

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0092 CAF**

BRIAN HIGGINS,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
KIA MOTORS AMERICA, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Brian Higgins (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his used 2012 Kia Soul. Complainant asserts the vehicle’s stop/start button sometimes does not work properly and, as a result, the vehicle will not always start when needed and sometimes the engine will not turn off. Kia Motors America, Inc. (Respondent) argued that the vehicle has been repaired. The hearings examiner concludes that the vehicle does not have an existing warrantable defect, and Complainant is not eligible for 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 on March 12, 2015, in Mesquite, Texas before Hearings Examiner Edward Sandoval. Complainant represented himself in the hearing. Respondent was represented by Chris Besser, District Parts and Service Manager. The hearing record was closed on March 12, 2015.

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 2012 certified, pre-owned Kia Soul from Central Kia of Lewisville (Central Kia), in Carrollton, Texas on June 27, 2013. The vehicle had mileage of 22,659 at the time of purchase.¹ At this time, Respondent's warranty coverage for the vehicle remains in place, with coverage for five (5) years or 60,000 miles, whichever comes first. In addition, Respondent has provided a powertrain warranty for the certified, pre-owned vehicle for ten (10) years or 100,000 miles.² Both of the warranties apply from the vehicle's original in-service date.

Mr. Higgins testified that the vehicle has had intermittent start and stop problems. The vehicle is equipped with a push button start/stop system. Sometimes the vehicle will not start when the start button is pushed. Also, there have been instances in the past when the vehicle would not turn off when the start/stop button was pushed.

Mr. Higgins indicated that the first time that he had trouble with the vehicle was on August 7, 2013. He attempted to start the car and it would not start. He kept pushing the start/stop button and after about five minutes the vehicle started. Mr. Higgins drove the vehicle to his destination and when he arrived at the location, the vehicle would not turn off. Again, after about five minutes of pushing the start/stop button the vehicle finally turned off. Mr. Higgins called the dealer about the issue. Mr. Higgins took the vehicle to the dealer, Central Kia, the following day, August 8, 2013. The dealer's service technician was able to duplicate the issue: "verified customer concern, have to push start botton [*sic*] multiple times for vehicle to start, put acc, or to turn vehicle off."³ The vehicle's smart key button and switch assembly were replaced during this repair visit. The vehicle was in the dealer's possession for four days at this time. Mr. Higgins was provided with a loaner vehicle while his vehicle was being repaired. The vehicle's mileage at the time he turned it over to the dealer was 24,062.⁴

In December, Mr. Higgins again had a problem turning the vehicle off after driving it to his house. In addition, he had trouble starting the vehicle the next time he wanted to drive it. He took the vehicle to Central Kia in Plano on December 2, 2013, in order to address the problem. The dealer's service technician was unable to duplicate the problem, so no repairs were performed. The vehicle was in the dealer's possession for one day on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired. The vehicle's mileage when Mr. Higgins presented it to the dealer was 29,623.⁵

¹ File Ex. 2, Vehicle Service Contract Declarations Page dated June 27, 2013.

² File Ex. 3, Certified Pre-Owned Vehicle Limited Warranty dated February 5, 2015.

³ File Ex. 4, Repair Order dated August 8, 2013.

⁴ *Id.*

⁵ File Ex. 5, Repair Order dated December 2, 2013.

A couple of days later, Mr. Higgins took the vehicle back to Central Kia because he couldn't turn the vehicle's engine off. Mr. Higgins testified that he removed a fuse from the vehicle in order to get the engine to turn off. Complainant took the vehicle to the dealer on December 5, 2013, in order to have them address the issue. The dealer's service technician determined that there might have been paint on one of the ignition wires that was preventing the vehicle from starting. The technician cleaned and removed debris from the wire in order to correct the issue.⁶ The mileage on the vehicle when Complainant took it to the dealer was 29,764.⁷ The vehicle was in the dealer's possession for six days during this repair visit. Complainant was provided with a rental vehicle while his vehicle was being repaired.

