -- were you holding anything in
8 your hands?
9 A. No, I was not.
10 Q. On Exhibit No. 5, which is the drawing
11 that you made, you have an arrow pointing into the
12 turtle pond that would have been to your right as
13 you're walking down the stairs, correct?
14 A. Correct.
15 Q. How is it that you ended up there?
16 A. I don't know.
17 Q. Do you remember -- do you remember what
18 portion of your body -- strike that. Do you
19 remember how you fell into the turtle pond? That
20 is, to your side, to your front forward, on your
21 back, on your left side?
22 A. I don't know.
23 Q. Do you remember what portion of your body
24 struck what first?
25 A. I don't recall what portion of my body

Page 274

1 asking you to -- if you would -- hold it up to the
2 camera so the camera can see it, please.
3 A. (Witness complies.)
4 (Diagram marked Exhibit 10.)
5 Q. All right. Good. So can you describe for
6 us now what you've drawn on Exhibit No. 10.
7 A. I've drawn some stairs, and next to the
8 stairs I have drawn, to the best of my ability,
9 what I remember about the turtle -- the turtle
10 pond.
11 Q. Now, I accept the fact that you're not an
12 artist.
13 A. Thank you.
14 Q. And so I have some questions about what
15 you drew if I could, okay.
16 A. Please.
17 Q. You have drawn an area that you've
18 identified as the turtle pond, correct?
19 A. Yes.
20 Q. And around that area that you've
21 identified as a turtle pond you have a series of
22 black squiggly lines. Can you -- can you tell us
23 what the black squiggly lines mean?
24 A. You know, stone wall, stones, stones,
25 stones, you know, round stones.