

made available on proportionally equal terms to all other customers competing with such favored customer in the distribution or resale of such products.

It is further ordered, That the effective date of this order to cease and desist be and it hereby is postponed until further Order of the Commission.

IN THE MATTER OF
WEAR-EVER ALUMINUM, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-842. Complaint, Sept. 30, 1964—Decision, Sept. 30, 1964

Consent order requiring a wholly owned subsidiary of Aluminum Company of America—the industry leader in the distribution and sale of aluminum stock pots and pans at the wholesale and retail level for the past 40 years, in December 1961, respondent put into effect a plan conditioning the sale of its said products to “Regular Food Service Equipment Dealers” upon their signing an “Authorized Dealer Agreement” and their understanding that they would purchase and display an adequate stock of WEAR-EVER’S professional cutlery, produced by an indirect subsidiary of ALCOA and of which WEAR-EVER was the exclusive distributor—to cease selling its pots and pans to hotel and restaurant supply purchasers and distributors on the condition that they agree to purchase WEAR-EVER’S cutlery or any other of WEAR-EVER’S products; and to cease engaging in any franchising, etc., which had the effect of requiring purchasers to buy said cutlery or other products as a condition to being able to deal in aluminum stock pots and pans; requiring it further to promptly advise all of its officers, agents, etc., of the full text of the instant order, to disseminate the order to all its hotel and restaurant supply dealer customers in eight named northeastern states along with a disclaimer to the effect that they would not be required to agree to purchase WEAR-EVER’S cutlery in order to obtain their requirements of pots and pans; and providing further that, should ALCOA transfer its controlling interest in respondent or WEAR-EVER brand aluminum to another subsidiary or affiliate or to itself, advise

the Commission within 90 days of such action and, in effect, secure the Commission's approval, as in detail set forth below.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, (U.S.C., Title 15, Sec. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondent named in the caption hereof and more particularly described hereinafter, has violated the provisions of said Act, and it appearing that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in respect thereto as follows:

PARAGRAPH 1. Respondent, WEAR-EVER ALUMINUM, INC., (hereinafter referred to as WEAR-EVER) a wholly owned and controlled sales subsidiary of the Aluminum Company of America, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its executive offices located at Fifth Avenue and Eleventh Street, New Kensington, Pennsylvania 15068.

ALUMINUM COMPANY OF AMERICA, (hereinafter referred to as ALCOA) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 425 Sixth Avenue, Alcoa Building, Pittsburgh, Pennsylvania 15219. ALCOA, together with its more than thirty subsidiaries, is a leading integrated producer and fabricator of aluminum and aluminum products. Among many of the various products which ALCOA fabricates and produces are aluminum cooking utensils, which include among other items: aluminum stock pots and pans. For the year ending December 31, 1962, the consolidated net sales and operating revenue of ALCOA and its subsidiaries exceeded \$938,000,000.

PAR. 2. By virtue of the following facts, among others:

(a) ALCOA directly owns and controls one hundred percent (100%) of the capital stock of WEAR-EVER:

(b) ALCOA is directly responsible for manufacturing and supplying WEAR-EVER with the aluminum stock pots and pans which WEAR-EVER sells and distributes;

(c) ALCOA is indirectly responsible, as hereinafter set forth, for manufacturing and supplying WEAR-EVER, through an indirect subsidiary, Alcas Cutlery Corporation, with the professional cutlery which WEAR-EVER sells and distributes;

ALCOA controls the present and future status of WEAR-EVER as a distinct and separate corporate entity.

PAR. 3. WEAR-EVER is primarily engaged in the distribution and sale of aluminum cooking utensils, which include, among other items, aluminum stock pots and pans, at the wholesale and retail level. Said aluminum cooking utensils are manufactured by ALCOA at New Kensington, Pennsylvania and Chillicothe, Ohio.

Additionally, WEAR-EVER is engaged in the distribution and sale of professional cutlery at the wholesale level. Professional cutlery is a separate and distinct product line and is not considered as being part of the product line encompassing cooking utensils. Said professional cutlery is manufactured by Alcas Cutlery Corporation at 1116 East State Street, Olean, New York, 14760. Alcas Cutlery Corporation is an indirect subsidiary of ALCOA in that fifty-one percent of its outstanding capital stock is owned by Alcoa Securities Corporation, Pittsburgh, Pennsylvania, which in turn is a directly wholly owned subsidiary of ALCOA. WEAR-EVER is the sole and exclusive distributor of the entire cutlery output of Alcas.

