

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

	x
PEOPLE OF THE STATE OF NEW YORK, by	:
ELIOT SPITZER, Attorney General of the	:
State of New York,	: Index No. 402644/05
	:
Petitioner,	: <b>CONSENT ORDER AND JUDGMENT</b>
	:
- against -	:
	:
EMMIS COMMUNICATIONS CORP.,	:
	:
Respondent.	: x

---

UPON reading and filing the Verified Petition, verified on August 5, 2005, and the Stipulation and Consent, dated August 5, 2005, in which Respondent admits service of the Verified Petition and consents to the entry of this Consent Order and Judgment ("Order") without further notice,

NOW, on motion of the Attorney General, it is hereby

**GENERAL INJUNCTIVE RELIEF**

1. ORDERED, ADJUDGED AND DECREED that this Order shall extend to Emmis Communications Corp. and Emmis Operating Co. and their New York subsidiaries, affiliates, and related entities, and their respective agents, directors, servants, employees, successors, and assigns, or any person under their direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device through which they may now or hereafter act or conduct business all future purchasers, merged parties, inheritors, or other successors in interest of Respondent (hereinafter collectively referred to as "Respondent"); and it is further

2. ORDERED, ADJUDGED AND DECREED that neither this Order nor any provision thereof shall be construed as an admission that Respondent or Emmis Radio, LLC d.b.a. WQHT (Hot 97) and/or any of its agents, directors, servants, employees, successors, and assigns, or any person acting under its direction and control have engaged in the conduct described in or prohibited by the provisions of the Order or the Verified Petition; and it is further

3. ORDERED, ADJUDGED AND DECREED that Respondent is permanently enjoined in New York State from engaging in any practices relating to the Smackfest contests that are in violation of Executive Law § 63(12), General Business Law §§ 349 and 350, and Uncons. Laws § 8905-a, including, but not limited to:

a. Conducting a combative sport activity within the meaning of Uncons. Laws § 8905-a (hereafter: "combative sport activity") wherein "combative sport" is defined as:

any professional match or exhibition other than boxing, sparring, wrestling or martial arts wherein the contestants deliver, or are not forbidden by the applicable rules thereof from delivering kicks, punches or blows of any kind to the body of an opponent or opponents.

Uncons. Laws § 8905-a(1); and

b. Advancing a combative sport activity within the meaning of Uncons. Laws § 8905-a by engaging in conduct which materially aids any combative sport, other than conduct engaged in as a spectator including, but not limited to:

i. conduct directed toward the creation, establishment or performance of a combative sport;

ii. conduct directed toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus for a combative sport;

iii. conduct directed toward the solicitation or inducement of persons to attend or participate in a combative sport;

iv. conduct directed toward the actual conduct of the performance of a combative sport;

v. conduct directed toward the arrangement of any of the financial or promotional phases of a combative sport;

vi. conduct directed toward any other phase of a combative sport; and

vii. permitting a combative sport to occur or continue or making no effort to prevent the occurrence or continuation of a combative sport when one has substantial proprietary or other authoritative control over premises being used with his or her knowledge for purposes of a combative sport activity;

c. Profiting from a combative sport activity within the meaning of Uncons. Laws § 8905-a(3)(c) by, *inter alia*, accepting or receiving money or other property with intent to participate in the proceeds of a combative sport activity, or pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of a combative sport activity; and it is further

#### **PROGRAMMING**

4. ORDERED, ADJUDGED AND DECREED that Respondent shall provide the following public service announcements and services:

a. Seven to ten public service announcements ("PSAs") per week beginning

August 15, 2005 and running through December 31, 2005 such PSAs to be aired on Hot 97 a/k/a WQHT-FM (hereafter "Hot 97") radio station between 6 a.m. and midnight and shall contain a variety of messages relating to anti-violence themes and specifically domestic violence awareness and conflict dispute resolution;

b. During the month of October, 2005 "Domestic Violence Awareness Month," two sixty minute presentations on *Street Soldier with Lisa Evers* during which guest speaker(s) will focus on domestic violence awareness and/or conflict dispute resolution or other anti-violence themes;

c. During the month of October, 2005 "Domestic Violence Awareness Month," Hot 97 will cause to air 3 additional PSAs per week hosted by Lisa Evers relating to domestic violence awareness and/or conflict dispute resolution. These celebrity hosted PSAs shall be in addition to the seven to ten PSAs per week set forth in paragraph 3.a above;

d. Cause a banner to appear in a conspicuous location on the Hot 97 website during the period August 15, 2005 through December 31, 2005 that includes a link to the resource pages on the website for Safe Horizon; and

e. Cause the Hot 97 van, which makes an average of 8-10 trips per week into local communities to, on each such trip from August 15, 2005 through December 31, 2005, carry and disseminate literature provided by Safe Horizon on various anti-violence topics, including, but not limited to, domestic violence awareness and conflict dispute resolution; and it is further

### COMPLIANCE

5. ORDERED, ADJUDGED AND DECREED that Respondent shall submit to the Attorney General no later than ninety (90) days after entry of this Order, a sworn statement by a corporate officer authorized by Respondent certifying that the injunctive provisions of this Order have been satisfied and setting forth the manner and extent of Respondent's compliance, together with a sample of the PSAs currently aired by Respondent; and it is further

