

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 14-0341 CAF**

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|--------------------------------|---|--------------------------------|
| <b>KEMEN AMMUNITION, INC.,</b> | § | <b>BEFORE THE OFFICE</b>       |
| <b>Complainant</b>             | § |                                |
| <b>v.</b>                      | § |                                |
|                                | § | <b>OF</b>                      |
| <b>JAGUAR LAND ROVER NORTH</b> | § |                                |
| <b>AMERICA LLC,</b>            | § |                                |
| <b>Respondent</b>              | § | <b>ADMINISTRATIVE HEARINGS</b> |

**DECISION AND ORDER**

John Gilopidis, owner of Kemen Ammunition, Inc. (“Complainant”) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2012 Range Rover Sport. Complainant asserts that the vehicle has an electrical issue that occurs intermittently. Chrysler Group LLC. (Respondent) argued that the vehicle does not have a defect that needs repair. The hearings examiner concludes that the vehicle does have a currently existing warrantable defect, and Complainant is eligible for repair relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record closed on April 6, 2015, in Austin, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by John Gilopidis, owner, in the hearing. Also present for Complainant was Paula Biehler, witness. Respondent was represented by John Chambless, Attorney with Thompson, Coe, Cousins, and Irons LLP. Present as a witness for Respondent was Arden Adler, Field Service Engineer.

**II. DISCUSSION**

**A. Applicable Law**

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.” Occupations Code § 2301.603(a) provides that “[a] manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer’s, converter’s, or distributor’s express warranty.” (Emphasis mine.) Therefore, repurchase or replacement relief for defects in a vehicle is available only for new vehicles as defined in the Code. However, relief

is available for purchasers of used vehicles under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

## **B. Complainant’s Evidence and Arguments**

Complainant purchased a used 2012 Range Rover Sport from an automobile dealer in Maryland on December 24, 2012. The vehicle’s mileage was 10,022 at the time of purchase.<sup>1</sup> At this time, Respondent’s basic express warranty is still in effect. Respondent’s new vehicle limited warranty provides coverage for four (4) years or 50,000 miles, whichever comes first.<sup>2</sup> On the date of hearing the vehicle’s mileage was 37,047.

Mr. Gilopidis testified that sometime in April of 2014, the vehicle began developing an intermittent electrical issue which affected the vehicle’s instrument panel. On occasion, the instrument panel would not function, the air conditioner would turn off, the vehicle’s turn signals wouldn’t work, and the windshield wipers wouldn’t work.

On April 15, 2104, Mr. Gilopidis took the vehicle to Respondent’s authorized dealer, Jaguar Land Rover Austin (Land Rover Austin), for repair. Mr. Gilopidis informed the dealer’s service advisor that the vehicle’s air conditioner was not cooling, the vehicle’s power windows wouldn’t roll down, and that the traction control warning light was illuminated.<sup>3</sup> The dealer’s service technician could not find any diagnostic fault codes on the vehicle’s computer system regarding the traction control warning light. In addition, the other problems did not manifest themselves during the repair visit. So, the technician determined that that the air conditioner and the windows were performing within the manufacturer’s specifications.<sup>4</sup> The vehicle’s mileage on this repair visit was 25,541.<sup>5</sup> At the time, Mr. Gilopidis was informed by a service representative that if the problem was not occurring when he took the vehicle for repair, then the technicians would not be able to find the issue. The vehicle was in the dealer’s possession for one day during this repair visit.

Within days the vehicle acted up again. Mr. Gilopidis feels that the vehicle would exhibit the behavior about once a week. When he would start the vehicle a warning light would show for a

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<sup>1</sup> Complainant Ex. 1, Vehicle Sales Contract dated December 24, 2012.

<sup>2</sup> Complainant Ex. 4, Summary of Warranties, undated.

<sup>3</sup> Complainant Ex. 2, Vehicle History Listing dated August 23, 2014, pp. 4-5.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

few seconds and then the instrument panel would be black and would not show any information. Then, if he tried to use the turn signals, windshield wipers, or the windows they would not operate. Also, the air conditioner wouldn't work. The side mirrors wouldn't open up as designed. Sometimes, the headlights wouldn't work.

