

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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<p>CAMPMOR, INC., <i>Plaintiff,</i></p> <p>- vs. -</p> <p>BRULANT, LLC <i>Defendant.</i></p>	<p>CIVIL ACTION NO. 19-CV-5465 (WHW)</p> <p><b>CERTIFICATION OF DANIEL JARASHOW</b></p>
<p>BRULANT, LLC, <i>Counterclaim Plaintiff,</i></p> <p>- vs. -</p> <p>CAMPMOR, INC., <i>Counterclaim Defendant.</i></p>	

Daniel Jarashow, of full age, certifies and says:

1. I am the Chief Executive officer of Campmor, Inc. (“Campmor” or “us”) and I have personal knowledge of the facts set forth in this Certification.
2. My father founded Campmor in Bogota, New Jersey in 1978. I spent essentially my entire adult life with Campmor and have at one time or another performed virtually every

function at Campmor in the process of learning the business from the ground up. Beginning in 1981, I took on primary responsibility for management of Campmor.

3. Campmor sells camping and related outdoor recreation equipment and accessories from its store, which is now located on Route 17 in Paramus. Additionally, building on 30 years of success as a catalog sales company with a large community of loyal customers, by 2006 Campmor had built a very successful online business with Internet sales exceeding \$60 million per year.

4. Until this time, Campmor's website support was provided by Tachyon Solutions Inc. ("Tachyon"). We decided to look for a larger, more sophisticated company to assist Campmor in updating and improving its website to maintain our market position and gain ground against Campmor's competitors on the Internet. Campmor approached IBM, which made the WebSphere Commerce e-commerce platform our website used. IBM recommended the defendant, Brulant, LLC,<sup>1</sup> and we contacted them and asked them to make a proposal.

5. On or about September 25, 2006, Brulant visited Campmor and made a presentation to Campmor in connection with its proffered services. In its presentation, Brulant represented itself as the "premier WebSphere Commerce partner in the United States" and claimed that it had more WebSphere Commerce resources than any other partner company. The Brulant team, which consisted of Scott Young and Mark Fodor, made these claims both orally and in the Power Point presentation they made at that time. A copy of the Power Point slide show given by Brulant during this presentation is attached as Exhibit A.

6. During the September 25th presentation Brulant urged Campmor to upgrade its website from the 5.6.1 WebSphere platform to the new 6.0 platform. Our impression had been

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<sup>1</sup> As discussed in its moving papers, during the course of the project Brulant, LLC was purchased by Rosetta, LLC, its successor in interest. Both are referred to herein as "Brulant."

that we could continue utilizing the 5.6.1 version. We had not been contemplating the expense and complications involved with a major upgrade.

7. It was in this context that I first heard the term “best practices” from Brulant. The Brulant team explained that “best practices” were known, accepted methods and standards established by the industry as the most effective in achieving given objectives. And when it came to upgrading Campmor’s website to IBM WebSphere 6.0, Brulant insisted that it had industry-leading mastery of those best practices.

8. We were not ready to do that upgrade, however. We did agree to have Brulant to improve Search Engine Optimization on and to maintain our 5.6 website, however, because Brulant assured us that it had the expertise to utilize best practices in the implementation of SEO on our existing platform.

9. On November 6, 2006, Campmor entered into a Master Services Agreement (“MSA”) retaining Brulant to provide technical maintenance and support as well as perform SEO enhancements to the Site. I signed the MSA based on the representations made by Brulant during its presentation about its level of expertise in WebSphere, its mastery of best practices in SEO and because Brulant claimed to have a unique relationship it had with IBM.

10. Soon after signing the MSA, Brulant intensified its drumbeat, asserting that the more time Brulant’s people spent with our 5.6.1 site, the more certain they were that Tachyon’s implementation of Campmor’s 5.6.1 site was replete with problems. The website, which had been the foundation of so much e-commerce business success for Campmor, was, Brulant told us, rife with technical deficiencies. The way Brulant described it, we came to believe that the Campmor website was essentially a ticking time bomb for the company.

