

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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

DEFENDANT EXPEDIA, INC.’S
EMERGENCY MOTION FOR RECONSIDERATION OF THE COURT’S
MARCH 14, 2007 ORDER PERTAINING TO PLAINTIFFS’
EMERGENCY MOTION RELATIVE TO THE DEPOSITION TESTIMONY AND
AFFIDAVIT OF FAYLIN MILLER

The defendant Expedia, Inc. (“Expedia”), by and through its undersigned counsel, moves this Honorable Court for reconsideration of its March 14, 2007 Order pertaining to Plaintiffs’ Emergency Motion to Reopen Discovery pursuant to Fed. R. Civ. P. 60(b)(1) and/or (6). As grounds therefore, Expedia states as follows.

1. The plaintiffs’ emergency motion was electronically filed and served on March 13, 2007 at 5:41 p.m. The plaintiffs provided no advance notice that they were filing such a motion.
2. Co-defendant The Gap, Inc. electronically filed a short response to plaintiffs’ motion on March 14, 2007 at 3:08 p.m.
3. Defendant Expedia electronically filed its opposition to plaintiffs’ emergency motion on March 14, 2007 at 4:12 p.m.

4. The Court issued its Order granting in part and denying in part plaintiffs' motion on March 14, 2007, the same being electronically filed and served at 4:41 p.m. The Court's Order stated that the defendants had not yet filed an opposition to the motion.

5. In light of the fact that both defendants had, in fact, filed papers prior to the issuance of the Court's Order, Expedia respectfully requests that the Court review Expedia's opposition to the plaintiffs' motion and the co-defendant The Gap, Inc.'s response to the plaintiffs' motion, and alter or amend its Order for the reasons stated therein. Specifically, Expedia prays that if the Court still deems it appropriate to re-open discovery on the limited issue of the identity of the person or persons who may have visited the Turtle Beach Towers prior to the plaintiff's accident based upon the deposition and affidavit of Faylin Miller, that the Court re-open all discovery on this issue to all parties so that Expedia may seek discovery from other third-parties, such as Travelocity.com and/or WorldRes.com, who would have first-hand knowledge of such information.

6. In the event the Court determines, based upon Expedia's opposition to the plaintiffs' emergency motion to re-open discovery, that no further discovery is necessary, Expedia would have no objection to the plaintiffs being given an extension of one week, to March 23, 2007, to file their opposition to Expedia's motion for summary judgment.

WHEREFORE, the defendant Expedia, Inc. respectfully requests that the Court reconsider its March 14, 2007 Order pertaining to plaintiffs' emergency motion to re-open discovery for the reasons set forth in Expedia's opposition and this instant motion.

Respectfully submitted,
By the defendant
EXPEDIA, INC.,
By its attorneys,

/s/ Rodney E. Gould

Rodney E. Gould (BBO # 205420)
Email: rgould@rhglaw.com
Robert C. Mueller (BBO#567599)
Email: rmueller@rhglaw.com
RUBIN, HAY & GOULD, P.C.
205 Newbury Street
P.O. Box 786
Framingham, MA 01701-0202
Tel: (508) 875-5222
Fax: (508) 879-6803

DATED: March 14, 2007

CERTIFICATE OF SERVICE

I, Rodney E. Gould, hereby certify that this document, filed through the ECF system, will be served electronically upon the registered participants identified on the Notice of Electronic Filing (NEF) and will be served upon any non-registered participants, as indicated on the NEF, by paper copy sent via first-class mail, postage prepaid.

DATED: March 14, 2007

/s/ Rodney E. Gould

Rodney E. Gould