### REMEDIES

6. ORDERED, ADJUDGED AND DECREED that Respondent shall, within five business days of signing this Order, pay to the State of New York civil penalties in the sum of \$ 240,000 pursuant to Uncons. Laws § 8905-a and GBL § 350, payment to be made by check to the New York State Attorney General's Office and delivered to the New York State Attorney General's Office, attention Francine James, Assistant First Deputy Attorney General, Executive Bureau, 120 Broadway, 25th Floor, New York, New York 10271; and it is further

7. ORDERED, ADJUDGED AND DECREED that Respondent shall, within five business days of signing this Order, pay to the not-for-profit organization Safe Horizon the sum of \$ 60,000, payment to be made by check delivered to the New York State Attorney General's Office, attention Francine James, Assistant First Deputy Attorney General, Executive Bureau, 120 Broadway, 25th Floor, New York, New York 10271.

8. It is the understanding of the parties that Respondent shall communicate to Safe Horizon that the monies shall be deposited in an interest-bearing segregated account and spent by Safe Horizon solely on anti-violence programs and specifically domestic violence awareness programs and conflict dispute resolution with all monies to be disbursed by not later than December 31, 2005. Respondent shall inform Safe Horizon that these monies are to be used

only for activities not funded previously and that said funding shall be used only to fund an expansion of activities. Respondent shall inform Safe Horizon to provide a final written report to Respondent no later than February 1, 2006 with a copy to the New York State Attorney General. Said report shall include a description of the use of these monies, the activities provided, an explanation of how the activities addressed anti-violence and specifically domestic violence awareness and conflict dispute resolution, and the number of persons served or benefitted; and it is further

9. ORDERED, ADJUDGED AND DECREED that in the event of default regarding the portion of this Order requiring payment of penalties and monies, upon application of the Attorney General, with ten days notice to Respondent, a money judgment shall be entered in the amount due, plus interest, in favor of Eliot Spitzer, Attorney General of the State of New York, 120 Broadway, New York, New York 10271, and the Attorney General shall have execution thereof;

10. Respondent agrees to pay all reasonable attorneys' fees and costs, including but not limited to court costs, associated with any successful collection efforts under this Order by the State or its representative; and it is further

**RELEASE**

11. The Attorney General shall not commence a civil action or investigation against Respondent for any claims relating in any manner to the "Smackfest" contests, including, but not limited to, any claims relating to the conducting, advancing, engaging in, advertising, promoting, and/or profiting from "Smackfest" contests conducted prior to the execution of this Consent Order, except for a civil action to enforce this Consent Order and in accordance with provisions provided herein; and it is further

## GENERAL PROVISIONS

12. ORDERED, ADJUDGED AND DECREED that neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the State of New York, the Attorney General, or any other governmental unit of the State of New York, has approved, sanctioned, or authorized any practice, act, advertisement or conduct of the Respondent; and it is further

13. ORDERED, ADJUDGED AND DECREED that the titles and headers to each section of this Order are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Order; and it is further

14. ORDERED, ADJUDGED AND DECREED that this document shall not be construed against the "drafter" because both parties participated in the drafting of this document; and it is further

15. ORDERED, ADJUDGED AND DECREED that as used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires; and it is further

16. ORDERED, ADJUDGED AND DECREED that, except as provided herein, nothing in this Order shall limit the Attorney General's right to obtain information, documents or testimony from Respondent pursuant to any state or federal law, regulation or rule; and it is further

17. ORDERED, ADJUDGED AND DECREED that if any clause, provision or section of this Order shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of

this Order, and this Order shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein; and it is further

18. ORDERED, ADJUDGED AND DECREED that this Consent Order, or any provision thereof, shall not be an admission by Respondent of the truth of any fact alleged in the Verified Petition or that it has engaged in the conduct described in or prohibited by provisions in the Consent Order; and it is further

19. ORDERED, ADJUDGED AND DECREED that this Consent Order sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Consent Order which are not fully expressed herein; and it is further

20. ORDERED, ADJUDGED AND DECREED that nothing in this Order shall affect the right or remedy of any person; and it is further

21. ORDERED, ADJUDGED AND DECREED that nothing in this Order shall be construed as relieving Respondent of its obligations to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Order be deemed to be permission to engage in any acts or practices prohibited by such law, regulation or rule; and it is further

22. ORDERED, ADJUDGED AND DECREED that nothing in this Order shall be construed as restricting Respondent from acting in compliance with other laws, including from acting as a journalist or broadcaster, or in airing or displaying promotions or an advertisement for attendance by the public at sports events or activities not conducted by Respondent; and it is further

23. ORDERED, ADJUDGED AND DECREED that Jurisdiction is retained by this Court for the purpose of enabling the parties to apply to this Court at any time for such further

orders and directions as may be necessary or appropriate for the construction, modification or execution of this Order, and the enforcement of this Order and punishment of violations thereof; and it is further

