The Disputes of Initial Interest Confusion in the Internet World — From Meta Tags to Keywords

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Abstract

Since many website operators find consumers today often use trademarks on an Internet search engine, like Google or Yahoo, seeking specific goods or services, these operators also adjust their marketing strategy to insert others' famous trademarks in their original website HTML pages (known as meta tags) or purchase the "keyword" (usually is other's trademark) from the search engine operator in order to have a better position in the search result pages. By these methods, the consumers will sometimes be referred to the advertisements for these website operators, instead of the real trademark owners. Undoubtedly, the real trademark owners are very angry with these, since they suffer economic loss. For these reasons, there are more and more lawsuits between the trademark owners and their competitors or search engine operators. The plaintiff often claims the defendant's behavior still violates the doctrine of initial interest confusion (IIC) in trademark law. The IIC doctrine is gradually developed by practices of the courts, it allowing a finding of infringement even if a consumer is sure to know the actual source or origin of the goods or services at the time the purchase is made, so long as the consumer may have been momentarily confused.

This Article will argue that the early application of the initial interest confusion doctrine in the United States to the Internet meta tag and search engine cases has a questionable legal basis and extend trademark protection far beyond the traditional purposes of trademark law. Additionally, how to define the "use" of the trademark is the prerequisite condition to decide trademark infringe or not, this Article will also discuss the appropriate scope in order to protect the trademark owner's right and harmony with the changing internet behavior.

Keywords: Initial Interest Confusion, Keyword, Search Engine, Google