

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
20<sup>TH</sup> JUDICIAL DISTRICT, DAVIDSON COUNTY, TENNESSEE

GENESCO INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
THE FINISH LINE, INC., and )  
HEADWIND, INC. )  
)  
Defendants, )  
)  
v. )  
)  
UBS SECURITIES LLC and )  
UBS LOAN FINANCE LLC, )  
)  
Third-Party Defendants. )

NO. 07-2137-II (III)

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ANSWER OF PLAINTIFF/COUNTER-DEFENDANT GENESCO INC. TO COUNTER-  
COMPLAINT OF THE FINISH LINE, INC. AND HEADWIND, INC.

Plaintiff/Counter-Defendant Genesco Inc. ("Genesco"), for its answer to the Counter-Complaint of Defendants/Counter-Plaintiffs The Finish Line ("Finish Line") and Headwind, Inc. ("Merger Sub") (the "Counter-Complaint"), states as follows:

**First Defense**  
**(Failure to State a Claim)**

The Counter-Complaint fails to state a claim upon which relief can be granted.

ORIGINAL

**Second Defense**  
**(Answer)**

**PRELIMINARY STATEMENT**

With the exception of the quoted excerpts from the Merger Agreement, Genesco denies each and every allegation contained in the unnumbered paragraphs under the heading "Preliminary Statement" of the Counter-Complaint. With respect to the quoted excerpts from the Merger Agreement, the Merger Agreement speaks for itself and Genesco denies all allegations contained in the "Preliminary Statement" that are inconsistent with the Merger Agreement.

**PARTIES**

1. The allegations contained in Paragraph 1 of the Counter-Complaint are admitted.
2. The allegations contained in Paragraph 2 of the Counter-Complaint are admitted upon information and belief.
3. The allegations contained in Paragraph 3 of the Counter-Complaint are admitted.
4. Genesco is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 4 of the Counter-Complaint.
5. Genesco is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 5 of the Counter-Complaint.

**JURISDICTION AND VENUE**

6. Genesco admits that this Court has jurisdiction over Finish Line and Genesco and over the subject matter of the claims asserted between and among Finish Line and Genesco under the Merger Agreement. Genesco is without sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 6 of the Counter-Complaint.

7. Genesco admits that venue is proper in this Court with respect to all claims asserted under the Merger Agreement. Genesco is without sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 7 of the Counter-Complaint.

8. Genesco admits that this action concerns the rights and obligations of the parties under the Merger Agreement. Section 9.8 of the Merger Agreement speaks for itself and Genesco denies all allegations of Paragraph 8 of the Counter-Complaint that are inconsistent with the Merger Agreement.

## **FACTS**

### **The Merger Agreement**

9. Genesco admits that Finish Line approached Genesco and the parties began negotiating over a possible merger of the two companies in the spring of 2007. The terms of the proposed merger are set forth in the Merger Agreement, which speaks for itself.

10. The allegations contained in the first sentence of paragraph 10 of the Counter-Complaint are admitted. To the extent Paragraph 10 of the Counter-Complaint purports to quote or paraphrase from the Merger Agreement, the Merger Agreement speaks for itself and Genesco denies all allegations that are inconsistent with that document.

11. Genesco admits that by mid-June 2007, Genesco and Finish Line had agreed to most of the terms of the merger, and Finish Line had substantially finalized the Commitment Letter with UBS. Genesco admits that Genesco was provided with a copy of the Commitment Letter. To the extent Paragraph 11 refers to and/or quotes from Genesco's proxy statement and the Merger Agreement, those documents speak for themselves and Genesco denies all allegations contained in Paragraph 11 of the Counter-Complaint that are inconsistent with those documents. The remaining allegations contained in Paragraph 11 of the Counter-Complaint are denied.

