

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0010 CAF**

STEFAN KIEDELS,
Complainant

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BEFORE THE OFFICE

v.

OF

FORD MOTOR COMPANY,
Respondent

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Stefan Kiedels (Complainant) seeks repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for an alleged defect in his 2013 Ford F-150. He asserts that a defect in the vehicle causes excessive brake shudder. Ford Motor Company (Respondent) argues that the complained-of condition is consistent with the expected ride quality of a light-duty pickup truck. The hearings examiner concludes that a preponderance of the evidence does not establish the existence of a warrantable defect in Complainant's vehicle. Accordingly, Complainant is not eligible for repurchase relief under the Texas Lemon Law.

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 on the merits in this case convened and closed on January 6, 2015 in Houston, Texas, with Hearings Examiner Anne K. Perez presiding. Complainant appeared and represented himself. Respondent appeared telephonically through Consumer Affairs Legal Analyst Melinda Steiner.

II. DISCUSSION

A. Applicable Law

The manufacturer of a motor vehicle must repurchase or replace the vehicle with a comparable vehicle if five conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair or correct a defect or condition in the vehicle. Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of

attempts to repair or correct the defect or condition.¹ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.² Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.³

A “serious safety hazard” is a life-threatening malfunction or defect that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.⁴ A rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty if the defect creating a serious safety hazard continues to exist after being subject to repair two or more times and: (1) one of the repair attempts was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (2) at least one other repair attempt was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.⁵

If a defect is not hazardous but substantially impairs the use or market value of the vehicle, a complainant may establish the same rebuttable presumption under Texas Occupations Code § 2301.605(a)(1). In the absence of controverting evidence, it is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same defect continues to exist after being subject to repair four or more times and: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.⁶

B. Complainant’s Evidence

Complainant purchased a new 2013 Ford F-150 (the vehicle, or truck) from Westway of Irving, Texas on February 26, 2014, with mileage of three (3) at the time of delivery.⁷ On the same date, Respondent issued a basic limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for 36 months or 36,000 miles, whichever occurs first. Respondent’s basic limited warranty excludes maintenance items, except: (1) wheel alignments and tire balancing are covered during the first 12 months or 12,000 miles, whichever occurs first; and (2) brake pad/lining replacements are covered during the first 12 months or 18,000 miles, whichever occurs first.⁸

¹ Tex. Occ. Code § 2301.604(a)(1) and (2).

² Tex. Occ. Code § 2301.606(c)(1).

³ Tex. Occ. Code § 2301.606(c)(2).

⁴ Tex. Occ. Code § 2301.601(4).

⁵ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

⁷ Complainant Ex. 1, Purchase Agreement.

⁸ The parties stipulated to the terms of Respondent’s basic limited warranty and brake warranty applicable to the vehicle.

Complainant testified that he recognized a slight vibration in the truck's brakes soon after purchase. More specifically, when he "taps" on the brakes to slow the vehicle down "it feels like the street is bumpy," regardless of road surface (e.g., black-top, concrete, etc.). He described the sensation as a brake "shudder." He contacted Tomball Ford of Tomball, Texas about the issue and was told that the brakes were warranted for only 12,000 miles. He was busy, and unable to schedule the vehicle for service until mid-July 2014, at 11,539 miles. At that time, technicians "skimmed the rotors," but he noticed the brake shudder while driving away from the dealership.

This time he did not delay in contacting Tomball Ford. He reported that the repairs performed in July 2014 had not cured the truck's braking problem, but the dealer "put him off." He was told that the service manager had to approve any further repairs, but she was on vacation. Several weeks passed. The dealer eventually agreed to replace the vehicle's brake assembly, a repair that was performed in August 2014.

Tomball Ford's repair orders for Complainant's truck reflect the following information:⁹

Date	Mileage	Reported Concern	Dealer's Findings & Actions
7-10-14	In 11,539 Out 11,539	Brakes [are] vibrating	Test drove to confirm; Performed inspection; Tire tread, wear pattern, and pressure checked, all ok; left & right front brake linings both at 8/32, ok; left & right rear brake linings both at 7/32, ok; found front rotors had 6 to 9 thousandths run out; machined both front rotors; resurfaced front [brake] pads, test drove to confirm repair; right front rotor b/4 machining at 34.03 mm, after: 33.82 mm; left front rotor b/4 machining at 33.97 mm, after: 33.62 mm
8-12-14	In 14,131 Out 14,131	Brakes still shuddering, shaking in steering, slight braking, higher speeds not so noticeable	Charged customer \$216.60 for "Rotor Assembly," no other details provided

Complainant testified that the repairs performed in August 2014 did not resolve the defective condition of his truck's brakes. He candidly admitted that he lacks expertise in automotive technology. Still, his

⁹ The repair orders were admitted as Complainants Exs. 3 and 4. Invoiced information has been summarized in the table for ease of reference.

prior history of vehicle ownership includes 19 different models, most recently another 2013 Ford F-150 virtually identical to his current truck.¹⁰ Although he could not say that the “shudder” affects brake performance, none of his previous vehicles exhibited this characteristic. But his experience with vehicles tells him that there is an existing problem with the truck’s brake system.

