

GAP INC  
Form S-8  
August 04, 2006

As filed with the Securities and Exchange Commission on August 4, 2006

Registration No. 333-\_\_\_\_\_

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER*  
*THE SECURITIES ACT OF 1933*

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**THE GAP, INC.**

(Exact name of registrant as specified in its charter)

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**DELAWARE**  
(State or other jurisdiction of  
incorporation or organization)

**Two Folsom Street, San Francisco, CA 94105**

(Address of Principal Executive Offices) (Zip Code)

**94-1697231**  
(I.R.S. Employer

Identification No.)

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**The Gap, Inc. 2006 Long-Term Incentive Plan**

(Formerly known as **The Gap, Inc. 1996 Stock Option and Award Plan** )

(Full title of the plan)

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Lauri M. Shanahan, Esq.

The Gap, Inc.

Two Folsom Street

San Francisco, CA 94105

(Name and address of agent for service)

Telephone number, including area code, of agent for service: (650) 952-4400

Copies to:

John E. Aguirre, Esq.

Wilson Sonsini Goodrich & Rosati PC

650 Page Mill Road

Palo Alto, CA 94304-1050

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CALCULATION OF REGISTRATION FEE

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Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee (2)
Common Stock, \$0.05 par value	40,225,653 (3)	\$16.53	\$664,930,044.09	\$43,308.31 (4)

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- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act ), this Registration Statement also covers any additional shares of the Registrant's Common Stock that become issuable under The Gap, Inc. 2006 Long-Term Incentive Plan (formerly known as The Gap, Inc. 1996 Stock Option and Award Plan ) (the LTIP ) described herein by reason of any stock split, stock dividend, recapitalization or other similar transaction effected without receipt of consideration that results in an increase in the number of the Registrant's outstanding shares of Common Stock.
- (2) The proposed maximum offering price per share was computed pursuant to Rules 457(c) and (h) under the Securities Act solely for the purpose of calculating the registration fee, on the basis of \$16.53 per share, the average of the high and low prices per share of the Registrant's Common Stock on August 3, 2006, as reported on the New York Stock Exchange.
- (3) The 40,225,653 shares of the Registrant's Common Stock being registered under this Registration Statement are shares that were previously available for issuance under The Gap, Inc. 2002 Stock Option Plan, as amended, but have been carried forward to and included in the reserve of shares available for issuance under the LTIP (the Carryover Shares ). The Registrant previously registered (a) 20,000,000 of the Carryover Shares (the 2003 Form S-8 Carryover Shares ) pursuant to its Registration Statement on Form S-8 (File No. 333-103128), which was originally filed with the Securities and Exchange Commission (the Commission ) on February 12, 2003 (the 2003 Form S-8 ), and (b) the remaining 20,225,653 of the Carryover Shares pursuant to its Registration Statement on Form S-8 (File No. 333-59292), which was originally filed with the Commission on April 20, 2001 and amended by Post-Effective Amendment No. 1 thereto filed on February 12, 2003 (the 2001 Form S-8 ). After the filing of this Registration Statement, the Registrant will file post-effective amendments to the 2003 Form S-8 and 2001 Form S-8 to deregister the applicable Carryover Shares therefrom.
- (4) In connection with the filing of the 2003 Form S-8, the Registrant previously paid a registration fee of \$27,839.20 relating to the 2003 Form S-8 Carryover Shares. Pursuant to Rule 457(p) under the Securities Act, such \$27,839.20 registration fee is being offset against the \$71,147.51 registration fee that otherwise would have been currently due with respect to the 40,225,653 shares of the Registrant's Common Stock being registered under this Registration Statement. Accordingly, a registration fee of \$43,308.31 has been paid by the Registrant pursuant to this Registration Statement (that is, \$71,147.51 less \$27,839.20).

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents are incorporated by reference in this registration statement: (i) the latest annual report of The Gap, Inc. (the Company or the Registrant) filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act); (ii) all other reports filed by the Company pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in clause (i) above (other than the portions of these documents not deemed to be filed); and (iii) the description of the Company's common stock set forth in the Company's Registration Statement on Form 8-B relating thereto, including any amendment or report filed for the purpose of updating such description. All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates all securities offered have been sold or which deregisters all securities then remaining unsold (other than the portions of these documents not deemed to be filed), shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES

Inapplicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Inapplicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Company's Certificate of Incorporation provides that, to the fullest extent permitted by the General Corporation Law of the State of Delaware (the GCL), as such law currently exists or may be amended so long as any such amendment authorizes action further eliminating or limiting the personal liabilities of directors, a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director.

