

DECLARATION OF BRIAN D. BAILIE

Serial No: 88262608

Mark: Monogram Wizard

Applicant: Briton Leap, Inc.

I Brian D. Bailie, declare under penalty of perjury as follows:

1. I am over the age of eighteen and competent to make this declaration.
2. The facts stated herein in this declaration are within my personal knowledge and are true.
3. I am the President of Briton Leap, Inc., a Nevada Corporation that specializes in embroidery software.
4. Briton Leap, Inc. ("Briton Leap") is the Applicant of record for the above referenced trademark application ("the application") for the "Monogram Wizard" mark.
5. Briton Leap acquired the Monogram Wizard product line, including the embroidery software product "Monogram Wizard Plus" from Parametric Systems, Inc. ("Parametric Systems").
6. The original specimen submitted with the application shows that Parametric Systems began selling the "Monogram Wizard" software in December of 2002. The specimen was obtained from the "wayback machine" at web.archive.org.
7. Trademark application 78252470 shows that Parametric Systems attempted to register the "Monogram Wizard" mark in 2003 in I.C. 009 for the goods "Computer Software". USPTO records show that the registration was on grounds including descriptiveness.
8. I have personal knowledge that Parametric Systems sold Monogram Wizard software through the needleheads.com website from December 2002 until the date that Briton Leap took over operation of the needleheads.com website.
9. Briton Leap sells the computer software "Monogram Wizard Plus" through the needleheads.com web site, through amazon.com, and other channels.
10. A search on google.com for "Monogram Wizard" shows that substantially every one of the first five pages of results are for Briton Leap's Monogram Wizard software. Printouts of the first five pages of search results are submitted with this declaration.
11. Substantially every one of the "Monogram Wizard" google search results is for third party websites that resell or discuss Briton Leap's Monogram Wizard software. The third-party websites are

not owned by or controlled by Briton Leap, but appear to be the websites of users of and consumers of Briton Leap's Monogram Wizard software.

12. A search on facebook.com for "Monogram Wizard" show that every top result and substantially every result is for posts and groups about or referencing Briton Leap's Monogram Wizard software.

13. The topmost Facebook result is for the "MONOGRAM WIZARD PLUS Group" having approximately 7,400 members. This closed group apparently was formed and is maintained by users of Briton Leap's Monogram Wizard software. According to fakebook's "About" page, the group was formed in July 2012. Briton Leap does not use this page for marketing because it was created by and for fans and users of the Monogram Wizard software. Printouts of the Facebook search results and initial pages of some of the top search results are submitted with this declaration.

14. As can be seen from the google and Facebook search results and the pages they link to, Briton Leap's Monogram Wizard software is commonly referred to as "Monogram Wizard" and "Monogram Wizard Plus".

15. As a result of the substantially exclusive use of MONOGRAM WIZARD in association with Briton Leap's Monogram Wizard software as evidenced by the search results, users'/consumers' websites, and users'/consumers' social media postings; it is clear that users and consumers of the relevant goods understand MONOGRAM WIZARD to identify the source of the goods Briton Leap offers under the mark.

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. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that all statements made of his or her own knowledge are true and that all statements made on information are believed to be true.

Signed: Brian Bailie
Brian D. Bailie
President
Briton Leap, Inc.

Date: 10/01/2019