11. Thus Brulant continued to press Campmor to upgrade the site to WebSphere 6.0 which – as implemented by Brulant utilizing its vaunted “best practices” – would, they assured us, solve all of Campmor’s website problems, including ones we had no inkling existed at all.

12. Brulant’s campaign to get Campmor to essentially trash the e-commerce operation that had brought us so much success and invest in a massively expensive upgrade to the new platform culminated in a presentation on August 16, 2007.

13. At that presentation, Brulant identified numerous defects with Campmor’s 5.6.1 site, including:

- a. it had disorganized data and included over 100 custom (and unnecessary) tables;
- b. data on the site was inconsistent and certain features (including sales catalogs) were removed;
- c. the custom code was poorly structured;
- d. the site received excessive and bizarre error messages which were confusing to debug.

A copy of Brulant’s PowerPoint presentation identifying these defects is attached as Exhibit B to this Certification.

14. Brulant told us that our present site prevented us from competing, and that merely maintaining the site would doom Campmor’s web-based business. The site could not be merely upgraded or retrofitted to meet current needs, they told us. Such a change would highly complex, costly and even risked a complete failure at some point. Indeed, Brulant was spending a significant percentage of the monthly retainer simply on maintaining the existing 5.61 Site, as opposed to enhancing it. *See Exhibit B, p. 14.*

15. All these problems, Brulant told us, could be addressed efficiently and cost-effectively by an upgrade to WebSphere 6.0. *See Exhibit B, p. 14.* In fact, Brulant assured us

that the result of the upgrade would be a substantial net increase in sales by the end of 2009, a representation that was put in an email with a specific dollar amount approximately a month later, as set out below. The sum and substance of Brulant's message was that an upgrade was technologically and commercially necessary, but that given its expertise and command of "best practices," this change was not only financially justifiable but would actually more than pay for itself in a very short time.

16. Along with this "carrot," however, Brulant also introduced a "stick" concerning the issue of upgrading to WebSphere 6.0 during this presentation. IBM, Brulant warned us ominously, was "discussing" terminating its provision of technical support for customers utilizing the 5.6.1 platform – and soon. Based on their uniquely reliable "information" from IBM sources, Brulant told Campmor that this would occur in or around October 2008, little more than a year from then. "After-life" support from IBM would, Brulant asserted, likely be available at the steep price of \$25,000 per month.

17. This was the first time I had ever heard that IBM was considering ending support for WebSphere 5.6.1 and the first time I had any indication of the possible after-life support costs if Campmor did not upgrade to 6.0. But Brulant's prediction was even set out in the Brulant PowerPoint; *see* Exhibit B, p. 15. This led me to believe that this was not mere speculation but a very concrete description of future events from Brulant.

18. Brulant's claim that IBM would end free support for WebSphere 5.6.1 in October of 2008 was a key factor in my decision to agree to upgrade the Campmor website to WebSphere 6.0 at that time. I relied on this prediction by Brulant because the Brulant people described themselves as being in a unique position to know IBM's intentions, both because of their

relationship with the company and what they had consistently told us was Brulant's high degree of knowledge and sophistication about everything WebSphere.

19. I later learned that Brulant's representation that IBM would end support for 5.6.1 in October 2008 was incorrect. Attached as Exhibit C to this Certification is a notification from IBM's website confirming that it would end support for WSC 5.6.1 on September 30, 2010 – two years later than Brulant confidently predicted.

20. On September 24, 2007, Brulant's Doug Denton followed up on the Brulant team's representation that an upgrade to WebSphere 6.0 would pay for itself in short order in the form of an email to Campmor. The email asserted that Campmor could conservatively expect net profits of \$2.2 Million above and beyond our current level of profitability by the end of 2009 as a direct result of the upgrade Brulant was pushing. A copy of this email is attached as Exhibit D to this Certification.

