

IN THE HIGH COURT AT CALCUTTA  
ORIGINAL SIDE  
(Intellectual Property Rights Division)

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

IA NO. GA-COM/1/2025  
In IP-COM/57/2025

INDIAMART INTER MESH LIMITED  
Vs  
OPEN AI INC. AND ORS.

For the petitioner : Mr. S. N. Mookherjee, Senior Advocate  
Mr. Ranjan Bachawat, Senior Advocate  
Mr. Rudraman Bhattacharyya, Senior Advocate  
Mr. S. K. Bajoria, Advocate  
Mr. Sourojit Dasgupta, Advocate  
Mr. Siddharth Banerjee, Advocate  
Mr. Dhruv Chaddha, Advocate  
Ms. Gargi Vasistha, Advocate

For the respondents : Mr. Sudipto Sarkar, Senior Advocate  
Mr. Ratnanko Banerji, Senior Advocate  
Mr. Sanjeev Kapoor, Advocate  
Mr. Shounak Mitra, Advocate  
Mr. Nirupam Lodha, Advocate  
Mr. Madhav Khosla, Advocate  
Ms. Vaibhavi Pandey, Advocate  
Mr. Aman Khemka, Advocate  
Mr. Hardik Malik, Advocate  
Mr. Abhi Uday Singh Gautam, Advocate

Heard on : 06.05.2026

Judgment on : 20.05.2026

**Ravi Krishan Kapur, J.:**

1. This is an application for interim reliefs. The suit is for protection of the intellectual property rights of the petitioner.
2. The petitioner is engaged in an integrated electronic Business to Business-(B-2-B), portal and has been providing an internet-based platform since 1996 with free and paid listings for a wide variety of products. The platform IndiaMart is being used by millions of consumers to obtain access to suppliers for diverse products. The petitioner also enjoys registration of various trade marks in its favour including both word and label marks. In brief, the entire business of the petitioner primarily depends on the internet. The results as to the products dealt with by the petitioner are to be found through the various intermediaries and search engines which provide links to the IndiaMart website.
3. The respondent no. 1 originally named Open AI INC was established in 2015 for the purposes of building Artificial General Intelligence (AGI) having global outreach. The objective behind incorporation of the respondent no. 1 was that powerful Artificial Intelligence (AI) and particularly AGI has a highly autonomous system which outperforms humans having the potential to bring larger benefits for society.
4. ChatGPT is an online chat interface which allows users to interact with AI models in a conversational manner. This technology is revolutionary inasmuch as it has the ability to increase productivity and is also economically viable. It is now well accepted that ChatGPT acts as a mechanism to increase accessibility. The technology underlying ChatGPT,

allows users to submit inputs including text prompts and receive back content generated by software and servers which ChatGPT functions by utilizing an engine known as 'Large Language Model' (LLM) which ensures accuracy, appropriateness, safety and utility to users.

5. In or about October 2024, the respondent no. 2 announced a feature called ChatGPT search for use on a broad and expansive basis. This feature permits ChatGPT to provide fast and timely answers with links to relevant web sources. Thus, a query submitted on ChatGPT allows to supplement its responses using information from a wide search with attribution and links to sources or any information style prompts by prospective users based on a wide variety of factors including locality, financial constraints, preferred features, physical or online sellers, category wise recommendation of products alongwith comparisons. In carrying out such functions, the respondent no. 2 has also deployed guard rails which are built in safeguards for blocking certain outputs, steer users to safe alternate options and add warning or checks. The implementation of such guard rails is necessary to ensure that ChatGPT is not called upon to aid unlawful and illegal activity, counterfeiting and other harmful or biased content.
6. On behalf of the petitioner, it is submitted that the petitioner is not aggrieved with the manner of data collection by the respondent no.2 in running the platform ChatGPT but the effect which such responses has on users and the access to information disseminated through ChatGPT. It is alleged that the respondent no.1 declares that its mission is to ensure that Artificial General Intelligence benefits the world at large and this is to be achieved in a manner where the benefits are as widely distributed as possible. However, the

