

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0361 CAF**

ANN TRAN,
Complainant

v.

TESLA MOTORS, INC.,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Ann Tran (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2014 Tesla Model S. Complainant asserts that the vehicle is defective because she hears a noise around the vehicle's sun roof when she's driving and because logos on the floor mats keep coming off. Tesla Motors, Inc. (Respondent) argued that the vehicle does not have any defects and that no relief is warranted. 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 and the record was closed on January 28, 2016, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant represented herself at the hearing. Testifying telephonically for Complainant was her friend, Robert Duong. Respondent was represented telephonically by Hiroshi Nogami, Respondent's Chief Counsel. Patrick Hernandez, Service Manager for the Houston service center, testified for Respondent.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or

¹ Tex. Occ. Code § 2301.604(a).

condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) 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 (2) 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 and Arguments

1. Ann Tran's Testimony

Complainant purchased a new 2014 Tesla Model S online on May 30, 2014.⁷ The vehicle's mileage at the time of delivery was 11.⁸ Respondent provided a new vehicle limited warranty for the vehicle for four (4) years or 50,000 miles, whichever comes first.⁹ On the date of hearing the vehicle's mileage was 40,639.

Complainant testified that in early November of 2014, she began to notice a "cracking" noise from the vehicle's sunroof area. The noise did not seem to be localized to one spot. So, on November 3, 2014, Complainant took the vehicle to Respondent's service center for repair. The service technician verified the noise and determined that it came from the headliner area above

² *Id.*

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁷ Complainant Ex. 1, Motor Vehicle Purchase Agreement dated May 30, 2014.

⁸ Complainant Ex. 2, Invoice dated September 24, 2014.

⁹ Complainant Ex. 12, Tesla Warranty Manual.

the driver's seat.¹⁰ The technician determined that the headliner was not fully secured, so he secured it fully.¹¹ Complainant also informed the service technician that the logos on the vehicle's all-weather mats had come off. The technician cleaned the logos and adhered them to the mats in order to effectuate the repair.¹² The vehicle's mileage when Complainant took it to Respondent's service center on this occasion was 4,516.¹³ The Complainant was provided with a loaner vehicle while her vehicle was being repaired. The vehicle was in the service center's possession for one (1) day.

Complainant testified that the vehicle was fine for about a week, but then she started hearing a "squeaking" noise from the area around the sunroof. She returned the vehicle to Respondent's service center on January 15, 2015. On this occasion, the service technician adjusted the sunroof's latching tab and applied noise softening tape to reduce the contact between the moving glass and front bracket.¹⁴ The vehicle was at the service center for two (2) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired. The mileage on the vehicle on this occasion was 12,486.¹⁵

Complainant stated that she did not hear any noises from the sunroof area for about a week or two. However, she then began to hear squeaking, rattling, and cracking noises. She took the vehicle back to Respondent's service center on April 27, 2015. The service technician determined that the noises were coming from the front and from the rear sides of the panoramic roof.¹⁶ The technician adjusted the front latching tab and reinsulated the sunroof area.¹⁷ In addition, noise was found to be coming from the C-pillar brightwork on both sides of the vehicle.¹⁸ To address the noise from the vehicle's pillars, the technician applied Loctite to both C-pillars' brightworks.¹⁹ The vehicle was in the service center for repair for one (1) day. Complainant was provided with a loaner vehicle during this repair visit. The mileage on the vehicle at the time Complainant took it for repair on this occasion was 20,161.²⁰

¹⁰ Complainant Ex. 3, Invoice dated November 5, 2014.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex. 4, Invoice dated January 17, 2015.

¹⁵ *Id.*

¹⁶ Complainant Ex. 5, Invoice dated April 28, 2015.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

On July 6, 2015, Complainant took the vehicle to Respondent's service center because the floor mat logos had come off. Respondent replaced the floor mats in order to alleviate Complainant's concern.²¹ The vehicle's mileage on this occasion was 24,861.²²

Complainant testified that she began to again hear the noises when driving the vehicle. On July 18, 2015, Complainant took the vehicle to Respondent's service center for repair. Complainant testified that her concern was with noise from the sunroof area on this occasion. However, the invoice indicates a noise from the left front window glass.²³ The service technician lubricated the sunroof tubes and added insulation.²⁴ The vehicle was in the service center for two (2) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired. The mileage on the vehicle when Complainant took it for repair on this occasion was 25,503.²⁵