21. Relying on these representations, Campmor acquiesced to Brulant's recommendation that we upgrade our website to WebSphere 6.0 and that we engage Brulant – the "best practices" company – to do that work.

22. For Campmor, an important part of the upgrade was to be the installation of another IBM product called OmniFind, a highly-scalable, secure, high-quality enterprise search.

23. Campmor's 5.6.1 website used an older version of OmniFind that, among other things, did not offer internal guided navigation. The updated OmniFind includes tools for indexing data and content from file shares, databases, collaboration tools, content management systems and online community-building tools that would allow Campmor to promote its business through social media.

24. We were also interested in OmniFind's analytical tools, which would give us deep and detailed understand of how users utilized the website's features and navigated within the site. OmniFind would complement the "best practices" SEO that Brulant promised to deliver.

25. In or around November, 2007, Brulant provided a proposed Statement of Work for the 6.0 upgrade. A copy is attached as Exhibit E to this Certification. I was uncomfortable with that proposed SOW, however, and requested a simpler version that omitted what seemed to me to be superfluous and confusing language while retaining the essential elements of the agreement.

26. In January 2008, Brulant and Campmor executed a revised Statement of Work for the 6.0 upgrade (the "6.0 SOW") which provided for a launch date in September 2008. The details of Brulant's approach and assumptions regarding the 6.0 SOW were incorporated by reference (on page 2 of the 6.0 SOW) from the draft SOW. (A copy of the 6.0 SOW is attached as Exhibit F to this Certification).

27. Among other things, under the 6.0 SOW set forth at Exhibit F, Brulant committed itself to:

- a. upgrade Campmor to the 6.0 site "with a best-practices configuration and all major components functioning properly";
- b. "Implement a new site and user experience design that compares favorably to market leaders and allows Campmor to compete with sites run by Backcountry, Moosejaw, Sierra Trading Post, REI and Paragon Sports";
- c. "Utilize OmniFind site search to provide 'guided navigation' so that visitors can browse search results by size, price, brand, and other useful characteristics";
- d. "Improve the URL structure for search engine indexing and increase the value of the URL for organic SEO scoring by flattening the URL and utilizing keywords instead of cookies"; and

- e. “Preserve the SEO scores of the existing site pages as a valuable baseline on which to build.”

28. Based on the promises made by Brulant, including its incorporation of “best practices” into the SOW, we were confident that the company had the resources, personnel and technical know-how to deliver these and the other results it promised.

29. And in fact, in its initial progress report to Campmor regarding the 6.0 upgrade in February 2008, Doug Denton, the Brulant executive in charge of the Campmor account, assured us that “Brulant is absolutely putting [its] best foot forward” and that Campmor’s website “will be the best site Brulant has ever built.” A copy of Mr. Denton’s email is attached as Exhibit G to this Certification.

30. Attached to Mr. Denton’s email was a “roadmap” confirming that the 6.0 site would be created, tested and launched by September 15, 2008, which is attached as Exhibit H to this Certification.

31. Throughout the spring and summer of 2008, Mr. Denton continued to assure me that the 6.0 upgrade project was on schedule. Campmor was in no position to evaluate those assurances. While we knew what we wanted and how expected the new Campmor site to work, Campmor did not have the in-house expertise to handle upgrade itself, and we hired Brulant based on its confident and explicit assurances that it had complete command of the technology involved and of the “best practices” required to implement it on Campmor’s behalf.

32. Therefore, through 2008, based on these promises as well as Mr. Denton’s repeated reassurances, Campmor paid Brulant’s invoices in full and on time, despite the fact that they were coming in for amounts far in excess of the project budget in the SOW.

33. In about September 2008, when the 6.0 site was scheduled under the SOW to go live, Brulant’s Adam Cohen and Doug Denton came to see me at Campmor’s offices. They



acknowledged that the project costs on the 6.0 upgrade were far exceeding the budget in the 6.0 SOW. They also told me that, rather than approaching the end of the project, there was still a long way to go and costs were projected to continue soaring.

