

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

TEMTEX INDUSTRIES, INC.	)	
a corporation,	)	
	)	
Plaintiff, Counter Defendant	)	
	)	
vs.	)	Case No.09 CV 1379
	)	Judge Lefkow
TPS ASSOCIATES, LLC., and	)	Magistrate Judge Kim
MARTIN BORG	)	
	)	
Defendants, Counter Plaintiffs	)	
	)	
TPS ASSOCIATES, L.L.C.	)	
	)	
Third Party Plaintiff	)	
	)	
vs.	)	
	)	
NUTRANO, INC., GARY ROTMAN,	)	
HAROLD ROTMAN and MILANO	)	
CONCEPTS, INC.,	)	
	)	
Third Party Defendants	)	

**MOTION FOR JUDGMENT**

TPS ASSOCIATES, LLC, (TPS), Third Party Plaintiff, moves the Court for the entry of a Judgment against MILANO CONCEPTS, INC (Milano) and as reason therefor states:

1. TPS filed a Third Party Complaint against Milano.
2. Service was had upon Milano and Milano failed to appear or answer the Complaint within the allotted time.
3. TPS filed a Motion for an Order of Default against Milano which was granted by this Court on August 30, 2011.

4. A copy of the Order of Default was mailed to Milano on September 1, 2011 by counsel for TPS.

5. No response to the Default Order or any other communication has been received by TPS from Milano.

6. As stated in the Complaint to which no responsive pleading has been filed, Milano has been selling products which were developed by TEMTEX INDUSTRIES, INC. (Temtex) and TPS and are subject to the Agreements between TPS and Temtex.

7. The website of Milano advertises the products which were developed and marketed by Temtex and TPS.

8. The records of the U.S. Customs Service indicate that during 2011 Milano has received from overseas products which are substantially identical to the products developed by TPS and Temtex. Milano has been selling said products in the United States.

9. TPS, based upon emails and communication with other industry parties, states that the principals of Temtex are also principals in Milano. Attached hereto is the Affidavit of Martin Borg, (Motion Exh.A) regarding information he has obtained relating to the relationship between Temtex and Milano.

10. This Court has previously found that Temtex was indebted to TPS and entered Judgment in favor of TPS and against Temtex in the amount \$472,286.80 on May 3, 2011.

11. The Agreements between TPS and Temtex (attached as Exhibits to the Counterclaim) also provide that TPS is entitled to receive reports of sales by Temtex and to pay to TPS a sum equal to at least 5% of the amount of such sales.

12. Milano having participated in to the transfer of technology, products, sales and marketing data from TPS is also obligated to comply with the Agreements between TPS and Temtex and is subject to the same reporting requirements as Temtex.

13. Because Gary Rotman and his associates have wrongfully removed the assets of Temtex and given them to Milano in an attempt to prevent TPS from being paid in accordance with its Agreements with Temtex, the provisions of the Agreements between Temtex and TPS should be applied to Milano.

14. The Judgment of this Court entered on May 3, 2011 in the amount of \$472,286.80 remains unsatisfied. For the reasons stated above, TPS asks this Court to enter Judgment in favor of TPS and against Milano in the sum of \$472,286.80 plus require Milano to account to TPS for all sales in accordance with the Agreements between TPS and Temtex.

WHEREFORE, TPS ASSOCIATES, LLC moves the Court as follows:

1. For the entry of a Judgment in favor of TPS ASSOCIATES, LLC and against MILANO CONCEPTS, INC in the sum of \$472,286.80 plus interest from May 3, 2011.

2. That MILANO CONCEPTS, INC be required to provide to TPS reports of all sales made by it of products and technology which it acquired from Temtex and to pay to TPS five percent (5%) of the amount of such sales.

3. For such other relief as the Court deems proper.

Respectfully submitted,

TPS ASSOCIATES, LLC.

By: /s/ Norman Hanfling  
Norman Hanfling, its attorney

Norman Hanfling  
208 S. LaSalle St., #1400  
Chicago, IL 60604  
(312) 853-0882  
Fax: (312) 263-3416

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TEMTEX INDUSTRIES, INC.  
a corporation,

Plaintiff, Counter Defendant

vs.

TPS ASSOCIATES, LLC., and  
MARTIN BORG

Defendants, Counter Plaintiffs

TPS ASSOCIATES, L.L.C.

Third Party Plaintiff

vs.

NUTRANO, INC., GARY ROTMAN,  
HAROLD ROTMAN and MILANO  
CONCEPTS, LLC.,

Third Party Defendants

Case No.09 CV 1379

Judge Lefkow

Magistrate Judge Kim

**AFFIDAVIT OF MARTIN BORG**

MARTIN BORG, being first duly sworn states:

1. Affiant is a consultant of TPS ASSOCIATES, LLC. (TPS)
2. Affiant has personal knowledge and if called upon as a witness in this case could properly testify to the statements contained in this Affidavit.
3. MILANO CONCEPTS, LLC. (MILANO) operates as an importer and seller of watches, including wristwatches, wrist computers and related products.
4. MILANO on its website advertises that it is selling products such as watches, wrist wrappers and related products. These products were developed by TEMTEX INDUSTRIES, INC. (TEMTEX) and TPS pursuant to the Agreements between TEMTEX and TPS.

