It is evident that as a result of respondent's policy competitors were foreclosed from selling to over 7,500 established dealers in the replacement market.

As previously found, there are several reasons why dealers prefer to handle several lines or brands of tapered roller bearings. Because of respondent's policy, its dealers are not permitted to exercise any discretion as to the brands they will carry and sell. As a result, respondent's dealers are injured by not being able to take advantage of higher discounts offered by some competitors and lose substantial sales because they are unable to carry competitive bearings. This is illustrated by the statement of one of respondent's salesmen who, in reporting a conversation with an authorized jobber, stated:

> He further stated that he made a survey of some of these dealers (car and truck dealers) on the acceptance of Bower Bearings and he found out that they would accept Bower Bearings. He added that for that class of trade, he buys Bower but for his fleet trade and garage type of trade, he will buy Timken. He further added that he knows that we would not countenance that sort of dual buying * * *. (Commission Exhibit 29 A and B)

Under the foregoing circumstances, the appeal of counsel supporting the complaint is granted. The initial decision is set aside, and we are entering our own findings as to the facts, conclusion and order to cease and desist in conformity with this opinion.

Commissioner Mills did not participate in the decision of this matter for the reason he did not hear oral argument.

IN THE MATTER OF

NICHOLS & COMPANY, INC., ET AL.*

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 7659. Complaint, Nov. 17, 1959—Decision, Jan. 24, 1961

Order requiring an individual engaged in garnetting wool stocks on commission for other firms, to cease violating the Wool Products Labeling Act by labeling as "80% Camel Hair, 20% Wool", wool stocks which contained in part reprocessed woolen fibers, and by failing in other respects to comply with labeling requirements.

*Settled as to all other respondents by consent order dated Mar. 25, 1960 (56 F.T.C. 1122).

Mr. Garland S. Ferguson for the Commission.
Mr. Harry Carr for himself.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, on November 17, 1959, issued and subsequently served its complaint in this proceeding upon the respondents, charging them with violation of the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act. Thereafter, on February 1, 1960, all of the respondents with the exception of Harry Carr agreed with counsel supporting the complaint to a consent order to cease and desist, and on March 25, 1960 the initial decision of the hearing examiner accepting the consent agreement was adopted as the Decision of the Commission, disposing of this matter as to all of the respondents with the exception of Harry Carr.

Pursuant to notice, a hearing was held as to respondent Harry Carr on March 11, 1960, at which witnesses called by the Commission counsel were heard and a number of Commission exhibits received in evidence. Mr. Carr was afforded an opportunity to cross-examine the witnesses, to testify on his own behalf and to submit evidence. Proposed findings, conclusions and order were submitted by Commission counsel, and an opportunity was afforded respondent to do same. Several informal communications were received from the respondent which have been considered in the determination of this case as well as the formal record on file. Oral arguments on the proposed findings were held on June 13, 1960 as of which date the proceedings were closed.

Upon the whole record herein, including all exhibits received in evidence and the testimony of the witnesses as well as Mr. Carr, whose conduct and demeanor were under observation during the hearing, the examiner makes the following:

FINDINGS OF FACTS

1. Respondent Harry Carr is an individual trading and doing business as Harry Carr and as West First Processing Inc., erroneously named in the complaint as West First Processing Company. Respondent's office and principal place of business is located at 319 West First Street, South Boston 27, Massachusetts.

2. Respondent Harry Carr is engaged in the commission garnetting business, processing material belonging to others into cotton-batting-like material for further processing into cloth. In this

process, respondent's customers ship their material to him and provide labels which he affixes to the product after his processing operations are concluded. Thereafter, pursuant to the instructions of his customers, respondent ships the processed material to such mills as his customers designate.

3. Respondent is paid a stipulated price for his services. He does not purchase the stock which he processes nor does he sell same.

4. Respondent is engaged in the manufacture of wool products within the meaning of the Wool Products Labeling Act of 1939. Subsequent to the effective date of that Act and more particularly since January 11, 1958, respondent has manufactured for introduction into commerce and has transported, distributed, delivered for shipment and shipped in commerce, as "commerce" is defined in that Act, such wool product.

5. The wool products concerning which evidence was adduced at the hearing consists of two lots garnetted by the respondent upon the instructions of his customer, Nichols & Company, Inc. These lots were prepared for shipment and shipped by the respondent from his place of business in Boston, Massachusetts, to Lebanon Mills in Lebanon, New Hampshire.

6. The respondent, in the course and conduct of his business, was and is in competition in commerce with other individuals, firms and corporations likewise engaged in the manufacture of wool products.

7. Certain of said wool products garnetted and introduced into commerce by the respondent were misbranded by respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Labels or tags attached by respondent to the lots of wool products, concerning which evidence was adduced in this proceeding, showed the fiber content to be "80% Camel Hair, 20% Wool." Tests of these lots made both by a Commission expert and another showed the camel hair content by weight to be between 19 and 24 percent and the wool content to be between 75 and 80 percent. Said products contained, in part, reprocessed wool as defined in the Wool Products Labeling Act.