34. As part of this status meeting, Mr. Cohen showed me a model of the 6.0 test site. The actual test site's performance, however, could not be tested because, Mr. Cohen explained, Brulant's servers were down.

35. In the simple, limited evaluation I could do of the test site during this meeting, however, I quickly discovered – to my considerable distress and complete surprise – that the test site did not have guided navigation. The new site was supposed to include not only this basic functionality but other OmniFind enhancements that we considered so central to this upgrade project. Instead, the 6.0 test site had no guided navigation at all.

36. Over Brulant's objections, I insisted that guided navigation and testing be completed before the 6.0 site was launched. We were already going to miss the 2008 holiday season. Because of Campmor's seasonal sales patterns, the next window of opportunity to launch the new site would be March 2009. This gave Brulant six months to complete and test the site – the site Brulant promised in the 6.0 SOW, and which we believed it was providing as we paid Brulant's invoices – before the launch.

37. On or around January of 2009, Campmor began analyzing the 6.0 test site. One major issue that Campmor noticed on the test site was consistent "shopping cart" errors. Specifically, a customer placing a product in the virtual shopping cart would then be asked to provide his zip code and state of residence. After providing the correct information, customers got an error message stating that the state and zip code did not match.

38. Despite the persistence of critical malfunctions such as these, by March of 2009 Brulant was pressuring Campmor to take the site live. Joe Rozsa, a Brulant project manager, and Doug Denton continuously called Campmor, assuring Campmor that the Site was ready to go live despite the unresolved issues on the punch list.

39. Ultimately I relied on Brulant's assurances that the SEO was in place and that any remaining bugs would "work out" through actual use in making the decision to allow the new site to go live.

40. If Brulant had represented the true state of affairs to me – which must have been known to them, especially the fact that no SEO work at all had been done on the new site – I would neither have authorized switching on the new site. Nor would I have kept paying Brulant for its worse-than-incompetent performance.

41. Another serious issue on the 6.0 Site was credit card processing errors, whose seriousness became apparent only after the site went live. Customers ready to make purchases and not getting "bounced" by the shopping cart error, would input their credit card numbers and expiration dates, yet their cards were getting rejected.

42. When I brought this issue up to Brulant, its response was, as incredible as it seems, that users were inputting incorrect credit card numbers.

43. This was obviously ridiculous. After years of experience with Campmor's website business and its customers, I knew that Campmor had never received such an unprecedented number of credit card errors. It took Brulant many months to resolve the credit card processing error.

44. Between the credit card malfunction and the zip code errors, it is hard to imagine a more devastating failure for a consumer-facing retail Internet website. But there were many

other critical errors, including Brulant's incompetent implementation – if that word can even be used – of OmniFind.

45. One key feature of OmniFind is the search box on the top of web page. Customers were, naturally, searching for an item using the OmniFind search box, but receiving results that featured a unique variation on “best practices”: they were irrelevant. The OmniFind search box was worse than useless, merely annoying to customers hoping to perform guided searches by wasting their time and undermining their confidence that anything could be found, or relied upon, at the Campmor website.

46. In selling the upgrade to Campmor, Brulant convincingly asserted its expertise and experience in handling upgrades of this nature and in its ability to follow industry best practices, yet as soon as Campmor signed the SOW, Brulant in fact performed sub-par work on the upgrade to 6.0, neglecting industry best practices as well as common sense.

47. Campmor's upgrade was too crucial to be used as a guinea pig for Brulant's future clients.

48. It is clear that Brulant knew, or at the minimum should have known that they lacked the expertise in handling matters of this nature, yet pushed the fact of their supposed expertise on Campmor, which Campmor relied upon, in ultimately deciding to retain Brulant to upgrade the Site to 6.0.

49. On March 24, 2009, Mike Rini, Brulant's project manager for search and media, emailed us and confirmed that the organic search (SEO) and paid search functions for the 6.0 site was ready for launch. The email also assured us that new, “flattened” URLs – web page addresses that are better suited for searching than the type we had originally been using – would

be uploaded the next morning before the site was launched and that 301 redirects were in place and ready to go. A copy of this email is attached as Exhibit I to this Certification.