WEAR-EVER's total gross dollar volume of sales of all product lines is substantial and exceeds \$25,000,000 annually. Of this total dollar figure over \$5,500,000 constitute annual sales of all products, except cutlery, to hotel and restaurant supply dealers located throughout the United States; and over \$200,000 constitute annual sales of cutlery to the aforementioned hotel and restaurant supply dealers.

PAR. 4. For the purpose of supplying customers and making deliveries to them, WEAR-EVER ships or otherwise transports the aforementioned aluminum cooking utensils and professional cutlery, or causes the same to be shipped or transported, for sale and distribution, from the places where said products are manufactured or stored across State lines, to the customers and purchasers thereof located in the several States of the United States and in the District of Columbia. There is and has been at all times mentioned herein a continuous current or stream of trade and commerce in said products sold by WEAR-EVER between the States where WEAR-EVER's warehouses are located and among the several States of the United States and in the District of Columbia. WEAR-EVER, therefore, is engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of WEAR-EVER's business, as hereinbefore described, WEAR-EVER sells aluminum stock pots and pans and professional cutlery to several hundred hotel and restaurant supply dealers. The aluminum stock pots and pans and professional cutlery are designed for use in large kitchens and cafeterias by the professional or institutional trade in the preparation and dispensing of food on a large scale basis. The hotel and restaurant supply dealers in turn re-

sell the aforementioned products to hotels, restaurants, cafeterias, and food service facilities of federal, State and local governments. WEAR-EVER sells said products to hotel and restaurant supply dealers in direct competition with other manufacturers of aluminum stock pots and pans and other manufacturers of professional cutlery.

PAR. 6. For approximately the past forty years, WEAR-EVER, through one corporate device or another, has been engaged in selling aluminum stock pots and pans to hotel and restaurant supply dealers. "Wear-Ever" stock pots and pans are of recognized and accepted excellent quality and have a high degree of public and dealer acceptance. As a result, WEAR-EVER has been the leader in the industry in the sale of stock pots and pans. WEAR-EVER's leadership and reputation for superior quality is reflected, for example, in the fact that in many invitations to bid, (government and commercial) specifications designate by name, "Wear-Ever" aluminum stock pots and pans, or the equivalent thereof. A consequence of this desire for "Wear-Ever" stock pots and pans on the part of customers is that it is difficult to effectively compete as a hotel and restaurant supply dealer without being able to stock and sell said products.

PAR. 7. On or before 1950, WEAR-EVER introduced professional cutlery into their sales line. This cutlery, in contrast to "Wear-Ever" stock pots and pans, never achieved substantial public or dealer acceptance. Until December 1, 1961, sales with respect thereto were considered poor. During the period 1957 to December 1, 1961, WEAR-EVER's sales of professional cutlery were relatively static and remained at a level of approximately \$200,000 per annum.

PAR. 8. Before December 1, 1961, many of WEAR-EVER's hotel and restaurant supply dealers did not stock or display "Wear-Ever" professional cutlery on a regular basis. They only ordered such cutlery as needed to fulfill limited customer requests. Their customer preferences were for professional cutlery of other competing manufacturers. Additionally, said dealers had no formal written or verbal agreement or understanding with WEAR-EVER to the effect that they were franchised or authorized dealers for WEAR-EVER's products. They purchased their requirements of each line of WEAR-EVER's products as needed.

PAR. 9. Commencing on or about December 1, 1961, and continuously since that time, WEAR-EVER, in the course and conduct of its business, has used and is now using unfair methods of competition and unfair acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it has formulated, adopted

and placed into effect a plan, scheme or policy to hinder, frustrate, suppress and eliminate competition by:

(a) Conditioning the sale of aluminum stock pots and pans by WEAR-EVER to "Regular Food Service Equipment Dealers" (those customers who stock and sell a broad line of WEAR-EVER's products) upon said dealers signing an "Authorized Dealer Agreement";

(b) Conditioning the sale of aluminum stock pots and pans by WEAR-EVER to "Regular Food Service Equipment Dealers" upon said dealers agreement or understanding that they would purchase and display an adequate stock of WEAR-EVER's professional cutlery; and

(c) Conditioning the sale of aluminum stock pots and pans by WEAR-EVER to "Regular Food Service Equipment Dealers" upon said dealers agreement or understanding that they purchase one of WEAR-EVER's cutlery display plans.

