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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 ELON MUSK et al.,
14 Plaintiffs,
15 v.
16 SAMUEL ALTMAN et al.,
17 Defendants.

Case No. 4:24-cv-04722-YGR
**PLAINTIFF’S MOTION *IN LIMINE* NO. 3
TO EXCLUDE EVIDENCE RELATING
TO X.AI CORP.’S BUSINESS AND
COMPETITIVE PRACTICES**
Date: March 13, 2026
Time: 9:00 AM
Courtroom: 1 – 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

INTRODUCTION

1
2 In 2023, Musk founded generative artificial intelligence company X.AI Corporation
3 (“xAI”), a competitor to Defendant OpenAI. In 2024, Musk and xAI filed this suit against OpenAI
4 and Microsoft, alleging fraud, unjust enrichment, and breach of charitable trust claims, as well as
5 antitrust violations. Dkt. 1. OpenAI counterclaimed, alleging unfair competition and business
6 interference. Dkt. 229. On April 24, 2025, the Court issued an order relegating competition-related
7 claims to Phase Two of this litigation. Dkt. 144 (Apr. 4, 2025 Hrg. Tr.) at 8:6-9. The Court held
8 that OpenAI’s counterclaims “properly belong in Phase II” because they “stem from actions taken
9 far after the actions forming the basis of” Phase One, and “[i]ndeed . . . occurred after this litigation
10 began.” Dkt. 228 at 9.

11 Despite those orders, OpenAI attempted repeatedly during Phase One discovery to probe
12 xAI’s irrelevant business and competitive practices. Defendants now intend to present at trial more
13 extraneous and inflammatory evidence about xAI that is sure to confuse the jury and prejudice
14 Musk. Consistent with its prior rulings, this Court should bar Defendants from prosecuting a
15 distracting “mini trial” on xAI’s irrelevant business and competitive practices.

BACKGROUND

16
17 Phase One concerns the founding of OpenAI, Inc. and Defendants’ systematic conversion
18 of the nonprofit into a for-profit enterprise for their own enrichment. Phase Two concerns
19 competition-related claims arising after Musk founded xAI in 2023. Dkt. 144 (Apr. 4, 2025 Hrg.
20 Tr.) at 8:6-9. Yet during Phase One discovery, Defendants repeatedly sought written discovery
21 about xAI. Dkts. 199, 201. Magistrate Judge Hixson repeatedly denied those requests. Dkt. 203 at
22 1 (“[W]hat X.AI does with respect to open-sourcing or not open-sourcing products does not seem
23 to have anything to do with this case.”); Dkt. 237 at 2 (“[T]he [letter of intent to acquire OpenAI]
24 and related discovery . . . do not share a common nucleus of facts with the charitable trust [claim].”).

25 Yet Defendants continued to probe improper Phase Two topics in fact and expert
26 depositions. Over counsel’s objections, OpenAI began Musk’s deposition with irrelevant questions
27 about xAI’s corporate structure. Ex. 1 (Musk Tr.) at 10:6-14, 11:4-12:7, 15:6-23:25; *see also id.* at
28 55:10-56:19, 63:12-16, 301:4-303:16. OpenAI also improperly tried to elicit testimony from Musk

1 and his financial advisor about xAI’s February 2025 bid to acquire OpenAI. *Id.* at 64:9-13, 309:7-
2 314:22; Ex. 2 (Birchall Tr.) at 150:22-157:16. And Defendants attempted to elicit expert testimony
3 about xAI’s safety practices. *See* Ex. 3 (Russell Tr.) at 72:25-82:10.