50. The launch of the 6.0 site the next day was a complete failure. Despite being delayed by six months beyond the time frame set out in the SOW as a result of Brulant's delays and, what we now realize, incompetence at best and reckless or willful disregard for their obligations at worse, none of the requirements discussed in paragraph 27 above was properly implemented.

51. The site was replete with major errors that prevented Campmor's customers from completing sales. These errors involved many aspects of the online checkout process, including, among others: credit card expiration dates and verification data, zip codes (domestic, Canada and Puerto Rico), sizing charts and food pages searches resulting in error pages or improper results, user registration errors, and shopping cart errors.

52. Through our normal email channels, we received hundreds of emails from customers complaining about the site's many malfunctions, some of which are attached as Exhibit J to this Certification.

53. It was clear that OmniFind was never implemented properly. I could discern this simply by utilizing the Campmor website the way any consumer would. Even basic left-hand navigation often resulted in error codes or improper internal search results continued to be an issue until remedied by Red Baritone, the company I hired to correct the problems caused by Brulant and, subsequently, to replace Brulant.

54. We noticed a radical drop-off in traffic to the Campmor site, and sales, almost immediately. When I complained to Brulant, its response was that the drop in SEO numbers was "minimal" and not uncommon. While Brulant had, shortly before the launch, told me to expect

some “shock” or dip in the sales, they never prepared me for the plummet that we experienced. Nor did Brulant do so before we agreed to the project. To the contrary, the SOW required Brulant to “Preserve the SEO scores of the existing site pages as a valuable baseline on which to build” – not to destroy them and then hope to someday recover them.

55. In the course of this case, in fact, we have learned that Brulant deliberately chose to de-prioritize Campmor’s requests regarding SEO, and that it acknowledged internally that Brulant’s abandonment of SEO and site usability and content issues were so negatively affecting Campmor’s SEO that many of Campmor’s SEO results “almost back to square one” – meaning they were worse than the we had been after we paid Brulant to improve the SEO on Campmor’s 5.6.1 site prior to the upgrade. (*See* Exhibit G to the Certification of Ronald D. Coleman). This information is far more consistent with what we experienced with the website than the half-baked explanations Brulant was providing us.

56. There were myriad other problems with the functionality of the 6.0 website as well as its SEO. I am not an expert in SEO, but through my responsibilities at Campmor and my long-time involvement in developing our e-commerce business I learned enough fundamental principles about the topic that I could enter into the SOW and understand what Brulant was agreeing to deliver.

57. For example, Brulant was required under the SOW to create and implement an XML SiteMap, which essentially assists “spiders” that crawl a website in order to find pages for organic search engines such as Google. These SiteMaps must be updated periodically to ensure they are working optimally. Although Brulant created an XML SiteMap for the 6.0 site, it was never even implemented or “switched on,” let alone updated.

58. In addition, only well after the launch of the new site, and after – relying on Brulant’s repeated assurances that the project was on course and would embody “best practices” – we had already paid millions of dollars to Brulant, did we come to learn that Brulant did not even install the right version of WebSphere Commerce (“WSC”) on Campmor’s site.

59. Without telling Campmor, and despite telling Campmor that everything on the project was proceeding as planned, Brulant, instead of launching the site using the WSC 6.0 Professional edition of WebSphere – the appropriate, agreed-upon and licensed version – installed WSC Enterprise edition, which is significantly more complex and expensive. Although I was able to negotiate with IBM to avoid the additional costs Brulant’s error would have imposed on us, this fundamental error demonstrates Brulant clearly lacked the basic skills required to perform the work under the 6.0 SOW, let alone the expertise it promised Campmor.