Mr. Gilopidis took the vehicle back to Land Rover Austin for repair on May 5, 2014. During this visit, Mr. Gilopidis indicated to the dealer's service advisor that the vehicle's air conditioner was not cooling, that the power windows would not roll down, and that the binnacle (instrument cluster) displayed a traction control fault and a tire pressure fault.<sup>6</sup> The dealer's service technician inspected the vehicle's wiring and determined that a wire was kinked which was causing a short in the electrical system. The technician re-routed the wire and reassembled the dash, since the navigation screen and audio head unit had been removed from the center dash.<sup>7</sup> The vehicle was in the dealer's possession for approximately four to five days during this repair visit. Mr. Gilopidis was provided with a loaner vehicle during this visit. The vehicle's mileage when it was turned over to the dealer was 26,621.<sup>8</sup>

In less than a week, Mr. Gilopidis began experiencing the same problems with the vehicle. He called the dealer about the recurrence of the issues and was told to take the vehicle back in for repair. So, on May 15, 2014, Mr. Gilopidis took the vehicle back to Land Rover Austin. On this occasion, he informed the dealer's service advisor that the vehicle's navigation system, phone, and rear camera were not working on the on the navigation screen.<sup>9</sup> In addition, the tire pressure warning light was coming on.<sup>10</sup> The dealer's service technician determined that there was no communication between the vehicle's audio control module and the systems in question.<sup>11</sup> Therefore, he replaced the audio control module.<sup>12</sup> One of the issues raised by Mr. Gilopidis on this occasion was that the vehicle's rear hatch would only go down halfway. However, he did not feel that this was due to the electrical issues he was experiencing. The service technician performed a repair on the rear hatch. However, the problem later recurred and Mr. Gilopidis had to get it repaired again. The vehicle was in the dealer's possession for one day on this occasion and Mr. Gilopidis was not provided with a loaner vehicle. The mileage on the vehicle on this repair visit was 26,636.<sup>13</sup>

Within a few days, the vehicle began experiencing the same problems. So, on May 23, 2014, Mr. Gilopidis took the vehicle to Land Rover Austin again. Mr. Gilopidis informed the service

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<sup>6</sup> *Id.*, pp. 3-4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, pp. 2-3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

advisor that the tire pressure warning light illuminated and that the right front door power lock had failed to lock on three occasions, although the side mirrors had folded close as they were designed.<sup>14</sup> The service technician ran a diagnosis on the vehicle's computer system and found several stored codes indicating that the right front door was ajar.<sup>15</sup> In order to correct the issue, the technician replaced the front door latch.<sup>16</sup> The technician was not able to find any fault codes for the tire pressure warning light, so he just adjusted the tire pressure in all of the vehicle's tires in an attempt to resolve this issue.<sup>17</sup> Mr. Gilopidis was provided with a loaner vehicle for four days during this repair visit. The mileage on the vehicle at the time of the repair was 26,854.<sup>18</sup>

Mr. Gilopidis experienced further problems with the vehicle. So, on June 24, 2014, he took the vehicle back to Land Rover Austin. Mr. Gilopidis informed the dealer's service advisor that the vehicle's right side window would not roll down on occasion, that the right side mirror would sometimes not work as designed, that the air conditioner's blower would sometimes not work, and that the instrument panel would sometimes go black.<sup>19</sup> The service technician performed diagnostics on the vehicle and also performed a visual inspection on the vehicle's wiring.<sup>20</sup> He removed the left front door and found "shorted illumination wiring" which he repaired.<sup>21</sup> The technician felt that this would address all of the issues raised by Mr. Gilopidis. The vehicle was in the dealer's possession for only one day, so no loaner vehicle was needed. The mileage on the vehicle at this time was 26,949.<sup>22</sup>

Mr. Gilopidis continued to have problems with the vehicle's instrument cluster going black, the doors not locking, the windows not rolling down, the windshield wipers not working, and the side mirrors not opening and closing as designed after the June of 2014 repairs. However, he did not take the vehicle back to the dealer for more repairs. The last time prior to the hearing date that Mr. Gilopidis experienced issues with the vehicle was in February of 2015.

