

1 March 2026

**By Email:** alf@media5.co.nz

M5 Limited t/a Media5  
537 Great North Road  
Grey Lynn  
Auckland

**Attention:** Alf Jamieson, Managing Director

## Defamatory billboard campaign

1. We are instructed by BDO Auckland and we also represent the interests of BDO New Zealand Limited (together, **BDO**).
2. As you are aware from your recent conversations with Tim Jones, Chief Executive Officer of BDO Auckland, in the past two days BDO has become aware that M5 Limited (**Media5**) has erected at least two billboards in Auckland which make statements, and feature a link to a website that makes further statements, which BDO considers are inaccurate and highly defamatory. The billboards also feature photographs of two BDO partners and make use of BDO trademarks without the permission of their owners.
3. We understand from your conversations and exchanges with Mr Jones that you are aware of the billboards, the statements made in them and the website to which they refer, and that you have had the opportunity to take legal advice. We also understand that, notwithstanding this, you have declined to remove the billboards. This letter gives you formal notice of the legal claims that BDO now intends to pursue against Media5 and demands that you take immediate action as set out at the end of this letter.
4. You have invited BDO to explain why the billboards and the website to which they refer are defamatory. In this letter we give that explanation. We are instructed that if the billboards are not removed by **4pm, Monday, 2 March**, BDO intends to apply to the High Court for emergency injunctive relief without further notice to Media5. BDO has instructed us to prepare to issue proceedings to seek that relief and seek damages and King's Counsel has been involved in preparing this letter. BDO intends to seek damages and costs against Media5 and reserves the right to seek costs against you as Media5's sole director, should they not be met by the company.
5. We also note that Media5's display of prominent photographs of two individuals, with derogatory statements about them, in very public locations, is highly inappropriate and is likely to cause unnecessary distress to those individuals and their families. BDO is investigating potential remedies against Media5 involving the Advertising Standards Authority as well as possible action under the Harassment Act and, given the direction to a website containing further false and misleading allegations, the Harmful Digital Communications Act.

## Billboards

6. A billboard featuring BDO Partner, Nick Innes-Jones, has been erected on the Northern Motorway in Auckland in the vicinity of the Albany interchange. It features:
  - (a) a photograph of Mr Innes-Jones, apparently taken from BDO's website, with his name and his title of Advisory Partner;
  - (b) the statement "*(even nice guys get it wrong)*";

- (c) a copy of BDO's trademarked logo which has been defaced by a red cross being placed across it; and
  - (d) a reference directing viewers to a website, bdo-complaints.co.nz.
7. A separate billboard featuring another BDO Partner, Andrew McKay, who is a Business Restructuring Partner and Forensics National Leader, has also been erected in Auckland, in the Ellerslie / Penrose area. It features:
- (a) a photograph of Mr McKay, with his name, captioned as "*National Leader*", with the word "*Leader*" crossed out and replaced with the words "*Know it all*";
  - (b) the same defaced copy of BDO's trademarked logo; and
  - (c) the same reference directing viewers to bdo-complaints.co.nz.
8. The billboard featuring Mr Innes-Jones makes the statement "*even nice guys get it wrong*" together with a reference to the website bdo-complaints.co.nz. These statements convey to a reasonable reader that BDO, by the conduct of Mr Innes-Jones, got it wrong in the manner alleged in the website (there being no other explanation on the billboard as to how he is said to have got it wrong). We address the website assertions below, which BDO considers are false and highly defamatory.
9. The billboard featuring Mr McKay makes the statement that he is a "*National Know it all*". Both on their own and in the context of the allegations made in the bdo-complaints.co.nz website, a reasonable reader would understand these words as a statement that Mr McKay is arrogant, unwilling to listen to others' views, and unfit to hold a national leadership position within BDO. The statement also carries the imputation that Mr McKay's professional judgement and his work are not to be trusted. These statements and imputations are defamatory in themselves, as well as in connection with the statements and assertions on the website.