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on August 18, 2015.²⁶ In addition, Complainant mailed a complaint letter on August 8, 2015, to Respondent outlining her unhappiness with the vehicle.²⁷

Complainant took the vehicle to Respondent's service center on September 3, 2015, after filing the Lemon Law complaint. Complainant informed the service technician that she was hearing a "rattle" noise from the front of the panoramic roof near the latching tabs.²⁸ The technician replaced and repaired several components in order to address Complainant's concern. The technician performed the following repairs: replaced the panoramic sunroof drive cables on both sides of the vehicle, replaced the panoramic sunroof side appliques on both sides of the vehicle, replaced the panoramic sunroof driver motors on both sides of the vehicle, replaced the panoramic fixed glass seal, installed anti-noise washers on moving glass bolts, replaced the four (4) panoramic moving glass links, performed a panoramic sunroof calibration, and installed foam to the headliner area to prevent further noise.²⁹ In addition, Respondent replaced the vehicle's all-

²¹ Complainant Ex. 6, Invoice dated July 7, 2015.

²² *Id.*

²³ Complainant Ex. 7, Invoice dated July 21, 2015.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Complainant Ex. 10, Lemon Law Complaint. Complainant signed and dated the complaint on August 8, 2015. However, the complaint was not received by the Texas Department of Motor Vehicles until August 18, 2015, which is the effective date of the complaint.

²⁷ Complainant Ex. 8, Letter to Tesla Motors, Inc. dated August 8, 2015.

²⁸ Complainant Ex. 11, Invoice dated September 3, 2015.

²⁹ *Id.*

weather floor mats to address the issue of the logos coming off the floor mats.³⁰ The mileage on the vehicle on this visit to the service center was 28,747.³¹

Complainant testified that she was not contacted about Respondent's desire to perform a final repair attempt on the vehicle until about three (3) or four (4) days prior to the scheduled hearing. Complainant indicated that she informed Respondent's representative that she preferred to have the Lemon Law hearing before any repairs were attempted.

Complainant testified that she has continued to hear the crackling, squeaking, rattling noise from the area around the vehicle's sunroof. She stated that she hears the noise every time she drives the vehicle. However, the noise does not occur as often when she's driving on freeways in the city. In addition, she testified that the logos on the floor mat have come off again.

During cross-examination, Complainant testified that the vehicle's function has not been impaired. All of the repairs were done for the noise that she was hearing from the sunroof area. Complainant also testified that the floor mats were purchased separately from the vehicle.

2. Robert Duong's Testimony

Robert Duong is Ms. Tran's friend and has been involved in many of the repair attempts for the vehicle. He testified that he has heard squeaking from the vehicle's sunroof, behind the rear view mirror, and the B-pillar. Mr. Duong drove the vehicle to Respondent's service center on some occasions. He would mark the areas from which he was hearing noises with blue painter's tape in order to help the technicians find the areas of concern. In addition, he would take test drives with the technicians to verify the noises that he and Complainant were hearing.

Mr. Duong testified that the noise occurs frequently. The location of the noise varies. However, he usually would not hear it immediately after a repair was performed.

Mr. Duong also testified that the logos have come off of the vehicle's all-weather floor mats. The mats were an after-market purchase, but were sold by Respondent.

In August of 2015, Mr. Duong wrote some e-mails to Respondent's representatives notifying them of Complainant's and his dissatisfaction with the vehicle. He was concerned by the fact that he never received a response to those e-mails.

³⁰ *Id.*

³¹ *Id.*

During cross-examination Mr. Duong testified that the vehicle functioned properly. However, there was a prior door handle issue which was resolved. He has not changed his e-mail address or phone number.

C. Respondent's Evidence and Arguments

Patrick Hernandez is the service manager for Respondent's Houston service center. He testified that the problems complained of by Complainant do not raise any functionality issues with the vehicle. The vehicle drives as designed despite the noises heard by Complainant. Mr. Hernandez also testified that Respondent's warranty excludes coverage for normal noise and vibration in the vehicle.³² However, Respondent's policies require that they make an attempt to address any issue raised by customers, regardless of whether the issue is covered by warranty. That's why the service center made several attempts to address Complainant's concerns regarding the noise from the sunroof area of the vehicle. Mr. Hernandez also stated that the vehicle's all-weather floor mats were purchased separately after the vehicle was initially purchased and were not covered by warranty.