responses of ChatGPT demonstrate a deliberate intent to exclude the petitioner by making listings available on the petitioner's platform inaccessible and unavailable though an active/working link is provided for other third party platforms. For example, on a specific enquiry using results only on or from IndiaMart, the response of ChatGPT is to bypass sending the links of the sellers posts through the IndiaMart website and providing the sellers' website/link directly. In comparison, when queries are made to other similar platforms, ChatGPT provides the links of such platforms wherein a sellers listing is made available on that platform. The intentional and deliberate omission in response to queries specifically seeking the petitioner's platform constitutes a conscious exclusion by ChatGPT and directly interferes with the petitioner's prospective business including deprivation of users in accessing the platform of the petitioner which causes loss to the petitioner. The petitioner complains of dilution of its mark and also claims disparagement as well as unfair trade practice by the respondents. It is submitted that in the nature of functions which the petitioner desires the respondents are obliged to provide the link with full accessibility to the petitioner's link. Thus, the petitioner alleges that there is a positive *duty* of the respondents to provide the petitioner's link.

7. Upon a series of correspondence being exchanged with the respondents, it transpires that the respondents have refused to display the content of IndiaMart in view of its name featuring on the United States Trade Representative Review of Notorious Markets List 2024 (USTR). It is contended that USTR is not a legal and binding document nor does it have any statutory force. The USTR List is a foreign document and the same has been unfairly

used by the respondents to exclude the petitioner with the ulterior intent to discriminate. Any blind reliance on the USTR List is impermissible. The petitioner also alleges discrimination inasmuch as other active links DHGate, Pinduoduo, Shopee, Taobao which are on the USTR List are readily accessible in the responses generated by ChatGPT.

8. The petitioner complains of infraction of the Information Technology Act, 2000 (IT Act) and the Rules framed thereunder. In terms of sections (2) (1) (w) read with section 79(2)(c) of the IT Act, ChatGPT is an intermediary and is obliged to act in terms of the same. The functions which ChatGPT performs as a search engine do not permit any kind of discrimination under Rule 3(1)(n) of the IT Rules 2021. The users have a right to know of the existence of IndiaMart. Such right of knowledge is a fundamental right and cannot be infringed by the deliberate and intentional omission of ChatGPT. The conduct of the ChatGPT is also in violation of the fundamental rights afforded to the petitioner under Articles 14, 19 and 21 of the Constitution of India. In such circumstances, ChatGPT cannot intentionally choose to exclude the petitioner. In support of such contentions, the petitioner relies on the decisions in *Neptune Assurance Co. Ltd. vs. Union of India* (1973) 1 SCC 310, *Press Trust of India vs. Union of India* 1974 AIR 1044 and *Neetu Singh & Anr. v. Telegram FZ LLC & Ors* (2022) SCC OnLine Del 2637.
9. On behalf of the respondent no.2, it is submitted that the entire grievance of the petitioner is based on the premise that it has no '*right to visibility*' on the platform of ChatGPT. Significantly, there is no right which the petitioner claims either based on contract, statute or any constitutional law. In the absence of any legal injury, the petitioner has no cause of action and the

petition is liable to be dismissed on that ground alone. In any event, the reliefs prayed for by the petitioner if granted would open the floodgates to litigation and would disrupt the functioning of ChatGPT. The fact that the link of the petitioner does not appear in the results shown by ChatGPT is not *per se* actionable. The petitioner cannot also impugn the policy adopted by the respondents in relying on the USTR.

10. There is also no cause of action which the petitioner has even under the IT Act. The respondent is not an 'intermediary' within the meaning of the Act. As a consequence, it has no obligation under the Rule (3)(1)(n) of the Rules. ChatGPT cannot also be described as a search engine. On the contrary, the response of ChatGPT is that of an 'originator' as defined under section 2(1)(za) of the IT Act. There is no violation under the Trade Marks Act, 1999. The petitioner has also been unable to demonstrate any cause of action either insofar as disparagement, trade libel or injurious falsehood is concerned. There is no infringement under the Copyright Act, 1957. In such circumstances, the balance of convenience is overwhelmingly against any order being passed as the same would virtually disrupt the business of the petitioner. In support of such contentions, the respondent no. 2 relies on the following decisions: *Google LLC v DRS Logistics (P) Ltd (2023) SCC OnLine Del 4809*, *M/s Getmyuni Education Services Private Limited v Mangalaytan uni FAO 126/2023 @ paras 6-9*, *Jasbhai Motibhai Deshai Roshan Kumar (1976) 1 SCC 671 @ Para 47-48*, *Rohit Pulp and Paper Mills Ltd v CCE (1990) 3 SCC 447*, *Myspace Inc. v. Super Cassettes, para 51*, *Sanchit Gupta v Union of India 2024 SCC Online Del 5880, paras 10-14*, *Tech Plus Media Private limited v Jyoti Janda, 2014 SCC Online Del 1819 @ Para 20*.