12. The allegations contained in Paragraph 12 of the Counter-Complaint are admitted.
13. The Merger Agreement speaks for itself and Genesco denies all allegations contained in Paragraph 13 of the Counter-Complaint that are inconsistent with that document.
14. The Merger Agreement speaks for itself and Genesco denies all allegations contained in Paragraph 14 of the Counter-Complaint that are inconsistent with that document.
15. The Merger Agreement speaks for itself and Genesco denies all allegations contained in Paragraph 15 of the Counter-Complaint that are inconsistent with that document.
16. The Merger Agreement speaks for itself and Genesco denies all allegations contained in Paragraph 16 of the Counter-Complaint that are inconsistent with that document.
17. The Merger Agreement speaks for itself and Genesco denies all allegations contained in Paragraph 17 of the Counter-Complaint that are inconsistent with that document.
18. The Merger Agreement speaks for itself and Genesco denies all allegations contained in Paragraph 18 of the Counter-Complaint that are inconsistent with that document.
19. To the extent Paragraph 19 of the Counter-Complaint refers to Genesco's proxy statement, that document speaks for itself and Genesco denies all allegations contained in Paragraph 19 that are inconsistent with that document. Genesco admits that it was aware of the terms of the Commitment Letter and that Finish Line will need financing from some source to pay the merger consideration. To the extent that Paragraph 19 of the Counter-Complaint paraphrases or quotes from the Merger Agreement and the Commitment Letter, those documents speak for themselves and Genesco denies all allegations contained in Paragraph 19 of the Counter-Complaint that are inconsistent with those documents. All other allegations contained in Paragraph 19 of the Counter-Complaint are denied.

20. Genesco admits that, within days of the execution of the Merger Agreement, representatives of Genesco and Finish Line met (via conference call) to devise a schedule for the closing of the merger. Genesco admits that Finish Line circulated a timeline containing the steps necessary to secure financing. Genesco further admits that the timeline anticipated a closing for the last week of September 2007 and the circulation of the draft offering memorandum in late July 2007. The remaining allegations contained in Paragraph 20 of the Counter-Complaint are denied.

21. The allegations contained in Paragraph 21 of the Counter-Complaint are denied.

22. Genesco admits that Genesco scheduled a shareholder vote on the merger for September 17, 2007. The remaining allegations contained in Paragraph 22 of the Counter-Complaint are denied.

23. With respect to the definition of a "Material Adverse Effect" and/or a "Company Material Adverse Effect," the Merger Agreement and the Commitment Letter speak for themselves. All other allegations contained in Paragraph 23 of the Counter-Complaint are denied.

24. To the extent Paragraph 24 of the Counter-Complaint purports to paraphrase or quote from the Merger Agreement or the Commitment Letter, those documents speak for themselves and Genesco denies all allegations that are inconsistent with those documents. All other allegations contained in Paragraph 24 of the Counter-Complaint are denied.

25. Genesco admits that Finish Line circulated a revised timeline that delayed the closing of the merger until October 23, 2007. Genesco further admits that Genesco, while reserving its rights under the Merger Agreement, agreed to assist Finish Line going forward with regard to financing even after Finish Line notified Genesco that Finish Line would not timely

close which was a breach of the Merger Agreement. The remaining allegations contained in Paragraph 25 of the Counter-Complaint are denied.

26. Genesco admits that Genesco released its second quarter results on August 30, 2007. Genesco further admits that in the second quarter of 2007, Genesco experienced a loss before discontinued operations of \$2.9 million, or \$0.13 per share, including \$0.13 per share of merger-related expenses. The remaining allegations contained in Paragraph 26 of the Counter-Complaint are denied.

27. Genesco admits that Finish Line publicly announced that it was "evaluating its options" under the Merger Agreement. Genesco also admits that Finish Line continued, after the earnings release, to periodically submit requests for certain financial information to Genesco. The remaining allegations contained in Paragraph 27 of the Counter-Complaint are denied.

28. Genesco admits upon information and belief that Finish Line received two separate letters from UBS on September 11 and 13, 2007. Genesco admits that copies of those letters were provided to Genesco by Finish Line. Those letters speak for themselves. The remaining allegations contained in Paragraph 28 of the Counter-Complaint are denied.

29. Upon information and belief, Genesco admits that on September 18, 2007, UBS provided to Finish Line a list of documents and financial information it allegedly needed from Genesco. Genesco admits that this list was provided to Genesco by Finish Line. Genesco further admits that Finish Line forwarded to Genesco an e-mail from UBS of the same date. That e-mail speaks for itself. The remaining allegations contained in Paragraph 29 of the Counter-Complaint are denied.

30. Genesco admits that Finish Line asked Genesco to respond to the unreasonable list of materials requested by UBS. Genesco denies that there was any obligation to provide

these materials under the Merger Agreement. Genesco admits that Finish Line stated that it would continue evaluating its options under the Merger Agreement while it continued to work on closing documents. The remaining allegations contained in Paragraph 30 of the Counter-Complaint are denied.