## Website

10. BDO understands that the website at bdo-complaints.co.nz is owned and operated by Mr David (Dave) Jaques, who is the owner and director of Digital Signs (2017) Limited. The website makes assertions about BDO (and other separate BDO entities around the world), Mr Innes-Jones and Mr McKay which are false and defamatory. These include the following:
- (a) A statement on the home page of the website that "*If you are a high-growth, tech start-up business, or otherwise wanting competent and professional accounting support, we think you would be much better off to avoid BDO completely! It's just not worth the risk.*"
  - (b) A statement that "*BDO sinks own client's business worth NZD\$255m!*"
  - (c) A statement attributed to the director of Digital Signs that: "*If you are a high-growth tech company, with something really special going on, and you are looking for a good accountant to help you capitalize on your efforts, then STAY AWAY from BDO!*"
  - (d) A statement that "*BDO also failed to disclose they were the Registered Office and Business Advisors to the business's largest competitor Lumo Digital. (Did BDO sink Digital Signs to favour the growth of Lumo?)*"
11. These statements, and other defamatory statements and imputations on the website, are defamatory of BDO and of Mr Innes-Jones and Mr McKay personally. They are likely to cause pecuniary loss to BDO if they have not already.
12. Under s2 of the Defamation Act 1992 (the **Act**) and the common law principles preserved by the Act, a statement is defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally. A statement may be defamatory on its face, by innuendo, or by the natural and ordinary meaning that a reasonable reader would attribute to it.

13. We address each of the statements referred to above in turn, along with others.

**“If you are a high-growth, tech start-up business, or otherwise wanting competent and professional accounting support, we think you would be much better off to avoid BDO completely! It’s just not worth the risk.”**

14. This statement would be understood by a reasonable reader to mean that businesses of the type described should not use BDO’s services, that BDO does not provide competent and professional accounting support to them, and that using BDO is risky as a consequence. None of these assertions are accurate or justified.

15. The words “*we think*”, without more, are not sufficient to convert the effect of the statement into a statement of opinion, such as might afford the publisher of the website a defence of honest opinion under the Defamation Act. No proper basis for that opinion being honestly held is provided, nor, in BDO’s view, can there be any such basis for such an opinion, given that the complaints made against BDO in New Zealand are confined to the conduct of two individuals. The statement that “*It’s just not worth the risk*” is unqualified.

**"BDO sinks own client's business worth NZD\$255m!"**

16. This headline statement conveys, in its natural and ordinary meaning, that BDO (and, when read with other statements on the website, Mr Innes-Jones and Mr McKay) caused the destruction of a client's business with a very substantial value, and that this was avoidable. Such an imputation is plainly capable of lowering BDO, Mr Innes-Jones, and Mr McKay in the estimation of right-thinking members of society, including current and prospective clients and the business community at large, particularly those involved in high value enterprises of the type that are BDO’s current and target clients. The statement is presented as a statement of fact, not as comment or opinion.

17. The statement is false and sensationalist. The figure of NZD \$255 million, while presented as fact, appears to be wholly speculative, given that it was based on hoped-for earnings of a start-up business. The assertion that BDO's involvement caused the failure of a thriving business worth \$255 million is entirely without foundation. The comments attributed to Mr Paul Kilmartin of the BNZ are not accurate as disclosed by Mr Jaques. BDO are unable to comment further without disclosing the financial affairs of a former client.

**“The Director of Digital Signs says: If you are a high-growth tech company, with something really special going on, and you are looking for a good accountant to help you capitalize on your efforts, then STAY AWAY from BDO'.”**

18. This statement, which is unqualified (it is not presented as an opinion) conveys to a reasonable person that BDO are not good accountants and that businesses of the type described should not use BDO’s services. The natural and ordinary meaning of this statement is that BDO is professionally incompetent and unfit to advise high-growth technology companies.

19. The statement is expressly intended to deter businesses from engaging BDO's professional services and to lower BDO's professional reputation.

**Allegation that CAANZ "Upheld" Complaints Against Both Mr Innes-Jones and Mr McKay**

20. The website states that:

*“Instead McKay told Innes-Jones to ‘back-off’ and ‘keep out of it’ and then proceeded to write a bad and inaccurate report on the venture (Moriarty Report, 3 September 2023).*

*The BNZ not only refused funding, but withdrew even existing approved funding, resulting in the total failure of the enterprise and the loss of 12 jobs.*

*The Chartered Accountants Australia and New Zealand have upheld the complaints against Innes-Jones and McKay and now it is time to seek redress in the High Court.”*

21. The statements are defamatory in that they convey an imputation that the CAANZ upheld complaints to the effect that Mr McKay's report was "*bad and inaccurate*", that Mr Innes-Jones and McKay were responsible for the BNZ refusing funding, and that the CAANZ findings support a claim for redress. This materially misrepresents the CAANZ decisions and is demonstrably false. The CAANZ findings in relation to him and Mr Innes-Jones, which we do not address in detail as they are confidential, related only to process and made no findings critical of the substance of Mr McKay's report.

#### **Breach of confidentiality of CAANZ proceedings**

22. The CAANZ proceedings were confidential and the Committee directed that only an anonymised publication of its decision take place, without identifying Mr McKay or Mr Innes-Jones by name or location. The website breaches the confidentiality of those proceedings. By publishing billboards directing attention to the website, Media5 has also directly breached that confidentiality.

#### **"BDO also failed to disclose they were the Registered Office and Business Advisors to the business's largest competitor Lumo Digital.**

#### **(Did BDO sink Digital Signs to favour the growth of Lumo?)"**

23. This statement carries the serious imputation that BDO intentionally acted to the detriment of one client in order to prefer another. While framed as a question, the statement conveys to a reasonable reader the clear imputation that BDO acted dishonestly and unethically in causing Digital Signs to fail. The imputations reasonably conveyed include dishonesty, corruption, breach of fiduciary duty, and serious professional misconduct.
24. These statements are wholly false. Lumo Digital was at the relevant time a client of a different department within BDO. In accordance with BDO's professional obligations regarding client confidentiality, information relating to Lumo Digital was not shared with those working on the Digital Signs engagement. There was no BDO relationship with Lumo Digital that was in any way connected to the outcome of Mr McKay's engagement Digital Signs (2017) Ltd at the request of BNZ.

#### **Media5's liability as publisher**

25. As you will no doubt be aware, every person who publishes a defamatory statement can be liable as a publisher. The billboards erected by Media5 are both defamatory in themselves and they actively direct viewers to the website at [bdo-complaints.co.nz](http://bdo-complaints.co.nz). By erecting those billboards and by failing to remove them, Media5 is acting as a publisher of the defamatory content on the website. The billboards are the mechanism by which members of the public are directed to and are caused to read the defamatory material on the website.
26. Under section 21 of the Defamation Act 1992, in any action for defamation, the court will have regard to all the circumstances of the case, including the conduct of the defendant after the publication is brought to its attention. You have now been expressly informed, by Mr Jones and by this letter, that:
- (a) the billboards refer to and direct the public to a website;
  - (b) that website contains statements that are plainly and seriously defamatory of BDO, Mr Innes-Jones and Mr McKay; and
  - (c) the falsity of those statements is evidence from their being inconsistent with the findings in the CAANZ decisions.
27. Any defence of innocent dissemination that might otherwise be available to Media5 as a secondary publisher is no longer available now it has been notified of their defamatory character. By maintaining the billboards after this notification, Media5 assumes full and primary liability as a publisher of the defamatory material to which those billboards direct the public.
28. It is also relevant that Media5 appears to have been engaged by Mr Jaques and/or his company specifically for the purpose of directing public attention to the website and its defamatory content.

Media5 is not an innocent intermediary but an active and knowing participant in the publication of the defamatory material. This has implications for your personal liability as the company's sole director.