11. The right to carry on trade or business subject to reasonable restrictions is an inviolable right. The roots of this principle are to be found in the policy of *laissez faire* which governs the economic affairs of individuals and corporations. It is best for industry to be left alone. (subject to reasonable restrictions) There is no law which can compel a private business to operate on terms and conditions dictated by a third party. This would lead to collapse of industry and ultimately be disastrous for entrepreneurship and the free market system.
12. Traditionally, the common law did not impose liability for what were called pure omissions. (*Lord Diplock in Home Office vs. Dorset Yacht Co Ltd [1970] 2 ALL ER 294 at 326*) The Good Samaritan analogy had never found favour with the common law. In the absence of any contract or statute or constitutional obligation, there is no affirmative duty which the law imposes to benefit the economic interests of another. There is no such positive obligation which can be foisted on a party and hence, there can be no question of assumption of responsibility.
13. The loss which the petitioner complains of is pure economic loss. The loss of user traffic is translated as a potential loss of profit. Assuming that the petitioner is made visible in the manner complained of i.e. by displaying IndiaMart's website and seller listing URLs (IndiaMart Links) in the responses generated by ChatGPT then all the other grievances of the petitioner would be redressed. The obligation which is sought to be imposed on the respondents is *prima facie* neither just nor reasonable and the petitioner simply has to put up with the same otherwise there would be no end to such claims. There is no *legal right* which entitles one party to have its business promoted on another

private party's platform. Is IndiaMart reflected and displayed on ChatGPT? Yes. Is IndiaMart reflected and displayed in a *manner* in which it would like to be reflected and displayed on ChatGPT? No. The petitioner cannot determine how ChatGPT should provide its service to OAI's users. On the contrary, there is a simple remedy inasmuch as the petitioner should introduce its own comparable mechanism as that of ChatGPT or analogous thereto. *Of the petitioner, By the petitioner and For the petitioner.*

14. The emergence of generative artificial intelligence now plays a central role in reshaping how information enters the public sphere. They are software tools which permit the "synthetic creation" of information. Unlike traditional intermediaries such as Google which merely hosts speech, Gen AI platforms produce expression probabilistically by curating a response. (*NITI Aayog National Strategy for Artificial Intelligence Pages 7 to 12*) This also raises an interplay of different legal rights including the right of freedom of speech, freedom to carry on business and freedom of association, private platforms governance and intellectual property law. Some of these issues are beyond the scope of the suit and need not be dilated upon. Nevertheless, the question which arises for consideration is to what extent should private enterprise be regulated. This also involves the choice of every private individual or entity to do or not to do business with another. This is also a kind of freedom. In effect, any interference of the kind claimed by the petitioner would make serious inroads in the running and operations of the respondent no. 2.
15. This brings us to the next question: What is the *wrong* being complained of by the petitioner? One of the most important distinctions which is to be observed lies in the different approaches which the law has towards the different kinds



of damage which a party may have suffered as a consequence of the acts of omission or commission of another. The loss which the petitioner claims is ultimately pure *economic loss*. By the alleged selective discrimination, inasmuch as the website link of the petitioner is not being reflected in the responses generated by ChatGPT, the same is causing pecuniary loss and damage to the petitioner's business. In attempting to remedy the situation, the petitioner is seeking to dictate the manner in which the respondents should be operating ChatGPT. "No third party can compel a service provider to use its service in a manner to reflect its link or for its benefit". [*Google LLC vs. DRS Logistic (P) Ltd & Ors. 2023 SCC OnLine Del 4809 @Para 31*]