24. ORDERED, ADJUDGED AND DECREED that any notices, statements or other written documents required to be served by this Order on a party to this action, unless otherwise provided herein, shall be provided by first-class mail to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the party changing such address:

For the Petitioner, the People of the State of New York, to:

ELIOT SPITZER  
Attorney General of the State of New York  
c/o Francine James  
Assistant First Deputy Attorney General  
120 Broadway, 25th Floor  
New York, NY 10271

For Respondent, Emmis Communications Corp. to:

DAVIS WRIGHT TREMAINE  
By: Sharon L. Schneier, Esq.  
1633 Broadway  
New York, New York 10019

and it is further

25. ORDERED, ADJUDGED AND DECREED that any party to this Order may apply to this Court for such other and further relief as may be necessary to effectuate the terms of this Consent Order, upon five days notice to all parties.

DATED: New York, New York

August 8, 2005

ENTER

  
\_\_\_\_\_  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

PEOPLE OF THE STATE OF NEW YORK, by	:	x
ELIOT SPITZER, Attorney General of the	:	Index No.
State of New York,	:	
	:	<b>STIPULATION AND CONSENT</b>
Petitioner,	:	
	:	
- against -	:	
	:	
EMMIS COMMUNICATIONS CORP.,	:	
	:	
Respondent.	:	x

---

IT HEREBY IS ACKNOWLEDGED, STIPULATED, CONSENTED TO AND AGREED, by and between Petitioner, the People of the State of New York, by their attorney, Eliot Spitzer, Attorney General of the State of New York, and Respondent, EMMIS COMMUNICATIONS CORP., by Barry Mayo as Senior Vice President and Market Manager of Hot 97 radio station a/k/a WQHT-FM (hereafter "Respondent"),

1. Petitioner and Respondent consent to entry of the annexed Consent Order and Judgment ("Consent Order").
2. Respondent enters into the Consent Order and Stipulation and Consent without any admission of wrongdoing and neither shall be construed as an admission that Respondent or any of its agents, directors, servants, employees, successors, and assigns or any person under its direction and control has engaged in the conduct described in or prohibited by the provisions herein.
3. The entry of the Consent Order shall not be deemed or construed as an approval by the Attorney General of any of the business activities of the Respondent.
4. Respondent has been served with a copy of the Verified Petition. The Verified Petition is being filed for jurisdictional purposes only and this matter will not be placed on the Supreme Court calendar. Respondent hereby accepts and expressly waives any defect in

connection with service of process issued on the Respondent by the State. Respondent consents to entry of the annexed Consent Order without further notice.

5. Respondent has, by signature of its representative and counsel hereto, waived any right to appeal, move to reargue or rehear or be heard in connection with any judicial proceedings upon the Consent Order, as originally submitted to the Court other than any proceedings to enforce compliance with the Consent Order.

6. This Stipulation and Consent is entered into by the Respondent of its own free and voluntary act and with full knowledge and understanding of this proceeding and the obligations and duties imposed by the Consent Order.

7. Both parties represent and warrant that no offers, agreements or inducements of any nature whatsoever (except as expressly set forth herein) have been made to it by the other party to procure the Consent Order.

8. The parties represent and warrant that their signatories to this Stipulation and Consent have authority to act for and bind the respective parties.

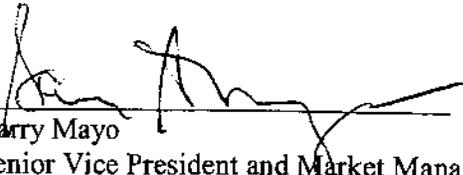
9. The parties represent and warrant that the Consent Order is the result of good faith negotiations. The parties represent and warrant that they will implement the terms of the Consent Order in good faith and in a fair and reasonable manner.

10. Respondent further acknowledges that it understands that the State expressly relies upon all of the representations and warranties set forth herein, and that if they are false, deceptive, misleading or inaccurate, the State has the right to move to vacate or set aside the

Consent Order and proceed under the original or an amended version of the State's Verified  
Petition, if the State so elects.

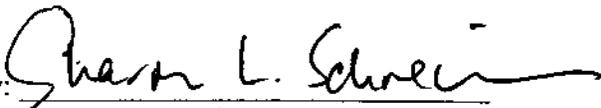
Dated: New York, New York  
August 5, 2005

EMMIS COMMUNICATIONS CORP.

By: 

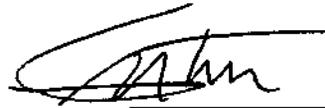
Barry Mayo  
Senior Vice President and Market Manager  
395 Hudson Street  
7<sup>th</sup> Floor  
New York, NY 10014  
Tel. (212) 229-9797

DAVIS WRIGHT TREMAINE LLP  
Attorney for Respondent

By: 

Sharon L. Schneier, Esq.  
1633 Broadway, 27<sup>th</sup>  
Floor  
New York, New York 10019  
Tel. (212) 489-8230

ELIOT SPITZER  
Attorney General of the State of New York

By: 

Francine James  
Assistant First Deputy  
Attorney General  
120 Broadway, 25<sup>th</sup> Floor  
New York, New York 10271  
Tel. (212) 416-8036