Mr. Gilopidis filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) regarding the vehicle effective August 25, 2014.<sup>23</sup>

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<sup>14</sup> *Id.*, pp. 1-2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, p. 1.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> File Ex. 1, Lemon Law complaint signed August 18, 2014. Although the complaint was signed by Complainant on August 18, 2014, it was not received by Texas Department of Motor Vehicles until August 25, 2014, which is the effective date of the complaint.

During cross examination, Mr. Gilopidis testified that when the problem occurs the vehicle's turn signals, air condition, and navigation system don't work. It seems to cause a "shut out" of the vehicle's electrically powered systems. If the problem occurs at night, then the vehicle's head lights sometimes will not work. This has occurred approximately two to three times between June of 2014 and February of 2015. However, Mr. Gilopidis has not taken the vehicle back to the dealer for repair. Some of the problems with the vehicle have occurred while he was driving the vehicle. On those occasions, Mr. Gilopidis had to pull over and stop the vehicle and then push the stop and start button on the vehicle in order to be able to drive the vehicle.

Paula Biehler testified that she sometimes drives the vehicle. In late March of 2015, she experienced the same type of issues with the vehicle as Mr. Gilopidis on at least three occasions. She indicated that the vehicle's instrument panel went black and the side mirrors would not turn out as designed. She thinks that the problems seem to occur more often when it was warm outside, although she did not notice any real pattern. The problems started occurring about a year and a half ago. She refuses to drive the vehicle at night due to her concern with the issues that have arisen with it.

The vehicle was inspected by the hearings examiner and the parties on the date of hearing. At the time of the inspection, the instrument panel refused to illuminate, the air conditioner did not blow cold air, and the driver's side mirror did not turn out as designed. After turning off and turning on the vehicle several times, the problems resolved themselves.

### **C. Respondent's Evidence and Arguments**

Arden Adler, Field Service Engineer, has worked for Respondent since November of 2013. He went to school at Universal Technical Institute (UTI) in Phoenix, Arizona. He has a Business Management degree from Indiana Wesleyan University. He worked for BMW for eight to ten years as a team leader and master technician. He was Automotive Service Excellence (ASE) certified. Mr. Adler did not have an opportunity to inspect the vehicle prior to the hearing date. He's not aware of any of the Respondent's field service engineers having looked at the vehicle.

Mr. Adler explained that during that the vehicle's medium speed bus can short sometimes as indicated by the repair conducted on May 5, 2014, by the Land Rover Austin's service technician. There are two wires and the wires have the communication for everything connected to the medium speed bus. So, if you want the windows to go down, you press a button which sends a signal to the bus which is then transmitted to all the modules on the bus. Whichever module needs the message will pick it up. All the modules are talking together through the bus. He feels that there may be a problem with the vehicle's medium speed bus. In addition, during the June 24, 2014, repair visit there was a wiring issue in the left front door of the vehicle. If the

same medium speed bus wires, which run to all the modules on the medium speed bus, have a problem, it will manifest similar symptoms to what's been described. If he were to repair the vehicle now, Mr. Adler testified that he would look at the instrument cluster, remove it and flex it, because of what's been described by Complainant.

Mr. Adler stated that the vehicle should be taken to the dealership for repair if it was still exhibiting problems with the electrical system.

#### **D. Analysis**

In the present case, the only remedy available to Complainant is an order to repair the vehicle under the provisions of Section 2301.204 of the Occupations Code, since the vehicle was purchased by Complainant as a used vehicle. In order to determine whether Complainant has a remedy under this section of the Occupations Code, there first has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent.

Complainant's Lemon Law complaint and his testimony specify that Complainant was concerned with an intermittent electrical issue with the vehicle. The electrical issue has caused different problems with the vehicle. Intermittently, the vehicle's air conditioner will stop working properly and will not blow cold air, the vehicle's windows will not roll up or down, the side mirrors will not open out or close properly, the turn signals will not work, the radio and navigation systems will not work, the tire pressure warning light will illuminate, the door locks will not work, and the dashboard display will go black. Several of these same issues occurred during an inspection of the vehicle at the time of hearing. The hearings examiner must hold that Complainant has met his burden of proof to establish that there is a defect or condition in the vehicle that has not been repaired by Respondent or its authorized dealers. As such, Respondent is under an obligation to repair the vehicle in order to conform it to Respondent's express warranty.