16. To this extent, the decision of the respondent no. 2 to adhere to the USTR Report is an internal policy and business decision which is not justiciable. Moreso, in the absence of the USTR as a party respondent there can be no determination of the authenticity or veracity of the USTR in this proceeding. In this context, the Press Release of the Government of India only clarifies that the same and is not binding. In such circumstances, the grievance of the respondent no. 2 insofar as the USTR is concerned is without basis and rejected.
17. This also raises a question of the real purpose behind all intellectual property. Intellectual Property is meant to promote and not support the less attractive aspect of human nature. [*"IP and other Things", Robin Jacob, Bloomsbury @ Page 371*] There is nothing in the grievance of the petitioner which truly brings it under the rubric of an intellectual property dispute. There is no falsity nor deception nor confusion nor association nor publication by the respondents at all. In such circumstances, silence *per se* cannot constitute a

cause of action. *Prima facie*, the petitioner has failed to disclose any vested legal right which has been infringed. There is also no case of disparagement which the petitioner has been able to demonstrate. In order to sustain any action for disparagement, trade libel or injurious falsehood, there must be *publication* and this is conspicuously missing in this case. Nor is there any case of infringement under the Trade Marks Act, 1999. Any dilution of a mark under section 29(4) of the Act of 1999 requires *use* in the course of the trade and the mere referential use to identify IndiaMart does not satisfy the ingredient to constitute dilution. (*Berger Paints India Ltd. v. JSW Paints (P) Ltd.*, 2023 SCC OnLine Cal 4949) Similarly, there is no case of copyright infringement pleaded either in the plaint or the petition and all arguments made from the Bar were *dehors* the pleadings. The petitioner has also failed to identify any infringement of copyrighted work which makes it actionable. There are no particulars whatsoever. (*Tech Plus Media Private Ltd vs Jyoti Janda* 2014 SCC OnLine Del 1819 @ Para. 20) There may be an element of unfairness but that is no wrong at all. You cannot cripple the respondents to doing business in a manner which is most convenient to the petitioner. This also brings to the forefront the question of the role of Courts and the limits to be exercised in such matters.

18. For convenience, the relevant provisions of the IT Act are set out below:-

2(1)(w)"intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market.

2(1)(t)"electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;(ta)"electronic signature" means authentication of any electronic record

by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature;(tb)"Electronic Signature Certificate" means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate;(u)"function", in relation to a computer, includes logic, control, arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer;(ua)"Indian Computer Emergency Response Team" means an agency established under sub-section (1) of section 70B;(v)"information" includes data, message, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche places and cyber cafes;

2(1)(za)"originator" means a person who sends, generates, stores or transmits any electronic message; or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

2(1)(k)"computer resource" means computer, computer system, computer network, data, computer data base or software;

79. Exemption from liability of intermediary in certain cases.-(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

(2) The provisions of sub-section (1) shall apply if-

- (a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or
- (b) the intermediary does not- (i) initiate the transmission, (ii) select the receiver of the transmission, and (iii) select or modify the information contained in the transmission;
- (c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if-

- (a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;
- (b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

19. The question of whether ChatGPT falls within the definition of an 'intermediary' under section 2(1)(w) or an 'originator' under section 2(za) of the IT Act is a complicated and vexed question of both law and fact. There is

much debate on this aspect and the same can only be adjudicated upon at the final hearing of the suit after technical, scientific and expert evidence has been adduced.

20. The IT Act was drafted long before the advent of generative AI and its definition reflects a world where only humans or legal entities could “originate” messages. “Originator” as defined above means a person who sends generates stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any person but does not include an intermediary.
21. Search engines typically serve as directories, wherein the user submits a query for particular information, and the search engine crawls the internet, ranking the websites that may contain that or similar information and providing them in a consolidated list. However, there is a fundamental difference in the manner in which LLM’s operate. They scour through volumes of data available on the internet, apply their algorithms to the same and then generate responses to facilitate user queries. These responses are direct and synthesized. There is a broader application of independent processes exercised by the LLM. In such circumstances, it cannot be *prima facie* called a search engine, since its functioning goes much beyond the same. Moreover, it cannot be overlooked that functioning even ‘akin to a search engine’ is merely one of the several roles which ChatGPT performs. For example, ChatGPT if asked, is capable of generating a poem, preparing a research project or a drawing. These functions require going beyond the electronic records provided on the internet and require an application of processes by the LLM. To this extent, it is the source of new content. It creates and generates or at least in

part is instrumental for developing content. It provides a functions more dynamic in nature than static. *Prima facie*, its generative qualities therefore, make it fall within the scope of an ‘originator’ under section 2(za) of the Act.