4 Defendants apparently plan to repeat those tactics at trial. OpenAI’s designations and exhibit
5 list include improper questioning and exhibits about xAI’s formation and funding, and its witness
6 list declares its intent to elicit testimony about xAI’s “corporate history.” *See, e.g.*, Ex. 1 (Musk Tr.)
7 at 10:6-12:7, 63:12-16, 301:4-9, 301:15-302:5, 302:10-303:7; Ex. 2 (Birchall Tr.) at 150:22-25,
8 151:11-153:15, 153:21-154:2, 154:8-25, 155:21-156:25; OpenAI Trial Ex. 943 (Ex. 4) (xAI articles
9 of formation); OpenAI Trial Exs. 1003 & 1013 (Exs. 5 & 6) (xAI posts about funding rounds);
10 OpenAI Trial Ex. 959 at 54:1-13 (Ex. 7) (excerpt of transcript of Musk interview); OpenAI Trial
11 Ex. 1053 (Ex. 8) (articles of merger between xAI and SpaceX). OpenAI’s designations and witness
12 and exhibit lists also show they intend to elicit testimony about xAI’s February 2025 bid to acquire
13 OpenAI, and to introduce the related “Letter of Intent” and letter to the California and Delaware
14 Attorneys General. *See* Ex. 1 (Musk Tr.) at 64:9-13; 316:24-317:12, 318:9-18, 319:4-320:3, 320:23-
15 321:8; OpenAI Trial Ex. 1022 (Ex. 9) (Letter of Intent); OpenAI Trial Ex. 1018 (Ex. 10) (letter to
16 Attorneys General). Piling on, Microsoft’s exhibit list includes 2025 announcements of xAI’s Grok
17 chatbot becoming available on Microsoft’s AI platform. *See* Microsoft Trial Exs. D041 & D050
18 (Exs. 11 & 12) (Microsoft posts); Microsoft Trial Ex. D039 at -96937 (Ex. 13) (letter to
19 shareholders). None of that evidence is admissible.

20 ARGUMENT

21 Evidence about xAI’s corporate structure, funding, and business and competitive practices
22 should be excluded. That evidence has no tendency to make the facts relevant to Phase One “more
23 or less probable than [they] would be” without it. Fed. R. Evid. 401. Allowing Defendants to stage
24 a sideshow about xAI at trial will only waste time, confuse the issues, mislead the jury, and unfairly
25 prejudice Plaintiff. Fed. R. Evid. 403.

1 **I. EVIDENCE OF XAI’S BUSINESS ORGANIZATION AND COMPETITIVE**
 2 **PRACTICES SHOULD BE EXCLUDED**

3 **A. Previous Orders Preclude Evidence About the 2025 Bid**

4 OpenAI should not be permitted to admit evidence or examine witnesses at trial regarding
 5 xAI’s February 2025 bid to acquire OpenAI. *See* Exs. 9 & 10. This Court’s Phase One rulings
 6 squarely preclude that evidence. Dkt. 228 at 9; *see also* Dkt. 237 (Hixson, M.J.) (quashing OpenAI’s
 7 third-party subpoenas about the bid). Any probative value is therefore substantially outweighed by
 8 the risk of confusion and prejudice to Musk. Fed. R. Evid. 403. The evidence is also not admissible
 9 for any other purpose, as it does not tend to prove any witness’s “character for truthfulness or
 10 untruthfulness.” Fed. R. Evid. 608. It should be precluded.

11 **B. Other Irrelevant Competition Evidence Should Be Excluded**

12 For the same reasons, Defendants should not be allowed to admit evidence or examine
 13 witnesses about the Microsoft/xAI 2025 agreement. *See* Exs. 11, 12, 13. xAI’s commercial dealings
 14 are only relevant to the competition claims in Phase Two, as is any inference of Musk’s purported
 15 motive to compete with OpenAI.