8. Certain of said wool products manufactured and shipped by respondent were misbranded in that they did not have affixed to them a stamp, tag, label or other means of identification showing each fiber other than wool contained in said wool stock in quantities of 5 percent or more by weight as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act. All thirteen

samples of one of the lots used by respondent in manufacturing the wool product which he shipped in commerce were tested by a Commission expert and found to contain more than 5 percent of non-wool **fibers.**

A — 84%	Wool,	16%	non-wool fibers
B — 75%	" ,	25%	" "
C — 86%	" ,	14%	Mohair
D — 52%	" ,	48%	non-wool fibers
E — 74%	" ,	26%	Mohair
F — 80%	" ,	20%	"
G — 91%	" ,	9%	"
H — 53%	" ,	47%	Camel hair
I — 93%	" ,	7%	non-wool fibers
J — 2%	" ,	98%	Camel hair
K — 2%	" ,	98%	" "
L — 42%	" ,	58%	" "
M — 85%	" ,	15%	non-wool fibers

OPINION

Harry Carr, the respondent in this proceeding, is a processor of wool stocks title to which remains in the name of his customer. The end result of his operations is not a finished product but a semi-finished product which he sends to a wool mill designated by his customer for further finishing into cloth. There is no denial, however, that the respondent performs some work upon the material and that it leaves his hands in a different state or condition from that in which it arrived. The Wool Products Labeling Act of 1939 makes unlawful and an unfair method of competition as well as an unfair or deceptive act or practice the "introduction, or manufacture for introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution, in commerce, of any wool product which is misbranded . . ." It should be noted that the various acts are stated in the disjunctive. Coverage does not depend upon a sale but may be found merely upon transportation in commerce of the misbranded product. Respondent's delivery of the product to a trucker for interstate delivery is sufficient to constitute "introduction" into commerce. In fact, the Act, in apparent recognition of that comprehensive coverage, specifically exempts common carriers or contract carriers. The Act, however, contains no exception or exemption for the type of work respondent engages in other than the guaranty provisions of Section 9. There is nothing in the record, however, indicating any receipt by respondent of a Section 9 guaranty from his supplier.

Even without such introduction into commerce, Mr. Carr's activities would be covered under the Act as a manufacturer. See *United Felt Co., et al.*, FTC D. 7132, October 21, 1959, where the Commission stated:

Respondent United Felt Co. is engaged in the manufacture of wool batting by garnetting it from raw material supplied from sources in Illinois . . . respondents have manufactured from introduction into commerce . . . .

To the same effect see also *Bolger Brothers*, FTC D. 5378 August 26, 1946.

Since the respondent has admitted that he placed the labels upon the product shipped out of the state, the only issue to be decided is whether the product was misbranded within the meaning of the Act or the Rules and Regulations thereunder. In this respect, the evidence is quite clear and, for all practical purposes, undisputed. The label specified the fiber content to be 80 percent camel hair and 20 percent wool and made no mention of the presence of reprocessed wool. Tests made upon a number of samples taken from the wool stock in question before processing showed the presence of woven material. Under the Wool Products Labeling Act the term "reprocessed Wool" means the resulting fiber when wool has been woven or felted into a wool product which, without having been ever utilized in any way by the ultimate consumer, consequently has been made into a fibrous state. By definition, therefore, it would appear that the lots in question were made, at least in part, from reprocessed wool. The same is true of the camel hair clips found in the raw material of the lots in question. Failure to indicate the reprocessed wool origin of the lots in question, therefore, constitutes a misbranding.

In addition, tests made upon the lots after shipment from respondent's plant indicate that they did not contain anything near 80 percent camel hair as specified on the labels.

Finally, the labels made no mention of the presence of non-wool fibers. Tests made on a number of samples of one of the lots used by respondent in manufacturing the wool product which he shipped in commerce, showed the presence of substantial amounts of non-wool fibers ranging from 7 to 98 percent.

None of these expert findings were disputed by the respondent who asserted simply that he knew nothing about the fiber content. Respondent's defense that he merely labeled as instructed by his customers has already been considered by the Commission and deemed without merit. See *Modern Rug Company, Inc.*, FTC D. 7373, November 11, 1959.

Accordingly, upon due consideration of the foregoing, I make the following

CONCLUSIONS

1. Respondent has misbranded wool products within the intent of meaning of Section 4(a)(1) and 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

2. The acts and practices of the respondent, all to the prejudice and injury of the public and of respondent's competition, constitutes unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

3. The Federal Trade Commission has jurisdiction of all of the respondent's acts and practices which have been hereinabove found to be violative of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Harry Carr, trading and doing business as Harry Carr and as West First Processing Inc., erroneously named in the complaint as West First Processing Company, or under any other name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen stocks or other "wool products" as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise falsely identifying such products as to the character or amount of the constituent fibers contained therein;

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The complaint in this matter charges respondents, Nichols & Company, Inc., a corporation, Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr. (erroneously named in the complaint