PAR. 10. Through the use of various means and methods, WEAR-EVER was and is able to influence, induce, persuade, or coerce a substantial number of "Regular Food Service Equipment Dealers" to sign an "Authorized Dealer Agreement"; to agree to purchase and display an adequate stock of WEAR-EVER's professional cutlery; and to agree to purchase one of WEAR-EVER's cutlery displayer plans as conditions precedent to said dealers being able to continue to purchase from WEAR-EVER their aluminum stock pots and pans requirements. Additionally, WEAR-EVER, through the use of various means and methods, causes or has caused a substantial number of "Regular Food Service Equipment Dealers" to understand or believe that they must sign an "Authorized Dealer Agreement"; agree to purchase and display an adequate stock of WEAR-EVER's professional cutlery; and agree to purchase one of WEAR-EVER's cutlery displayer plans before they will be able to continue to purchase their requirements of WEAR-EVER's aluminum stock pots and pans from WEAR-EVER.

PAR. 11. Said "Authorized Dealer Agreement" and conditions precedent to being able to purchase WEAR-EVER's aluminum stock pots and pans have had and do now have the effect of interfering with the "Regular Food Service Equipment Dealers" freedom to choose among competing cutlery products.

PAR. 12. All the acts, practices, methods, policies or things hereinabove alleged to be done by respondent WEAR-EVER are singularly oppressive and unfair and operate to the prejudice of the public; have a dangerous tendency to unduly restrain, suppress or eliminate competition between and among respondent WEAR-EVER's cutlery competitors; have a dangerous tendency to unduly restrain, suppress or eliminate competition in aluminum stock pots and pans and cutlery in commerce;

and constitute unfair methods of competition and unfair acts or practices in commerce within the intent and meaning of § 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent herein, Wear-Ever Aluminum, Inc., with violation of the Federal Trade Commission Act, and respondent Wear-Ever Aluminum, Inc. and Aluminum Company of America having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

Respondent Wear-Ever Aluminum, Inc., and Aluminum Company of America and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent Wear-Ever Aluminum, Inc., and Aluminum Company of America of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent Wear-Ever Aluminum, Inc., and Aluminum Company of America that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Wear-Ever Aluminum, Inc. (hereinafter sometimes referred to as Wear-Ever), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at Fifth Avenue and Eleventh Street, New Kensington, Pennsylvania, 15068. Said corporation is a wholly-owned and controlled sales subsidiary of Aluminum Company of America, which latter firm is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 425 Sixth Avenue, Alcoa Building, Pittsburgh, Pennsylvania, 15219.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent Wear-Ever Aluminum, Inc., and Aluminum Company of America, and the proceeding is in the public interest.

Decision and Order

66 F.T.C.

ORDER

1. *It is ordered*, That respondent, WEAR-EVER ALUMINUM, INC., its officers, agents, representatives, salesmen, employees, successors or assigns, directly or indirectly, or through any corporate or other device, in connection with the establishment of WEAR-EVER or any other Authorized Food Service Equipment Dealerships or in connection with the promotion, contracting, arranging, or offering for sale, sale or distribution of aluminum cooking utensils which are designed for use in large kitchens and cafeterias by the professional or institutional trade in the preparation and dispensing of food on a large scale basis, known in the trade as "aluminum stock pots and pans," and cutlery, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from engaging in any of the following acts, practices, or things:

A. Offering to sell or selling such WEAR-EVER "aluminum stock pots and pans" to hotel and restaurant supply purchasers, dealers, or distributors upon the condition that said purchasers, dealers, or distributors purchase or agree to purchase WEAR-EVER's cutlery or any articles other than such "aluminum stock pots and pans" which are manufactured for, sold or distributed by WEAR-EVER; or

B. Continuing or placing into effect any contract of sale, or engaging in any franchising, merchandising, or distribution plan or policy through contracts, agreements, or understandings, either expressed or implied, with hotel and restaurant supply purchasers, dealers, or distributors which has the purpose or effect of requiring said purchasers, dealers or distributors to purchase or agree to purchase WEAR-EVER's cutlery or any other articles (except such "aluminum stock pots and pans") which are manufactured for, sold, or distributed by WEAR-EVER as a condition to being able to purchase or deal in WEAR-EVER's said "aluminum stock pots and pans."