Following the August 2014, service visit, Complainant tried to address the issue with Tomball Ford, but the lack of positive outcome convinced him to pursue another means of relief. On September 5, 2014, he mailed written notice to Respondent of a defect in the truck’s braking system.¹¹ And, on September 16, 2014, he filed a Lemon Law complaint against Respondent with the Texas Department of Motor Vehicles, alleging the presence of an abnormal brake shudder.¹²

Complainant recalled that Respondent’s Field Service Engineer (FSE) examined the vehicle’s brakes in October 2014, but “the conclusion was the same,” *i.e.*, the FSE concluded that truck’s brake system was functioning as designed. Complainant indicated that he continues to disagree with this assessment.

Complainant stated that the shudder is most prominent after the vehicle has been traveling at highway speeds for a long period of time (*e.g.*, more than 100 miles), and the brakes are “tapped” to reduce vehicle speed to 50 mph, or less; while the engine’s revolutions per minute (RPM) are somewhere between 1000 and 2000, he said the vibration coming through the brake system can be felt in the steering column, if not the entire vehicle. He indicated that the phenomena is much easier to observe on a smooth, black-top road surface.

The hearing included a test drive of the vehicle. Mileage was at 25,386. For approximately 30 minutes, Complainant and Mr. Jay took turns driving the truck on local freeways and residential streets. Due to traffic congestion and time constraints, Complainant was unable to demonstrate the vehicle’s brake shudder under optimal conditions (*i.e.*, traveling 100-plus miles at highway speeds, then braking to reduce speed to 50 mph, or less while traveling on a smooth road surface). Although Complainant stated that the complained-of vibration was present during the test-drive, he acknowledged that the source of vibration could be the brakes, or “the engine pushing.”

C. Respondent’s Evidence

Respondent offered the testimony of its FSE Brian Jay.

Mr. Jay testified that on October 23, 2014, he inspected Complainant’s vehicle at Tomball Ford in response to the Lemon Law complaint. On that date, he test-drove the truck on freeways, an interstate

¹⁰ Complainant testified that his previous 2013 Ford F-150 was equipped with a V-8 engine; he sold the truck after it was involved in an accident. Complainant’s current 2013 Ford F-150 has a standard EcoBoost V-6 engine.

¹¹ Complainant Ex. 5.

¹² Complainant Ex. 2.

highway, frontage roads, and residential streets. He engaged in “aggressive braking” on the highway “to heat the brakes up.” He observed no problems in brake performance during these maneuvers. He drove on both rough and smooth road surfaces. He recalled noticing “bumpiness in the road” during the test-drive, but said the experience was present whether the brake pedal was engaged or not, *i.e.*, the sensation of “bumpiness” was not the result of brake function, but rather the vehicle’s rough ride-quality. After completing a 22-mile test-drive, Mr. Jay was unable to confirm the existence of an abnormal brake “shudder.”

Back at the dealership the truck was put on a lift so that Mr. Jay could examine the tires and check for proper inflation. He said there was quite a bit of tread left on the tires, the wear pattern was fine, and the tires were properly inflated. Although Mr. Jay concluded that the tires were not the source of Complainant’s concern, he noted that the truck 20” tires do not “ride as well” as 16” or 18” tires, *i.e.*, the increased sidewall-exposure in larger tires results in harsher ride-quality.

Mr. Jay acknowledged that his inspection and test-drive of Complainant’s truck on October 23, 2014 took place after Tomball Ford first machined, then replaced the vehicle’s front brake rotors. He offered no comment on the necessity of those repairs. Based on his inspection of October 23, 2014, as well as the test-drive conducted at hearing, however, his conclusion was the same: the truck’s brake system is functioning exactly as designed, and no repairs are necessary.

In the end, Mr. Jay emphasized that Complainant’s truck is not a luxury vehicle: it has a Gross Vehicle Weight Rating of 7100 pounds, it is rated for towing, and while its 20” tires may be ideal for towing the end result is a noisier, rougher ride. Further, the ride of a 2013 Ford F-150 is similar to other trucks in its class. Complainant might prefer a vehicle with a smoother ride, but the truck’s complained-of vibration is not the result of a defect in the braking system.

D. Analysis

In order to prevail in his request for repurchase relief, Complainant must show by a preponderance of the evidence that Respondent has not conformed his vehicle to an applicable express warranty because Respondent cannot repair a defect in the vehicle. In addition, Complainant must show that the nonconformity creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Neither of these statutory elements were established by the required standard of proof.

Complainant credibly testified that he often feels vibration, or a shuddering sensation in the truck’s brakes; the condition is most prominent when braking to reduce vehicle speed to 50 mph or less, after the truck has been traveling at highway speeds for an hour or two. He has owned many different types of vehicles, including another 2013 Ford F-150 almost identical to his current truck, and none of his previous vehicles exhibited a similar brake shudder. The logical conclusion is that something is wrong with the truck’s brake function.

