

ChatGPT is not an Intermediary says Calcutta High Court

In the case of *Indiamart Inter Mesh Limited vs. Open AI Inc. and Ors.*¹, the High Court of Calcutta (“**Calcutta HC**”) recently dismissed an application for interim relief filed by IndiaMart InterMesh Limited (“**IndiaMart**”) against Open AI Inc. (“**OpenAI**”) and others. The Calcutta HC in their interim order declined to direct ChatGPT to display IndiaMart’s website links in its search responses, holding that IndiaMart had failed to establish any prima facie legal right to visibility on a private Artificial Intelligence (“**AI**”) platform, and that the balance of convenience lay firmly against granting the relief sought.

Brief facts

IndiaMart is India’s leading business to business internet marketplace, operating since 1996. IndiaMart alleged that ChatGPT, operated by OpenAI was deliberately suppressing its platform links from AI-generated search responses, while actively displaying links from competing platforms such as DHGate, Pinduoduo, Shopee, and Taobao. For instance, when users queried ChatGPT for products specifically sourced from IndiaMart, the AI would bypass IndiaMart’s seller listing uniform resource locator (URL) and instead provide sellers’ direct website links.

OpenAI disclosed that it was withholding IndiaMart’s content because IndiaMart appears on the United States Trade Representative’s (“**USTR**”) Review of Notorious Markets List 2024 (“**USTR Notorious List**”), a list associated with intellectual property violations. IndiaMart challenged this basis as legally non-binding and discriminatory, particularly given that several other platforms (such as DHGate, Pinduoduo, Shopee, and Taobao) on the same USTR Notorious List remained accessible on ChatGPT. IndiaMart filed the present suit in December 2025 claiming infringement of its intellectual property rights, disparagement, unfair trade practice, and violations of the Information Technology Act, 2000 (“**IT Act**”).

Issues

The primary issue before the Court was whether IndiaMart has a legally enforceable right to have its platform links displayed in ChatGPT’s AI-generated responses. Accordingly, whether a mandatory injunction could be issued directing OpenAI to include IndiaMart’s links in such responses.

The other issues included: (a) whether ChatGPT qualifies as an ‘intermediary’ or an ‘originator’ under the IT Act; (b) whether IndiaMart’s complaints of trademark dilution, disparagement, copyright infringement, and violation of fundamental rights were made out; and (c) whether OpenAI’s reliance on the USTR Notorious List as an internal content moderation policy was legally justiciable.

¹ IA No. GA-COM/1/2025 in IP-COM/57/2025 (decided on May 20, 2026)

Findings and analysis

The Calcutta HC dismissed the application for interim relief on the following grounds:

No Legal Right to Visibility

The Calcutta HC held that IndiaMart had failed to establish any vested legal right, whether contractual, statutory, or constitutional to have its links featured in ChatGPT's responses. The Calcutta HC also rejected the notion that a private business could be directed to feature another party's content, while citing the *Google LLC vs. DRS Logistic Private Limited*², holding that "No third party can compel a service provider to use its service in a manner to reflect its link or for its benefit".

The Calcutta HC further observed the practical reality of IndiaMart's position in the current situation on the following lines: "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".

Pure economic loss not actionable

The Calcutta HC classified IndiaMart's grievance as one of pure economic loss, wherein the loss of web traffic translated into potential loss of profit. Following the common law principle that there is ordinarily no affirmative duty on a private party to promote the economic interests of another, on which the Calcutta HC held "There is no legal right which entitles one party to have its business promoted on another private party's platform."

The Calcutta HC also noted that in the absence of any contract, statute, or constitutional obligation, there is no positive duty which the law imposes to benefit the economic interests of another and therefore no assumption of responsibility could arise.

ChatGPT likely qualifies as an 'Originator', not an 'Intermediary'

On the question regarding the classification of ChatGPT under the IT Act, the Calcutta HC drew a critical distinction between traditional search engines and Large Language Model ("LLM") powered generative AI. The Calcutta HC stated that search engines work like directories. Upon receiving a query, they crawl the internet and show results of websites that may contain the required information. LLMs, however, operate in a fundamentally distinct manner. They scour volumes of data available on the internet, apply their previous learning and algorithms, and then generate content that directly responds to the user's queries.

Since ChatGPT can independently create text, code, images, and other outputs, the Calcutta HC held prima facie that it falls within the definition of 'originator' under Section 2(1)(za)³ of the IT Act. The Calcutta HC characterised ChatGPT as: "...an active participant rather than a mere intermediary... It does not simply reproduce materials but acts as a generator of electronic records. In that sense, it is not a passive conduit".

The Calcutta HC expressly reserved a final determination on this point for trial, after taking into consideration technical and expert evidence.

² (2023) 4 HCC (Del) 515 @ para 31

³ The IT Act through section 2(1)(za) defines an originator as 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.

No infringement of trademark, copyright, or disparagement

The Calcutta HC rejected IndiaMart's claim of trademark dilution under Section 29(4)⁴ of the Trade Marks Act, 1999, holding that mere referential use of the IndiaMart name does not satisfy the ingredient of dilution, which requires use "in the course of trade". On disparagement, the Calcutta HC noted that: "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".

The Calcutta HC additionally observed that IndiaMart's grievance does not truly constitute an intellectual property dispute, since there was no falsity, deception, confusion, association, or publication by the respondents. In addition, no particulars of copyright infringement were pleaded in the plaint.

USTR reliance is an internal business decision

The Court found that OpenAI's decision to rely on the USTR Notorious List is an internal policy and business decision which is not justiciable. Since USTR was not a party to the proceedings, the Calcutta HC could not determine the authenticity or veracity of the list at this stage.

Balance of convenience and irreparable harm

The Calcutta HC noted that granting the relief would amount to compelling specific performance of a continuous obligation requiring judicial supervision. It also observed the significant irony that IndiaMart had itself previously blocked ChatGPT from crawling its website, which weakened the urgency and equity of its claim.

Call for legislative reform

The Calcutta HC candidly acknowledged the inadequacy of the existing legal framework for AI, observing that the IT Act was drafted before modern AI systems existed. It called for: "Legislative intervention (not only through Government Advisories) where distinct liability is created for AI platforms, which recognizes and distributes liability across developers and users in proportion to their control and participation over the system".

Conclusion

This interim order is significant as one of India's first court rulings to examine the legal status of a generative AI platform and the rights of third parties to demand inclusion in AI-generated outputs. Since the Calcutta HC's characterisation of ChatGPT as an originator remains a prima facie view, and the actual suit is pending trial where the Calcutta HC may revisit its findings based on technical and expert evidence, this order should be read only as an early judicial signal and not as a definitive statement of law.

⁴ Section 29 (4) of the Trademark Act, 1999 provides protection to registered trademarks in India, specifically in context of protecting well-known or reputed marks beyond the boundaries of their registered goods/services. Under this provision, infringement occurs where a person, without authorisation, uses a mark identical or similar to the registered mark in relation to goods/services not similar to those covered by the registration. Such use amounts to infringement provided that: (a) the registered mark has a reputation in India; and (b) the use without due cause takes unfair advantage of or is detrimental to the distinctive character or repute of the mark.

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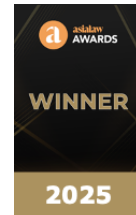
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