Mr. Hernandez stated that Respondent had reached out several times to Complainant to attempt a final repair attempt on the vehicle, but had not received a response.

After taking a test drive in the vehicle on the date of hearing, Mr. Hernandez stated that he did not hear the noise from the sunroof area. He stated that he heard more noise from a water bottle in the cup holder than anything else.

D. Analysis

Under the Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainant is entitled to have the vehicle repurchased or replaced.

³² Complainant Ex. 12, Tesla Warranty Manual, p. 4.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainant initially had two concerns regarding the vehicle. The first concern involved a "cracking" or "squeaking" noise from the area of the vehicle's sunroof that she hears intermittently. The noise seems to be more pronounced when driving on rough or bumpy roads. This noise was still occurring at the time of hearing and, in fact, was heard by the hearings examiner and the parties during the test drive of the vehicle. It is understandable that the noise can be annoying. However, the noise does not create a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupations Code. It's not a life-threatening malfunction or nonconformity that substantially impedes Complainant's ability to control or operate the vehicle and it does not create substantial risk of fire or explosion.

In addition, the "cracking" or "squeaking" noise does not *substantially* impair the use or market value of the vehicle. If Complainant were to trade in the vehicle or attempt to sell it to another party, it's doubtful that the noise would affect the purchase price, since most people would not even notice it.

Also, Respondent's warranty specifically excludes normal noise and vibration, including creaks and rattles.

The second concern raised by Complainant had to deal with the Tesla logo coming off of the vehicle's floor mats. The floor mats were an after-market purchase and are not covered under the vehicle's warranty. Even if the floor mats were covered under the warranty, the logo coming off does not create a serious safety hazard nor does it substantially impair the use or market value of the vehicle.

Therefore, the hearings examiner finds that there is no defect with the vehicle and, as such, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 40,639 and it remains under warranty. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the vehicle's warranty.

Complainant's request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Ann Tran (Complainant) purchased a new 2014 Tesla Model S on May 30, 2014, online, with mileage of 11 at the time of delivery.
2. The manufacturer of the vehicle, Tesla Motors, Inc. (Respondent), issued a warranty for the vehicle for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 40,639.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant took the vehicle to Respondent's authorized service center in Houston, Texas, in order to address her concerns regarding noises coming from the vehicle's sunroof on the following dates:
 - a. November 3, 2014, at 4,516 miles;
 - b. January 15, 2015, at 12,486 miles;
 - c. April 27, 2015, at 20,161 miles; and
 - d. July 18, 2015, at 25,503 miles.
6. On November 3, 2014, the service technician secured the vehicle's headliner completely, after he determined that it was not secured properly.
7. On January 15, 2015, the service technician adjusted the sunroof's latching tab and applied noise softening tape to reduce the contact between the moving glass and front bracket.
8. On April 27, 2015, the service technician adjusted the front latching tab and reinsulated the sunroof area and applied Loctite to both C-pillars' brightworks.
9. On July 18, 2015, the service technician lubricated the sunroof tubes and added insulation to the vehicle.
10. The vehicle's floor mats were repaired on November 3, 2014, by adhering the logos back to the mats.
11. On July 6, 2015, the floor mats were completely replaced.

12. On August 18, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On September 3, 2015, Respondent's service technician replaced the panoramic sunroof drive cables on both sides of the vehicle, replaced the panoramic sunroof side appliques on both sides of the vehicle, replaced the panoramic sunroof driver motors on both sides of the vehicle, replaced the panoramic fixed glass seal, installed anti-noise washers on moving glass bolts, replaced the four (4) panoramic moving glass links, performed a panoramic sunroof calibration, installed foam to the headliner area to prevent further noise, and replaced the vehicle's floor mats.
14. On November 12, 2015, 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.
15. The hearing in this case convened and the record was closed on January 28, 2016, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant represented herself at the hearing. Testifying telephonically for Complainant was her friend, Robert Duong. Respondent was represented telephonically by Hiroshi Nogami, Respondent's Chief Counsel. Patrick Hernandez, Service Manager for the Houston service center, testified for Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (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 bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a 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.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code §§ 2301.204, 2301.603.
8. 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 replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED February 5, 2016.


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