Almost a year later, Complainant experienced another incident where the vehicle failed to start. The internal lights came on, but nothing else would turn on. When the vehicle didn't start, Complainant tried to jump start it. However, the jump start did not work and Complainant was unable to start the vehicle. Complainant had the vehicle towed to Central Kia on November 14, 2014. The dealer's service technician determined that the button that was supposed to start the vehicle had "shorted internally."⁸ The start/stop button and the main relay were replaced in order to repair the vehicle.⁹ The vehicle's mileage when it was delivered to the dealer on this occasion was 46,146.¹⁰ The vehicle was in the dealer's possession for one day. Complainant was provided with a loaner vehicle on this occasion.

Complainant filed a Lemon Law complaint regarding the vehicle effective November 21, 2014.¹¹ He also mailed a letter to Respondent on November 17, 2014, informing them of Complainant's concerns with the vehicle.¹²

Mr. Higgins initially testified that Respondent did not perform a final repair attempt on the vehicle. However, he then recalled that a final repair attempt took place on December 5, 2014, where it was inspected by Respondent's technician. The mileage on the vehicle on this occasion was 46,803.¹³ Complainant was provided with a loaner vehicle while the final repair attempt was performed.

⁶ File Ex. 6, Repair Order dated December 5, 2013.

⁷ *Id.*

⁸ File Ex. 7, Repair Order dated November 14, 2014.

⁹ *Id.*

¹⁰ *Id.*

¹¹ File Ex. 8, Lemon Law complaint signed November 17, 2014. Although the complaint was signed by Complainant on November 17, 2014, it was not received by Texas Department of Motor Vehicles until November 21, 2014, which is the effective date of the complaint.

¹² File Ex. 9, Letter to Kia Motors America, Inc. dated November 17, 2014.

¹³ File Ex. 10, Repair Order dated December 5, 2014.

Complainant has not had any issues with the vehicle failing to start or stop since either the last repair visit on November 14, 2014, or after the final repair attempt on December 5, 2014.

C. Respondent's Evidence and Arguments

Chris Besser, District Parts and Service Manager, has worked in the automobile industry for thirty years. He worked for American Honda prior to working for Respondent. He's worked in service and service management positions with both companies. Mr. Besser first became involved with the complaint in question in January of 2015.

Mr. Besser testified that Respondent performed a final repair attempt on the vehicle on December 5, 2014. In October of 2014, Respondent had issued Technical Service Bulletin (TSB) 055 which addressed the issue of certain vehicles' intermittent issue of not cranking or not starting. TSB's are issued when certain issues with vehicles start trending. In those situations, Respondent's engineers will attempt to determine what might be causing the problem and develop a fix and to provide dealer's technicians with an idea of what might be causing the issue. In this case, Respondent determined that there could be an issue with the vehicle's inhibitor switch. The TSB recommended that when a vehicle doesn't crank or start, then the inhibitor switch should be replaced or adjusted. During the final repair attempt that occurred on December 5, 2014, Richard Peralta, Field Technical Representative, adjusted the inhibitor switch on Complainant's vehicle. Respondent feels that Complainant's concerns have been addressed and the vehicle is now repaired.

Mr. Besser testified that the base bumper to bumper warranty for Complainant's vehicle was for five years or 60,000 miles. The powertrain warranty only applies to the original purchaser. However, because the vehicle is a certified, pre-owned vehicle, Complainant received a twelve month, 12,000 mile warranty that covers everything in the vehicle in the event that the original warranty expired before the purchase of the vehicle. In addition, Complainant was also provided with a powertrain warranty for ten years or 100,000 miles beginning the date of the original purchase of the vehicle.