31. Genesco admits that on September 19, 2007, Genesco informed Finish Line that it considered UBS's and Finish Line's unreasonable requests for information a "fishing expedition" and that Genesco would not comply with those requests. It is further admitted that Genesco demanded that Finish Line deliver a draft of a substantially completed offering memorandum and close the merger in accordance with the terms of the Merger Agreement. The remaining allegations contained in Paragraph 31 of the Counter-Complaint are denied.

32. Genesco admits that it received the September 21, 2007 letter attached as Exhibit B to the Counter-Complaint as well as a draft of the offering memorandum. The letter attached as Exhibit B to the Counter-Complaint speaks for itself. The remaining allegations contained in Paragraph 32 of the Counter-Complaint are denied. Genesco specifically denies that it had any obligation under the Merger Agreement to comply with the unreasonable requests from UBS.

33. Genesco admits that it filed its Complaint on September 21, 2007. The remaining allegations contained in Paragraph 33 of the Counter-Complaint are denied.

34. Genesco admits that on September 24, 2007, Finish Line communicated to Genesco its belief that Genesco had breached the Merger Agreement. The remaining allegations contained in Paragraph 34 of the Counter-Complaint are denied.

#### **FIRST CLAIM FOR DECLARATORY RELIEF**

35. Genesco hereby incorporates by reference paragraphs 1 through 34 of this Answer.

36. To the extent Paragraph 36 of the Counter-Complaint purports to paraphrase or quote from the Merger Agreement, that agreement speaks for itself and Genesco denies all allegations that are inconsistent with the terms of that document. The remaining allegations contained in Paragraph 36 of the Counter-Complaint are denied.

37. The allegations contained in Paragraph 37 of the Counter-Complaint are denied.

38. The allegations contained in Paragraph 38 of the Counter-Complaint state conclusions of law as to which no response is required.

### **SECOND CLAIM FOR DECLARATORY RELIEF**

39. Genesco hereby incorporates by reference Paragraphs 1 through 38 of this Answer.

40. The allegations contained in Paragraph 40 of the Counter-Complaint are denied.

41. Genesco admits that UBS has asserted that it allegedly needs access to Genesco's information. To the extent Paragraph 41 of the Counter-Complaint purports to quote from or paraphrase the Merger Agreement and the Commitment Letter, those documents speak for themselves and Genesco denies all allegations that are inconsistent with those documents. The remaining allegations contained in Paragraph 41 of the Counter-Complaint are denied.

42. Genesco admits that no Material Adverse Effect has occurred. The remaining allegations contained in Paragraph 42 of the Counter-Complaint are denied.

43. The allegations contained in Paragraph 43 of the Counter-Complaint state conclusions of law as to which no response is required.

Genesco further denies each and every allegation contained in the unnumbered paragraphs beginning with the phrase "WHEREFORE...." Genesco denies that Defendants are

entitled to any of the requested relief. Genesco further denies each and every other allegation contained in the Counter-Complaint that is not specifically admitted herein.

**Third Defense**  
**(Mootness)**

Although Genesco denies that it has breached any provision of the Merger Agreement, Defendants' claim that Genesco has breached the Merger Agreement by failing to provide certain documents and/or information is moot in any event because Genesco has substantially responded to Finish Line's information requests since the filing of the Counter-Complaint.

**Fourth Defense**  
**(Ripeness)**

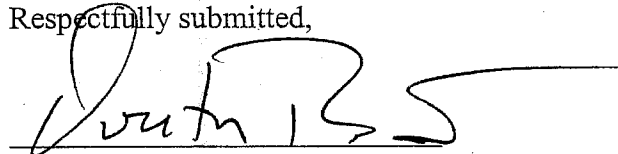
Defendants' claims are not ripe for adjudication.

**Fifth Defense**  
**(Unclean Hands)**

Defendants are not entitled to relief sought in their Counter-Complaint because they come into this proceeding with unclean hands.

WHEREFORE, Genesco demands that Defendants' Counter-Complaint be dismissed with prejudice, with costs and fees, including any attorneys' fees, taxed to Defendants, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,



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*Of Counsel*


**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served via the methods indicated upon the following parties on this 25<sup>th</sup> day of October, 2007:

Robert J. Walker  
Walker, Tipps & Malone  
2300 One Nashville Place  
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A handwritten signature in black ink, appearing to read "Joseph J. Frank", written over a horizontal line.

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