60. In contrast to its current position, once it became clear the site was a complete failure Brulant came to Campmor’s offices and admitted it was at fault for the problems with the site. On June 16, 2009 I met with Scott Young, Adam Cohen, Joe McCrone and Dave Fazekas of Brulant and Sue Ruffalo of IBM. During this meeting, everyone agreed that the issues Campmor raised with the website were due to failures on the part of Brulant on both the website functionality and SEO sides and that those issues could and would be addressed in a timely fashion. Many of these issues were never addressed by Brulant, despite their admissions and promises to correct them.

61. I am advised that Brulant claims that Campmor’s severe decline in sales started in December 2008. But Brulant does not base this claim on any of the financial data provided by Campmor in this litigation, which empirically refute that claim. Attached as Exhibit K to this Certification is a breakdown of Campmor’s December 2008 sales versus its December 2007

sales. The abbreviation “M.O.” on that exhibit stands for “mail order,” which includes Internet sales. As demonstrated on this sheet, Campmor’s mail and Internet sales in December 2008 dipped approximately 6%, not 20% as claimed by Brulant.

62. Brulant’s claim on this score is evidently based on an email from me to IBM (*see* Exhibit L to the Declaration of Barry L. Cohen, dated March 30, 2011). I wrote that email at the request of IBM’s Sue Ruffalo so that she could go to her superiors at IBM and use it to get Campmor a better renewal price. But it does not say that sales began to decline in December 2008. It only says that “Campmor holiday business is off over 20%.” There is no reference at all to when that trend began. The actual financial data, as shown in Exhibit K, tell the real story.

63. The drop in revenue that did occur was in part due to Campmor’s decision to cut its paid Internet advertising. We made this decision because of a significant increase in organic search revenue in 2008, which is reflected in Exhibit L to this Certification. This was a business decision we made to not go “out of pocket” and spend money in a weak economy when we were already getting “free” or organic search traffic in the range of what we would have been seeking through paid advertising. This would have been a very exciting trend for Campmor if it had continued. Perhaps it would have if not for the devastating launch of Brulant’s new 6.0 site.

64. Attached as Exhibit M to this Certification is a breakdown of unique visitors to Campmor’s site compared to its main competition obtained from Compete.com, an independent company that tracks this information for businesses. Comparing the spring and summer of 2008 with 2009, Campmor’s site lost tens of thousands of visitors per month from the preceding year, ranging from a 7.3% drop in June to a 22.6% drop in August, while its competition gained an average of well over 200,000 new visitors per month from the prior year (average growth ranging from 15% to 21%).

65. As these figures demonstrate, the recession did not cause Campmor's customers to stop shopping. Rather, Brulant's "best practices" caused them to stop shopping, and buying, from Campmor.

66. One final issue concerns allegations about Campmor's relationship with Goutham Suryadevara. Soon after the termination of the relationship between Campmor and Brulant in October of 2009, Mr. Suryadevara, then a Brulant employee specializing in WCS coding, contacted me.

67. He told me that because he felt Brulant's performance on the 6.0 upgrade was seriously inadequate, he wanted to assist Campmor in its transition from Brulant to Red Baritone.

68. During the transition, which lasted under three months, Goutham helped the Red Baritone team on a part time basis.

69. Goutham never raised the issue of payment for his part time assistance to Campmor. Campmor never made any payment to Goutham for his work.

70. Campmor did provide a laptop computer to Goutham for his use in assisting Red Baritone in the transition. After his work on the project was done, Goutham shipped the laptop back to Campmor.

71. Campmor never extended an employment offer to Goutham, though Campmor had a preliminary interest in hiring Goutham to work for Campmor full time. On the advice of counsel Campmor decided against extending an offer to Goutham.

72. To date, Campmor has paid Brulant not less than \$1,567,707.88 for its work in upgrading to the 6.0 site and the SEO work in connection therewith. In addition, Campmor has paid \$417,900.00 to Red Baritone to correct the problems caused by Brulant.



I hereby declare under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge. I understand that if any of the foregoing is known by me to be false, I am subject to punishment.



DANIEL JARASHOW

Dated: May 9, 2011