22. The difficult legal issue is that generative AI systems do not fit neatly into the 2000 framework because the IT Act was drafted before modern AI systems existed and this would ultimately require legislative intervention (not only through Government Advisories) where distinct liability is created for AI platforms, which recognizes and distribute liability across developers and users in proportion to their control and participation over the system. Any such exercise would also require taking into consideration the different interpretations adopted internationally and re-examination of a “function specific” or “entity specific” approach when dealing with the definition of “intermediary” and “originator”. In some cases, the words are either not defined. In other cases, they need elaboration. In the dynamic nature of functions which ChatGPT performs it curates, promotes and generates content. This makes it an active participant rather than a mere intermediary. The results generated on ChatGPT are independently generated whereby new output whether by way of text, code, images writings or pictures are made available. In many ways, the responses on ChatGPT are uncertain and therein also lies the originality. It does not simply reproduce materials but acts as a generator of electronic records. In that sense, it is not a passive conduit. In such circumstances, ChatGPT has an element of newness, uniqueness and originality in its results which ought to bring it within the definition of an “originator” rather than an ‘intermediary’.

23. On the other hand there is a strong argument for ChatGPT to be treated as intermediary because any generation of an electronic record, service or response is always dependent on a “user prompt” while the platform remains an “intermediary” in providing the computer resource. The user prompt being the proximate cause, no output exists without the user’s instruction. Then again the meaning of the word “person” requires reconsideration. The user supplies the intent and the platform executes it. To this extent, AI cannot *suo moto* generate any content. AI is the resource. The intermediary ChatGPT is the provider of the resource. The human is the originator. Despite the above issues, *prima facie*, ChatGPT ought to be treated as an “originator” rather than an “intermediary”.
24. Even assuming that ChatGPT is an intermediary under the IT Act, the petitioner has been unable to demonstrate any breach of any positive obligation which is owed to the petitioner. There is no *right* which the petitioner has been able to demonstrate which has been infringed. The only contention of the petitioner is that non-compliance of the IT Rules, which at most signifies non-qualification of the safe-harbour exception provided under section 79 of the Act which grants intermediaries conditional immunity commonly referred to as “safe harbour” for liability from third party consent. In order to establish infraction of the IT Act, the petitioner has to independently establish that the content in question violates a substantive legal right of the petitioner outside the IT Rules which it has *prima facie* failed to do. In this regard, the decisions cited on behalf of the petitioner are distinguishable and inapposite.

25. It is true that the fear of opening the floodgates cannot outweigh the protection of legal or fundamental rights. There is a policy concern about potential future claims which ought not to be denied in cases where there is a valid legal right. This requires a balancing exercise. In the classic words of Cardozo CJ, there cannot be “liability in an *indeterminate* amount for an *indeterminate* time to an *indeterminate* class”. [*Ultramares Corp. vs. Touche* (1931) 255 NY 170 at 179] This is also a factor which has to be taken into account in weighing the balance of convenience and assessing the comparative advantages and disadvantages of any order being passed. ChatGPT was launched in October 2024 and the petitioner has filed this suit in December 2025. Significantly, at an earlier point of time, the petitioner itself has blocked ChatGPT from accessing its website. In any event, any relief if granted in favour of the petitioner would be similar to compelling specific performance and would require continuous supervision and be impossible to monitor other than being the final relief in the suit. [*State Of U.P. And Ors vs Ram Sukhi Devi* (Supra) at Para41] In view of the above, the petitioner has been unable to demonstrate any *prima facie* case in favour of orders being passed. In addition, the balance of convenience and irreparable injury is also against any order as prayed for by the petitioner. GA COM 1 of 2025 stands dismissed. The parties are directed to take necessary steps for expeditious hearing of the suit.

(Ravi Krishan Kapur, J.)