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 the intermittent failure of the vehicle to turn on and turn off. This occurred four different times over the year and a half after Complainant purchased the vehicle. The evidence presented at the hearing indicates that the repairs performed either during the November 14, 2014, repair visit or the final inspection and repair attempt on December 5, 2014, have probably addressed Complainant's concern, since the vehicle has not failed to turn on or turn off since those repairs. Therefore, it appears that the defect or condition has been repaired and is no longer grounds for relief. However, if the problem with the vehicle's start/stop button recurs, Respondent is under an obligation to repair the vehicle under the warranty.

Respondent's warranty applicable to Complainant's certified, pre-owned vehicle provides coverage for five (5) years or 60,000 miles whichever comes first. In addition, Respondent's powertrain warranty provides coverage for ten (10) years or 100,000 miles from the date of original purchase, whichever comes first. Respondent is liable to repair the vehicle whenever there is any other problem covered by their warranties.

Complainant's request for repair relief is denied.

III. FINDINGS OF FACT

1. Brian Higgins (Complainant) purchased a certified, pre-owned 2012 Kia Soul on June 27, 2013, from Central Kia of Lewisville in Carrollton, Texas with mileage of 22,659 at the time of purchase.
2. The manufacturer of the vehicle, Kia Motors America, Inc. (Respondent), issued a warranty for the vehicle for five years or 60,000 miles and a powertrain warranty for ten years or 100,000 miles from the vehicle's original in-service date.
3. Complainant filed the Lemon Law complaint because the vehicle refused to turn on and/or turn off on at least four different occasions.
4. On August 7, 2013, Complainant's vehicle would not start for about five minutes, although Complainant kept pushing the start/stop button. When Complainant arrived at his destination, the vehicle would not turn off for about the same amount of time, although he was pushing the start/stop button.
5. Complainant took the vehicle to Respondent's authorized dealer, Central Kia of Lewisville, in Carrollton, Texas on August 8, 2013, for repair. The vehicle's mileage at the time was 24,062. The vehicle's smart key button was replaced during the repair visit.

6. In December of 2013, Complainant had trouble turning off the vehicle despite pushing the vehicle's start/stop button.
7. Complainant took the vehicle to Central Kia for repairs on December 2, 2013. The reported mileage for the vehicle at this time was 29,623. No repairs were performed on this visit because the service technician could not duplicate the concern.
8. On December 5, 2013, Complainant took the vehicle to Central Kia for repair because the vehicle would not turn off. On this occasion, Complainant had to remove a fuse from the vehicle in order to turn off the engine. The vehicle's mileage on this occasion was 29,764.
9. During the December 5, 2013, repair visit, the dealer's service technician determined that there was paint on one of the ignition wires, so he cleaned the wire and removed debris from it.
10. On November 13, 2014, Complainant attempted to start the vehicle, but it refused to start.
11. On November 14, 2014, Complainant had the vehicle towed to Central Kia for repair. The dealer's service technician determined that the vehicle would not start due to a short in the start/stop button. So, the button and the main relay were replaced. The vehicle's mileage on this occasion was 46,146.
12. On November 21, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. Respondent performed a final repair attempt on the vehicle on December 5, 2014. The mileage on the vehicle was 46,803.
14. During the final repair attempt, Respondent's field technical representative adjusted the vehicle's inhibitor switch pursuant to the instructions of Respondent's Technical Service Bulletin 055.
15. The concerns raised by Complainant in Findings of Fact No. 3 have not recurred since the final repair attempt of December 5, 2014.

16. On December 17, 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.
17. The hearing in this case convened on March 12, 2015, in Mesquite, Texas before Hearings Examiner Edward Sandoval. Complainant represented himself in the hearing. Respondent was represented by Chris Besser, District Parts and Service Manager. The hearing record was closed on March 12, 2015.

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 failed to prove by a preponderance of the evidence that the vehicle 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 relief pursuant to Texas Occupations Code § 2301.204 is hereby **DISMISSED**.

SIGNED March 23, 2015



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