2. *It is further ordered*, That respondent corporation WEAR-EVER ALUMINUM, INC., shall within sixty (60) days after service upon it of this Order:

A. Advise promptly, in writing, all of its officers, agents, representatives, salesmen and employees engaged in negotiating the sale of such "aluminum stock pots and pans" to hotel restaurant supply dealers or negotiating merchandising or franchising agreements with said dealers the full text of this Order and that each and every person is subject to the provision of this Order as it applies to WEAR-EVER ALUMINUM, INC.;

B. Disseminate in writing to all hotel and restaurant supply dealers or distributors located in Maine, New Hampshire, Massachusetts,

Vermont, Rhode Island, Connecticut, New York and the northern half of New Jersey, who are or were purchasers of WEAR-EVER ALUMINUM, INC.'s said "aluminum stock pots and pans," the full text of this Order as it applies to WEAR-EVER ALUMINUM, INC.:

C. Disseminate to all such dealers or distributors who are or were purchasers of WEAR-EVER ALUMINUM, INC.'s said "aluminum stock pots and pans" a written affirmative disclaimer to the effect that said purchasers will not be required to agree to purchase or maintain an adequate stock of cutlery which is manufactured for, sold or distributed by WEAR-EVER ALUMINUM, INC., in order to be able to obtain their requirements of said "aluminum stock pots and pans" or to become, maintain or retain their status as an Authorized Food Service Equipment Dealer or Distributor.

D. For the purposes of subparagraphs B and C of paragraph 2 of this Order, the term "purchasers" shall be deemed to include all present and former hotel and restaurant supply purchasers of WEAR-EVER ALUMINUM, INC.'s said "aluminum stock pots and pans" in the area specified in subparagraph B of paragraph 2 of this Order for the period beginning January 1, 1961, and continuing up to and including sixty (60) days after service upon WEAR-EVER ALUMINUM, INC., of this Order.

3. *It is additionally ordered, That:*

A. In the event ALUMINUM COMPANY OF AMERICA should divest, divorce or transfer, by whatever means, its complete or controlling interest in the ownership of the capital stock of respondent WEAR-EVER ALUMINUM, INC., to a subsidiary or affiliate, the ALUMINUM COMPANY OF AMERICA shall advise the Federal Trade Commission within ninety (90) days of such divestment, divorcement or transfer and shall be required to have as a necessary condition to any such transfer that the transferee file with the Commission's principal office within the aforesaid ninety (90) day period a report consenting to the jurisdiction of the Commission and to the terms, conditions, and prohibitions of this Order as it applies to the ALUMINUM COMPANY OF AMERICA or to prior intervening successors.

B. In the event ALUMINUM COMPANY OF AMERICA should divest, divorce or transfer, by whatever means, the business of selling "WEAR-EVER" aluminum stock pots and pans by WEAR-EVER ALUMINUM, INC., to another subsidiary, affiliate, or itself, the ALUMINUM COMPANY OF AMERICA shall advise the Federal Trade Commission within ninety (90) days of such divestment, divorcement or transfer and shall be required to have as a necessary condition to any such transfer that the transferee file with the Commission's principal office within the aforesaid ninety (90) day period a report consenting to the jurisdiction of the Commis-

Complaint

66 F.T.C.

sion and to the terms, conditions and prohibitions of this Order as it applies to WEAR-EVER ALUMINUM, INC., or to prior intervening successors to the aforementioned business of selling aluminum stock pots and pans.

It is further ordered, That the respondent WEAR-EVER ALUMINUM, INC. shall, within sixty (60) days after service upon it of this order,