Complainant's request for repair relief is granted. Respondent is hereby ordered to determine the cause of the issues with the vehicle and perform any necessary repairs to conform the vehicle to the express warranty.

Respondent's warranty applicable to Complainant's vehicle provides coverage for four (4) years or 50,000 miles whichever comes first. Respondent is liable to repair the vehicle whenever there is any other problem covered by the vehicle's warranty.

**III. FINDINGS OF FACT**

1. John Gilopidis, owner of Kemen Ammunition, Inc. (Complainant), purchased a used 2012 Range Rover Sport on December 24, 2012, with mileage of 10,022 from an automobile dealer in Maryland.
2. The vehicle's mileage on the date of hearing was 37,047.
3. The manufacturer of the vehicle, Jaguar Land Rover North America LLC (Respondent), issued an express warranty for the vehicle for four (4) years or 50,000 miles.
4. At the time of hearing the vehicle was still under warranty.
5. In early 2014, Complainant began experiencing issues with the vehicle's electrical system.
6. Complainant's vehicle was serviced by Respondent's authorized dealer, Jaguar Land Rover Austin (Land Rover Austin) in Austin, Texas on the following dates:
  - a. April 15, 2014, at 25,541 miles;
  - b. May 5, 2014, at 26,621 miles;
  - c. May 15, 2014, at 26,636 miles;
  - d. May 23, 2014, at 26,854 miles; and
  - e. June 24, 2014, at 26,949 miles.
7. On April 15, 2014, Complainant took the vehicle to Land Rover Austin because the air condition was not cooling, the vehicle's power windows wouldn't roll down, and the traction control warning light came on. The dealer's service technician could not recreate the problems at the time, so no repairs were performed.
8. On May 5, 2014, Complainant took the vehicle to Land Rover Austin because the vehicle's air conditioner was not cooling, the power windows would not roll down, and the vehicle's binnacle displayed warning lights for a traction control fault and a tire pressure fault.
9. During the May 5, 2014, repair visit a kinked wire was determined to be causing a short in the electrical system. So, the service technician rewired the medium speed bus in order to correct the problem.

10. On May 14, 2014, Complainant took the vehicle to Land Rover Austin because the vehicle's navigation system, phone and rear camera were not working. In addition, the tire pressure warning light came on. The dealer's service technician replaced the vehicle's audio control module, since the module was not communicating with the systems in question.
11. On May 23, 2014, Complainant took the vehicle to Land Rover Austin because the tire pressure warning light came on and the right front power lock was not working properly. The dealer's service technician found some fault codes indicating that the front door was ajar and replaced the front door latch in order to resolve the issue.
12. On June 24, 2014, Complainant took the vehicle to Land Rover Austin because the vehicle's right side window would not roll down on occasion, the right side mirror would not always open up as designed, the air conditioner's blower was not blowing out cold air, and because the instrument panel would intermittently go black. The dealer's service technician determined that there was a short in the wiring in the left front door which he repaired.
13. On August 25, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On April 6, 2015, during the vehicle inspection which occurred at the time of hearing, when the vehicle was turned on the instrument panel was black, the side view mirror didn't open up, the air conditioner was not cooling, and the turn signal lights indicated they were not working, although the lights did actually come on.
15. On October 15, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
16. The hearing in this case convened and the record closed on April 6, 2015, in Austin, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by John Gilopidis, owner, in the hearing. Also present for Complainant was Paula Biehler, witness. Respondent was represented by John Chambless, Attorney with Thompson, Coe, Cousins, and Irons LLP. Present as a witness for Respondent was Arden Adler, Field Service Engineer.

**IV. CONCLUSIONS OF LAW**

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant established by a preponderance of the evidence that the vehicle currently has a verifiable defect or condition that is covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent is further **ORDERED** to determine the cause of the electrical problems with the vehicle and to **PERFORM ALL NECESSARY REPAIRS** in order to conform the vehicle to Respondent's express warranty.

**SIGNED April 20, 2015**

  
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**EDWARD SANDOVAL, HEARINGS EXAMINER  
OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS DEPARTMENT OF MOTOR VEHICLES**