Complainant drives his vehicle every day, and his perception of the truck's performance is entitled to quite a bit of weight. On the other hand, he acknowledged several important facts. He does not possess any specialized knowledge of automotive technology. As a result, he does not know whether the source of the complained-of vibration is the brakes, or "the engine pushing." Engine-related vibration is present to some extent in all vehicles, and it is closely related to ride quality. As noted by Mr. Jay, Complainant's 2013 Ford F-150 is marketed as a "working" truck, and it has a relatively "rough" ride. Engine-related vibration is a characteristic of the vehicle, rather than a defect.

The evidence does not establish that the complained-of vibration is the result of a defect in the truck's braking system. More likely than not, the unwanted vibration comes from the vehicle's engine. Beyond the exact source, however, is the lack of evidence establishing that the vibration adversely affects brake performance, or for that matter, engine performance. Again, Complainant is required to show that an existing defect in the vehicle creates a serious safety hazard, or substantially impairs the use or market value of the vehicle. The required standard of proof has not been met in this case.

In summary, a preponderance of the evidence does not demonstrate that a warrantable defect in Complainant's vehicle currently exists. Rather, the evidence supports the conclusion that the vehicle is operating as designed, that no repairs are needed, and that no safety concerns are present. The use and market value of the vehicle are unaffected by the complained-of condition.

III. FINDINGS OF FACT

1. Stefan Kiedels (Complainant) purchased a new 2013 Ford F-150 (the vehicle, or truck) from Westway of Irving, Texas on February 26, 2014, with mileage of three (3) at the time of delivery.
2. Ford Motor Company (Respondent) manufactured the truck.
3. On February 26, 2014, Respondent issued a basic limited warranty for the vehicle covering defects in factory-supplied materials and workmanship for 36 months or 36,000 miles, whichever occurs first.
4. Respondent's basic limited warranty applicable to the vehicle excludes wear and maintenance items, except that: (1) wheel alignments and tire balancing are covered during the first 12 months or 12,000 miles, whichever occurs first; and (2) brake pad/lining replacements are covered during the first 12 months or 18,000 miles, whichever occurs first.
5. The vehicle's mileage on the date of hearing was 25,386.

6. At the time of hearing, the vehicle was covered by Respondent's basic limited warranty, but wheel alignments, tire balancing, and brake pad/lining replacements are no longer covered due to the vehicle's mileage.
7. Within a few months of purchase, Complainant recognized a slight vibration, or "shudder" in the truck's brakes. The shudder is most prominent and can be felt in the steering column, after the vehicle has been traveling at highway speeds for a long period of time (*e.g.*, more than 100 miles), and the brakes are "tapped" to reduce the vehicle's speed to 50 mph, or below.
8. Complainant's reports of brake shudder to an authorized dealer of Respondent resulted in the following repairs to the vehicle:
 - a. On July 10, 2014, at 11,539 miles, the front brake rotors were machined; and
 - b. On August 12, 2014, at 14,131 miles, the front brake rotors were replaced.
9. On October 23, 2014, Respondent's Field Service Engineer (FSE) inspected Complainant's vehicle, focusing on the brake system and tires. The FSE conducted a 22-mile road test of the truck over residential streets and highways, inclusive of "aggressive braking" maneuvers. No problems in brake performance or abnormal vibration was noted by the FSE.
10. The engine, rather than the brake system, is the most likely source of unwanted vibration in Complainant's vehicle.
11. Engine-related vibration is a determining factor of ride quality.
12. Complainant's vehicle is considered a "working" truck; it is rated for towing and has a Gross Vehicle Weight Rating of 7100 pounds. It is also equipped with 20" tires. The high load rating of the truck's 20" tires may be ideal for towing, but the end-result is a noisier, rougher ride.
13. Engine-related vibration is characteristic of Complainant's vehicle.
14. The complained-of vibration in the vehicle is not the result of a warrantable defect.
15. The complained-of vibration in the vehicle does not create a safety hazard.
16. The complained-of vibration does not substantially impair the vehicle's use or market value.
17. On September 5, 2014, Complainant mailed written notice to Respondent that the truck's brake system was defective.

18. On September 16, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department). His petition alleged the presence of an abnormal brake shudder in the vehicle.
19. On November 3, 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.
20. The hearing convened on January 6, 2015 in Houston, Texas, with Hearings Examiner Anne K. Perez presiding. Complainant appeared and represented himself. Respondent appeared telephonically through Consumer Affairs Legal Analyst Melinda Steiner. The hearing concluded and the record closed that same day.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
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 failed to prove by a preponderance of the evidence that the vehicle has a verifiable defect or condition that presents a serious safety hazard, or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
6. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

SIGNED February 13, 2015.



ANNE K. PEREZ
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES