

Background

1. We were contacted by Associated Newspapers at approximately 17.45 this evening, by way of a call to one of our partners on his mobile, who was in France at the time. He then contacted the office, and having confirmed we could assist, were then sent details of the matter.
2. The key facts are as follows:-
3. A “spoof” version of the Metro newspaper has been distributed this morning by individuals wearing T shirts bearing the Metro logo at various locations in London. This comprised a 4 page printed edition, a .pdf copy of which is attached [].
4. A web version of this spoof Metro newspaper was made available on a website at www.metro0.co.uk. A .pdf version of the downloadable version is attached [].
5. We have subsequently found further information about the distribution of the spoof newspaper at <http://indymedia.org.uk/articles/5099>, and a .pdf copy is attached []. As will be seen, this contains photo of a distributor at a tube station, and comments apparently provided by a representative of Press Action.

Associated Newspapers and The Metro

6. Associated Newspapers Limited (“ANL”) is one of the UK’s largest publishers of national newspapers and consumer websites. ANL publishes two of the UK’s most influential paid-for newspapers, the Daily Mail and The Mail on Sunday, as well as the country’s most-read free newspaper, in the form of the national title Metro. As well as the newspapers’ companion websites including metro.co.uk.
7. Associated Newspapers is part of a division of Daily Mail and General Trust Plc (“DMGT”).
8. Metro is a daily free-to-consumer newspaper which was launched in London on 16 March 1999 and is published by ANL Monday to Friday. Since launching in London, Metro has been rolled out nationally across 33 towns and cities.
9. Metro is published in colour newsprint and is 34cms high by 26.8cms wide. Metro’s masthead features prominently across the top two-thirds of the banner strip of the cover page. The cover logo consists of a blue (Pantone 2748) rectangular box with METRO in reversed-out white thick capital letters in Kabel Ultra font and a red

(Pantone reference 485) triangle in the top left with “FREE” in white lettering as follows:



10. The METRO logo (blue rectangle with white lettering) without the “free” red triangle is then printed at the top of internal news pages between the page number and date.
11. The first day’s print run of Metro in London was 85,000 copies but has risen to 1,332,000 copies a day with a readership of 3,476,000 as at May 2009 and Metro is the third biggest newspaper in Britain.
12. Initially Metro was handed out to readers but now the majority of copies are picked up from approximately 10,097 METRO branded bins or racks.
13. The content of Metro is also available at its website metro.co.uk and can be downloaded on readers’ phones via the metro.mobi. Readers can also sign up for an electronic PDF copy of Metro which is emailed via a link to registered users each morning.

The METRO trade mark

14. Trade mark number 1586405 (the “METRO Mark”) was filed on 28 September 1994 and was registered for “Books, magazines, printed publications and diaries; all included in Class 16; but not including timetables and not including any such goods relating to railway systems; or printed publications for use in operating, servicing, and/or repairing motor vehicles, vehicle handbooks, and vehicle parts catalogues” on 24 January 1997.
15. ANL purchased this trade mark from National Magazine Company Limited (“NMCL”) with effect from 2 December 1999. The assignment of the ’94 Mark was published in the Trade Marks Journal no. 6314 on 9 February 2000.

16. The METRO Mark is currently subject to an application for revocation by MIP METRO Group Intellectual Property GmbH & Co KG ("MIP"). Although proceedings are currently ongoing, MIP have acknowledged that ANL have evidenced genuine use of the METRO Mark in relation to newspapers.

Our client's steps taken today

17. We set out below a summary of the steps taken by our client's in-house legal advisor, Spencer Davies, during the course of today.
18. "I emailed John Leitch and Simon Garner at approx 9.15am to confirm that I would review urgently at 10am. Once I reviewed at approx 10am I then telephoned John Leitch and left a message for him to call me. His voicemail stated that he would only be able to check his message intermittently on Friday 2 July. I reviewed the website www.metr0.co.uk and as a result drafted a notice of take down in respect of this site. I also reviewed WHOIS to determine who was hosting the site, Hurricane Electric. I sent the notice by fax and by email to Hurricane Electric at approximately 10.45am. My legal director, Harvey Kass, emailed Steve Auckland [MD of Metro] at 10.40am and asked for him to call either Harvey Kass or myself urgently. I telephoned one of our external legal advisors at approx 11am, Adam Taylor of AdLex, and left a message for him to call me back. I wished to discuss with him the next steps available to us in respect of obtaining the domain name through nominet's DRS procedure. At approximately 12.30pm Steve Auckland telephoned me. He stated that both he and John Leitch were at a Metro off-site in Portugal. He asked for an update. I informed him that we had sent a notice of take down to he.net. I added that as he.net were in California it had possibly not yet been actioned due to the time difference. I said that I would chase this during the course of the day. I also added that I was waiting to discuss the possibility of obtaining the domain through Nominet with our external advisors. I said would update him later in the day. Adam Taylor telephoned me back at approx 2pm. I sent him a copy of the notice of takedown and asked him to review, and then call me back to discuss / advise. Harvey Kass spoke with Steve Auckland again in the afternoon. At that time HK discussed with Steve Auckland the possibility of making an application for an interim injunction to prevent further distribution of the spoof Metr0. Steve Auckland agreed with the idea. Adam Taylor and I spoke again at approx 4pm. We discussed the Nominet DRS procedure. We also discussed the research that he had conducted in respect of the address of the registrant of www.metr0.co.uk and other domains registered there. We agreed that he would send me today a wish list of information he required in respect of the DRS procedure. I

would then put together the relevant documents over the weekend to send to him on Monday. He sent his "wish-list" at approx 4.40pm. I telephoned Bird & Bird and asked for Peter Brownlow, a partner, to discuss the possibility of making an application for an injunction. I was told he was unavailable. I then telephoned him on his mobile at approx 17.45. He confirmed that he was in France but would urgently advise on who was available at Bird and Bird to assist in the application. He telephoned me back at approx 18.15 to say that Bird and Bird could assist."

More information about the spoof publication

19. According to the "Whois" information for www.metr0.co.uk, the registrant is stated to be "Press Action" with the registrant's address recorded as 62 Fielsgate Street, Whitechapel, London, Greater London E1 1ES United Kingdom. We have ascertained that this is the address¹ of the London Action Resource Centre – details of which can be found at www.londonarc.org. According to this website this is stated to be "A collectively run building providing space and resources for people and groups working on self-organised, non-hierarchical projects for radical social change. The resources of the building include meeting-space, library, shared offices, a roofgarden, banner and prop-making space and an action information area. If you're interested in helping out with LARC, booking a meeting-space, or otherwise using the buildings resources, please contact us at the address above..."
20. We telephoned the telephone number for LARC at 20.36 on 2 July 2010, and were informed by the person who answered the phone (a gentleman named []) that he had no knowledge of the spoof Metro publication distributed this morning, nor the website displaying the spoof Metro newspaper at www.metr0.co.uk. He said that the address was used by various different people, and that he had been there for an hour or so, with a couple of mates, and would be leaving soon.
21. The Whois information also reveals that the site is being hosted by Hurricane Electric. As indicated in the information received from Mr Davies, he sent a take down notice to Hurricane Electric by fax and email, and has re-sent this several times (and to various different email addresses). However, no response has been received to date, and the website remains active. A copy of the take down letter to Hurricane Electric is enclosed [].

¹ There appears to be a typographical error in the address as this is in fact Fieldgate Street.