

Elon Musk’s lawsuit against Open AI, Sam Altman and others
(Elon Musk v. Sam Altman, 2024)

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1. Introduction

At the end of February 2024, Elon Musk (hereinafter referred to as the "Plaintiff") filed a lawsuit in San Francisco, California, against Open AI Inc.¹, Samuel Altman and others². Today, we analyze this lawsuit based on this complaint³ (hereinafter referred to as "Complaint").



2. Background leading up to the lawsuit

According to the complaint, OpenAI is a non-profit organization established under an agreement (hereinafter, the "Founding Agreement") between the Plaintiff, Mr. Altman and others. The Founding Agreement aims to develop safe and beneficial artificial general intelligence (AGI) for humanity. The Founding Agreement was also expressed in email correspondence between the Plaintiff and Mr. Altman in June 2015 (see Exhibit 2 of the Complaint), and the same purpose is documented in Open AI's Certificate of Incorporation (see Exhibit 1 of the Complaint)⁴. For this reason, the Plaintiff has allocated significant resources to Open AI since its inception; contributing millions of dollars, providing integral advice on research directions, and playing a key role in recruiting world-class talent to OpenAI, Inc. until September 14, 2020. The Plaintiff claimed that despite resigning as co-chair on February 21, 2018, he provided approximately \$3.5 million to OpenAI in 2018.

On the other hand, when Altman became the CEO of Open AI in 2019, he established a for-profit subsidiary, and on September 22, 2020, he signed an agreement with Microsoft to exclusively license the Generative Pre-Trained Transformer (GPT)-3 language model. However, the license to Microsoft applied only to Open AI's pre-AGI technology, and any rights regarding AGI were not included. It is claimed that it is the board of OpenAI, Inc., who makes decisions as to when OpenAI reaches AGI, and not Microsoft.

¹ Open AI, Inc. is a non-profit organization incorporated under Delaware law on December 8, 2015. In this newsletter, a series of related subsidiaries and organizations including the Open AI, Inc. (see footnote 2 below for details) is referred to as Open AI.

² Specifically, this lawsuit names the followings as defendants: Mr. Altman, Mr. Gregory Brockman (co-founder of Open AI), OpenAI, Inc., OpenAI, L.P., OpenAI, L.L.C., OpenAI GP, L.L.C., OpenAI OpCo, LLC, OpenAI Global, LLC, OAI Corporation, LLC, and/or OpenAI Holdings, LL.C. (collectively, referred to as "Defendants").

³ The Complaint was filed on February 29, 2024 in the Superior Court of California, County of San Francisco (CGC-24-6127746). <https://www.courthousenews.com/wp-content/uploads/2024/02/musk-v-altman-openai-complaint-sf.pdf>

⁴ "The specific purpose of this corporation is to provide funding for research, development and distribution of technology related to artificial intelligence. The resulting technology will benefit the public and the corporation will seek to open source technology for the public benefit when applicable. The corporation is not organized for the private gain of any person."



In response to these allegations, the Plaintiff has now filed a lawsuit against the Defendants for a breach of contract, promissory estoppel, breach of fiduciary duties, and unfair business practices.

3. Plaintiff's Arguments

a. Cause of Actions

"The causes of actions are mainly claimed as follows:"

(1) Breach of contract

The Plaintiff claims that the following Defendants' actions cause the breach of the Founding Agreement:

- 1) Exclusively licensing Chat GPT to a for-profit company like Microsoft;
- 2) Failing to disclose to the public, among other things, details on GPT-4's architecture, hardware, etc. in order to advance Defendants and Microsoft's own private commercial interests; and
- 3) Permitting Microsoft, a publicly traded for-profit corporation, to occupy a seat on OpenAI, Inc.'s Board of Directors and exert undue influence and control over OpenAI's non-profit activities.

Based on this, Plaintiff seeks damages and the performance of Defendants' contractual obligations. Although the amount of damages claimed is unknown, Plaintiff inferred that the following contributions should be accounted for: Plaintiff has funded tens of millions of dollars, provided advice, and played a key role in recruiting world-class talent.

(2) Promissory Estoppel

In order to induce the Plaintiff to subsequently provide resources, including significant financial assistance, the Plaintiff alleges that the Defendants made the following promises to the Plaintiff:

- a) Open AI would be a non-profit developing AGI for the benefit of humanity; and
- b) OpenAI would be open-source, balancing only countervailing safety considerations, and would not keep its technology closed and secret for proprietary commercial reasons.

However, Plaintiff claims that OpenAI acted contrary to such promises and that the "injustice can only be avoided through the enforcement of Defendants' repeated promises".

The Plaintiff therefore seeks specific performance from the Defendants, and, in case of non-fulfillment, seeks damages while the amount is presently unknown but shall be proven at trial.

(3) Violation of fiduciary duty

The Plaintiff also alleges that the Defendants are in violation of their fiduciary duty under California law⁵, which obligates the Defendants to use the Plaintiff's financial assistance for its original purpose.

(4) Unfair Business Practices

The Plaintiff additionally alleges that the solicitation of funds and donations under false pretenses for the fulfillment of the Funding Agreement constitutes an unfair business practice under California law⁶, and the Defendants shall pay compensation for damages and disgorge all profits and remuneration received. The Plaintiff also seeks an injunction to prevent the Defendants from engaging in such conduct in the future.

b. Prayer for Relief

As stated above, the Plaintiff is seeking damages, injunctions, and specific performances. In addition, the Plaintiff seeks judicial determinations that:

- a) "GPT-4 constitutes Artificial General Intelligence and is thereby outside the scope of OpenAI's license to Microsoft"; and

⁵ California Business & Professions Code § 17510.8.

⁶ California Business & Professions Code § 17200 et seq.



- b) “Q* (Q Star)⁷ and/or other OpenAI next generation large language models in development constitute(s) Artificial General Intelligence and is/are outside the scope of OpenAI’s license to Microsoft”.

c. Demand for Jury Trial

The Plaintiff demands trial by jury.

4. Conclusion

As mentioned above, the Plaintiff is seeking damages, injunctive relief, and specific performance. While it is generally difficult to predict the outcome of a lawsuit from the complaint alone, the fact that the Plaintiff, in this case, is demanding a trial by jury makes it even more difficult to predict the outcome.

However, not just focusing on the result of this lawsuit, it should be noted that there are currently reports that Mr. Elon Musk will be investing a large amount of money into the development of AI. Thus, His prayer for relief in judicial determinations regarding GPT-4 and Q* (Q Start) may imply his intention to disclose OpenAI's confidential information, including that of Chat GPT and Q*.

Furthermore, as the scope of Open AI's license to Microsoft is also in dispute, Plaintiff may intend to impact OpenAI’s alliance with Microsoft, which may be considered a competitor in the development of AI.

In any case, with the current fierce competition among companies in AI/AGI development, the outcome of this lawsuit could have a significant impact on Open AI and Elon Musk's AI development. We may consider that the battle to create and regulate AGI has only just begun. Although there is limited clarity at this point, One Asia Lawyers will regularly provide the latest information on AI-related issues, including this lawsuit.

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⁷ A new AAI system that Open AI is reportedly currently developing.



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