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# **Civil Liability for Trademark Initial Interest Confusion to Keywords in US and Current Evaluation in Taiwan —Centering on Search Engine and Information Storage Service Provider**

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## Abstract

The enormous data collection power in search engine providers and the tremendous data storage power in information storage service providers arouse strong concerns about initial interest confusion to trademark use among the trademark owners. This article indicates that US judicial practice overreads the trademark use to keyword search mechanism in search engine providers and storage service providers as direct trademark infringement. This phenomenon not only tears down the fundamental torts theory but also strikes the inappropriate balance between the protection of trademark owners and the importance of Internet development. This article concludes that the indirect torts liability would be the most appropriate solution to resolve the trademark dispute for keywords initial confusion regarding search

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engine and information storage service if Taiwan follows the US experience. To get through the transitional stage until reaching the ultimate indirect tort liability for search engine providers and information storage providers, this article would suggest that to set minimum behavior requirements through the enactment of the Electronic Communications Act be the first step. With respect to implementing indirect tort liability into Taiwan's legal system, the author also conceives a tentative contributory liability (induced infringement liability) provision to the Taiwan Trademark Law, which is based upon the counterpart in the US legal system.

**Keywords:** Search Engine, Initial Interest Confusion, Keyword, Indirect Torts Liability, Trademark Law