### **Copyright Infringement**

29. The billboard referring to Mr Innes-Jones features a photograph of him which appears to have been taken from BDO's website. That photograph was taken by or on behalf of BDO and is its property. It is protected by copyright under the Copyright Act 1994 (**Copyright Act**).
30. BDO is the owner of the copyright in the photograph of Mr Innes-Jones. Under s 14 of the Copyright Act, original artistic works, including photographs, attract copyright protection automatically upon creation. Under s21, the owner of the copyright in a photograph is the author or, where the work was commissioned, the person who commissioned it.
31. The billboard referring to Mr McKay features a photograph which appears to have been screenshotted from a presentation Mr McKay gave at a conference. That presentation and Mr McKay's image while presenting it are likewise protected by copyright.
32. Under s 16 of the Copyright Act, the owner of copyright in an artistic work has the exclusive right to:
  - (a) copy the work (s 16(1)(a));
  - (b) issue copies of the work to the public (s 16(1)(b)); and
  - (c) show the work in public (s 16(1)(f)).
33. The use of the photographs by Media5:
  - (a) constitute copying and reproduction of a copyright work within the meaning of ss 2 and 16(1)(a);
  - (b) constitute issuing copies of the work to the public within the meaning of s 16(1)(b); and
  - (c) constitute showing the work in public within the meaning of s 16(1)(f),in each case without the licence, consent, or authorisation of BDO as the copyright owner.
34. Accordingly, Media5's use of the photographs constitutes a primary infringement of BDO's copyright under s 29 of the Copyright Act. BDO demands that Media5 immediately cease and desist from all use of the photographs.

### **Trademark Infringement**

35. Both billboards feature BDO's corporate logo defaced with a red cross overlaid upon it.
36. BDO's logo is a registered trademark in New Zealand. The trademark is owned by Stichting BDO, the global custodian of BDO's intellectual property. Stichting BDO holds registered New Zealand trademark registrations in respect of the BDO logo, including across Classes 9, 35, 36, and 42, all of which are current and in force.
37. The use of this logo - even in a modified or defaced form - on a public billboard, without the consent of Stichting BDO, constitutes use of a sign that is identical or confusingly similar to a registered trademark in the course of trade in a manner that is likely to be taken as use as a trademark, and which is calculated to damage the reputation associated with the mark, contrary to the Trade Marks Act 2002, including s 89 of that Act. The defacement of the BDO logo by overlaying a red cross is specifically calculated to cause damage to the reputation of BDO's brand, by associating it with the false allegations and defamatory imputations on the bdo-complaints.co.nz website.
38. BDO places Media5 on notice that Stichting BDO, as the registered owner of the BDO trademarks, is entitled to take full enforcement action in New Zealand in respect of any infringement of those

registrations. If necessary, BDO will arrange for Stichting BDO to exercise its rights to protect its global trademarks and to pursue all available remedies against Media5, including without limitation injunctive relief and damages.

### **Demands**

39. BDO demands that Media5, with immediate effect:
- (a) takes down and removes from public display all billboards that feature the BDO logo, the photographs of Mr Innes-Jones and Mr McKay, or reference bdo-complaints.co.nz or any associated website;
  - (b) provides written confirmation to this firm **by 4pm on Monday, 2 March 2026**, that all such billboards have been removed and will not be re-erected and that no further billboards of a similar nature will be erected; and
  - (c) preserves all documents, records and communications relating to the commissioning, design, erection and operation of the billboards, including all communications with Mr Jaques and any of his associated companies or entities.
40. BDO has engaged Zane Kennedy KC together with our firm to prepare to issue proceedings in the High Court for an urgent injunction requiring the immediate removal of both billboards. If necessary we will issue injunction proceedings without further notice to Media5. We are instructed that BDO intends to seek damages against Media5 and if necessary against you personally in any event.
41. In the event that it is necessary to issue and pursue proceedings for an urgent injunction, BDO will seek an award of costs against Media5 on an indemnity basis, given that Media5 has been placed on notice of the claims described in this letter and has failed to act. As already noted, it reserves its right to seek costs against you in your capacity as sole director of the company.

Yours faithfully

**MinterEllisonRuddWatts**



Andrew Horne  
Partner

T +64 9 353 9903  
andrew.horne@minterellison.co.nz

Counsel instructed: Zane Kennedy KC

Appendix – Billboards