16 **C. xAI’s Organization and Business Practices Are Irrelevant**

17 Defendants should not be permitted to admit evidence or examine witnesses regarding xAI’s
 18 formation, corporate organization, or funding. *See, e.g.*, Exs. 4, 5, 6, 7, 8. xAI’s 2023 incorporation
 19 has nothing to do with the issue on trial – the evolution of *OpenAI’s* corporate structure and
 20 governance. It is also irrelevant to any affirmative defense. xAI’s formation is not probative of
 21 when Musk discovered his claims against OpenAI. And any bearing on Musk’s motive for *filing*
 22 *this suit* is irrelevant to the unclean hands defense. *See Comet Techs. USA Inc. v. XP Power LLC*,
 23 No. 20-cv-06408-NC, 2022 WL 1131729, at *3 (N.D. Cal. Feb. 7, 2022); *Brewster v. City of Los*
 24 *Angeles*, 672 F. Supp. 3d 872, 1003 (C.D. Cal. 2023) (“[T]he unclean hands defense cannot be
 25 distorted into a proceeding to try the general morals of the parties.”).

26 **II. TESTIMONY ABOUT GROK IS IRRELEVANT AND PREJUDICIAL**

27 Defendants should not be permitted to elicit irrelevant and unduly prejudicial testimony
 28 about xAI’s model, Grok. In his deposition, Sam Altman – unprompted – referred to xAI’s model

1 as a “goonbot” and “anime sex bot[] for children.” Ex. 14 (Altman Tr.) at 114:15-115:6, 170:7-
2 172:7. Such gratuitous testimony is plainly irrelevant. This is not a trial about Grok. It is a trial
3 about whether OpenAI breached its charitable obligations by converting its public assets for private
4 gain. The risk that crude commentary would poison the jury’s deliberations substantially outweighs
5 any bare probative value it might have. Fed. R. Evid. 403.

6 For the same reason, Defendants should be barred from examining witnesses about ongoing
7 public controversies regarding Grok or xAI.¹ Such evidence is inadmissible for any purpose – it
8 does not bear on any witness’s credibility, Fed. R. Evid. 608, and it is not probative of Musk’s
9 “motive” or “knowledge” at the time frame relevant to Phase One, Fed. R. Evid. 404(b)(2). Merely
10 broaching that inherently salacious media coverage, moreover, would so clearly taint the jury that a
11 corrective instruction would not “unring the bell.” *Romero v. Garland*, No. 3:19-CV-02138-JAH-
12 DTF, 2025 WL 3120718, at *4 (S.D. Cal. Nov. 6, 2025) (motions *in limine* “avoid the futile attempt
13 to ‘unring the bell’ when highly prejudicial evidence is offered and then stricken at trial”).

14 **III. BROADER EVIDENCE ABOUT XAI’S SAFETY PRACTICES IS IRRELEVANT**

15 At trial, OpenAI should be prohibited from prosecuting xAI’s safety record as it did in
16 depositions. *See* Ex. 3 (Russell Tr.) at 72:25-82:10. That line of inquiry is irrelevant to Musk’s
17 commitment to AI safety when OpenAI was founded in 2015. *See* Dkt. 203 (Hixson, M.J.) (denying
18 discovery into xAI’s open-source practices). Nor is it relevant to whether *OpenAI’s* safety lapses
19 demonstrated its prioritization of commercial gains over its mission. Defendants should not be free
20 to stage a side-show or mini trial on xAI to distract the jury from OpenAI – the defendant on trial.

21 **CONCLUSION**

22 The Court should exclude evidence relating to xAI’s business and competitive practices.
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24

25 ¹ *See, e.g., Attorney General Bonta Sends Cease and Desist Letter to xAI, Demands It Halt Illegal*
26 *Actions Immediately*, Cal. Dep’t. of Justice (Jan. 16, 2026), [https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/attorney-general-bonta-sends-cease-and-desist-letter-xai-demands-it-halt-illegal)
27 *Prosecutor’s Cybercrime Unit Searches X Office, Musk Summoned*, CNBC (Feb. 3, 2026),
28 [https://www.cnbc.com/2026/02/03/paris-prosecutors-cybercrime-unit-searches-x-office-musk-](https://www.cnbc.com/2026/02/03/paris-prosecutors-cybercrime-unit-searches-x-office-musk-summoned.html)
[summoned.html](https://www.cnbc.com/2026/02/03/paris-prosecutors-cybercrime-unit-searches-x-office-musk-summoned.html).

1 Dated: February 24, 2026

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