Under the Bylaws of the Company, each director and officer of the Company is entitled to indemnification to the fullest extent permitted by the laws of the State of Delaware against all expenses, liabilities and losses, judgments, fines and amounts paid in settlement incurred in connection with any pending, threatened or completed action, suit or proceeding in which he or she may be involved by reason of the fact that he or she is or was a director or officer of the Company or serving at the request of the Company as director or officer of an entity affiliated with the Company, provided that the standards of conduct specified in the GCL have been satisfied. Section 145 of the GCL empowers a corporation to indemnify any director or officer, or former director or officer, against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any action, suit or proceeding (other than a derivative action) by reason of the fact that he or she is or was a director or officer or is or was serving at the request of the corporation as an agent of another entity, if he or she acted in good

faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action, had no reasonable cause to believe his or her conduct was unlawful. In regard to a derivative action, indemnification may not be made in respect of any matter as to which an officer or director is adjudged to be liable unless the Delaware Court of Chancery, or the court in which such action was brought, shall determine that such person is fairly and reasonably entitled to indemnification.

The Company carries insurance policies indemnifying its directors and officers against liabilities arising from certain acts performed by them in their respective capacities as such. The policies also provide for reimbursement of the Company for any sums it may be required or permitted to pay pursuant to applicable law to its directors and officers by way of indemnification against liabilities incurred by them in their capacities as such.

#### ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Inapplicable.

#### ITEM 8. EXHIBITS

- 4.1 The Gap, Inc. 2006 Long-Term Incentive Plan (As Amended and Restated Effective as of January 24, 2006) (incorporated by reference to Appendix B to the Registrant's definitive proxy statement for its annual meeting of stockholders held on May 9, 2006, Commission File No. 1-7562).
- 4.2 Form of Non-Qualified Stock Option Agreement for Executives under The Gap, Inc. 2006 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed on March 23, 2006, Commission File No. 1-7562).
- 4.3 Form of Stock Award Agreement for Executives under The Gap, Inc. 2006 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed on March 23, 2006, Commission File No. 1-7562).
- 4.4 Form of Non-Qualified Stock Option Agreement for Chief Executive Officer under The Gap, Inc. 2006 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.3 to the Registrant's Form 8-K filed on March 23, 2006, Commission File No. 1-7562).
- 4.5 Form of Stock Award Agreement for Chief Executive Officer under The Gap, Inc. 2006 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.4 to the Registrant's Form 8-K filed on March 23, 2006, Commission File No. 1-7562).
- 4.6 Form of Stock Unit Agreement and Stock Unit Deferral Election Form for Nonemployee Directors under The Gap, Inc. 2006 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.5 to the Registrant's Form 8-K filed on March 23, 2006, Commission File No. 1-7562).

- 4.7 Certificate of Amendment of Amended and Restated Certificate of Incorporation of The Gap, Inc. (incorporated by reference to Exhibit 3.2 to the Registrant's Annual Report on Form 10-K for the year ended January 29, 2000, Commission File No. 1-7562).
- 4.8 Amended and Restated Certificate of Incorporation of The Gap, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K for the year ended January 30, 1993, Commission File No. 1-7562).
- 4.9 Amended and Restated Bylaws of The Gap, Inc. (effective November 30, 2005) (incorporated by reference to Exhibit 3(ii) to the Registrant's Form 10-Q for the quarter ended October 29, 2005, Commission File No. 1-7562).
- 5.1 Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.
- 23.1 Consent of Independent Registered Public Accounting Firm.
- 23.2 Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation, is contained in Exhibit 5.1 to this Registration Statement.
- 24.1 Power of Attorney of Directors.

ITEM 9. UNDERTAKINGS

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

THE REGISTRANT

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California on the 4th day of August, 2006.

THE GAP, INC.  
(Registrant)

By /s/ Paul S. Pressler  
Paul S. Pressler  
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
Principal Executive Officer:  /s/ Paul S. Pressler  Paul S. Pressler Principal Financial and Principal Accounting Officer:	President and Chief Executive Officer	August 4, 2006
/s/ Byron H. Pollitt, Jr.  Byron H. Pollitt, Jr.	Executive Vice President and Chief Financial Officer	August 4, 2006

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Directors:

	*	Director	August 4, 2006
Howard P. Behar			
	*	Director	August 4, 2006
Adrian D. P. Bellamy			
	*	Director	August 4, 2006
Domenico De Sole			
	*	Director	August 4, 2006
Donald G. Fisher			
	*	Director	August 4, 2006
Doris F. Fisher			
	*	Director	August 4, 2006
Robert J. Fisher			
	*	Director	August 4, 2006
Penelope L. Hughes			
	*	Director	August 4, 2006
Bob L. Martin			
	*	Director	August 4, 2006
Jorge P. Montoya			
	*	Director	August 4, 2006
Paul S. Pressler			
		Director	
James M. Schneider			
	*	Director	August 4, 2006

Mayo A. Shattuck III  
Represents a majority of the members of the Board of Directors.

\*By: /s/ Lauri M. Shanahan  
Lauri M. Shanahan

Attorney-in-Fact\*\*

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\*\* By authority of the Power of Attorney of Directors filed as Exhibit 24.1 to this Registration Statement.

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