5. According to the records of the Department of Commerce, MILANO has been importing the above products and related products using the designs and technology developed by TPS and TEMTEX and selling them as its own. Attached are copies of shipping data showing three shipments in 2011 for electronics products and watches.

6. Trademarks have been granted to Cheryl Rotman, the wife of Gary Rotman pursuant to filings made by her on January 16, 2011. The trademarks are property of TEMTEX and Cheryl Rotman is wrongfully attempting to appropriate said trademarks. Attached is a copy of the Trademark application (Affidavit Exhibit 1).

7. The trademarked items are presently being sold by MILANO as its own.

8. Gary Rotman, who was the President of TEMTEX is one of the owners of MILANO.

9. Based upon MILANO's website and products presented at trade shows, almost all of the products of MILANO are similar or identical to the products developed by TPS and TEMTEX. The names used are the same in most cases and the advertising is the same or nearly the same as that developed and used by TEMTEX.

10. Press releases by MILANO use some of the same photos with the same product names as existed on the old TEMTEX website.

11. TPS has determined that although MILANO is operating from an office in the State of Washington, its warehouse is in Los Angeles. If one calls the telephone number for MILANO, the phone is answered in Canada. The extension numbers for various people at MILANO include extension number 205 for Gary Rotman.

12. Gary Rotman has informed industry sales representatives that he is the owner of MILANO.

FURTHER AFFIANT SAYETH NOT.

  
MARTIN BORG, Affiant

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of November, 2011

  
Notary Public

My commission expires:

Norman Hanfling  
Attorney for Affiant  
208 S. LaSalle St., #1400  
Chicago, IL 60604  
(312) 853-0882  
Fax: (312) 263-3416

OFFICIAL SEAL  
TONY T SHU  
Notary Public - State of Illinois  
My Commission Expires Oct 5, 2013

Document Description: **Application**  
Mail / Create Date: **16-Jan-2011**

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PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 12/31/2011)

## Trademark/Service Mark Application, Principal Register

Serial Number: 85218773

Filing Date: 01/16/2011

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85218773
MARK INFORMATION	
*MARK	WRIST WRAPPERS
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	WRIST WRAPPERS
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Cheryl Rotman <i>Att. Ex. 1</i>

<b>*CITY</b>	Toronto
<b>*COUNTRY</b>	Canada
<b>*ZIP/POSTAL CODE</b> (Required for U.S. applicants only)	M3H1G9
<b>PHONE</b>	416 716 3869
<b>EMAIL ADDRESS</b>	gary@neutrano.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	individual
<b>COUNTRY OF CITIZENSHIP</b>	Canada
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	014
<b>*IDENTIFICATION</b>	Clocks and watches; Inexpensive non-jewelry watches; Jewelry watches; Watch bands and straps; Watch bracelets; Watches for outdoor use; Watches for sporting use
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 04/01/2004
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 04/01/2004
<b>SPECIMEN FILE NAME(S)</b>	\\TICRS\EXPORT11\IMAGEOUT 11\852187\85218773\xml1\ APP0003.JPG
<b>SPECIMEN DESCRIPTION</b>	Wrist watch with band that snaps and wraps around the wrist.
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>DISCLAIMER</b>	No claim is made to the exclusive right to use WRIST apart from the mark as shown.
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Cheryl Rotman
<b>STREET</b>	51 Raeburn Ave
<b>CITY</b>	Toronto
<b>COUNTRY</b>	Canada
<b>ZIP/POSTAL CODE</b>	M3H1G9

PHONE	416 716 3869
EMAIL ADDRESS	gary@neutrano.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
<b>FEE INFORMATION</b>	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
<b>SIGNATURE INFORMATION</b>	
SIGNATURE	/Cheryl Rotman/
SIGNATORY'S NAME	Cheryl Rotman
SIGNATORY'S POSITION	Owner
DATE SIGNED	01/16/2011

PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 12/31/2011)

### Trademark/Service Mark Application, Principal Register

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#### To the Commissioner for Trademarks:

**MARK:** WRIST WRAPPERS (Standard Characters, see mark)

The literal element of the mark consists of WRIST WRAPPERS.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Cheryl Rotman, a citizen of Canada, having an address of

51 Raeburn Ave  
Toronto M3H1G9  
Canada

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:



**For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 014: Clocks and watches; Inexpensive non-jewelry watches; Jewelry watches; Watch bands and straps; Watch bracelets; Watches for outdoor use; Watches for sporting use

In International Class 014, the mark was first used at least as early as 04/01/2004, and first used in commerce at least as early as 04/01/2004, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Wrist watch with band that snaps and wraps around the wrist..

Specimen File1

No claim is made to the exclusive right to use WRIST apart from the mark as shown.

The applicant's current Correspondence Information:

Cheryl Rotman  
51 Raeburn Ave  
Toronto M3H1G9, Canada  
416 716 3869(phone)  
gary@neutrano.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

#### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Cheryl Rotman/ Date Signed: 01/16/2011

Signatory's Name: Cheryl Rotman

Signatory's Position: Owner

RAM Sale Number: 8233

RAM Accounting Date: 01/18/2011