

Hallucinations as Trademark Tarnishment: How Wrong Answers Led to a Lawsuit

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ChatGPT took the world by the storm after OpenAI launched it in November 2022 as a general-purpose AI chatbot that could answer questions ranging from the innocuous to the complex. Since then, similar generative AI applications and the large language models underlying them have proliferated, as have controversies over how they use the works of others. Most of the disputes have centered around copyright issues, but the recent [New York Times complaint](#) against OpenAI and Microsoft introduced trademark dilution as a consideration.

Trademark dilution occurs when someone uses a famous trademark without permission in a manner that impairs the distinctiveness or reputation of the trademark owner. Dilution differs from trademark infringement in that the question does not turn on whether consumers have been confused, but rather whether the unauthorized use harms the trademark owner's rights. The harm typically is categorized as blurring or tarnishment. Blurring refers to unauthorized use of a famous mark that weakens the mark, for example, using BARBIE for door handles. Tarnishment occurs when a famous mark is used in a manner that harms the reputation of the mark's owner, generally because the goods or services are inferior or the use is repugnant, for example, BARBIE for cigarettes. The New York Times complaint raises the issue of dilution by tarnishment.

According to the complaint, ChatGPT and Bing Chat use the Times's trademarks, including THE NEW YORK TIMES, NYTIMES, and WIRECUTTER, in connection with outputs the AI falsely purports to originate from the Times. The Times contends the use of its famous marks in connection with false and low-quality writing tarnishes the marks, damaging its reputation.

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