

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0176 CAF**

**PAUL F. TRIF,
Complainant**

v.

**BMW OF NORTH AMERICA, LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Paul F. Trif (Complainant) filed a complaint with the Texas Department of Motor Vehicles seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his vehicle distributed by BMW of North America, LLC (Respondent). A preponderance of the evidence does not show that the vehicle does not have a warrantable defect. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ 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 June 14, 2016, in San Antonio, Texas, before Hearings Examiner Andrew Kang. David Dilley, attorney, represented the Complainant. Ligia Trif, the Complainant's spouse, and the Complainant himself, testified for the Complainant. Stephen Soncini, After Sales Area Manager, represented the Respondent. Lou Gatti, Service Manager at BMW of San Antonio, Ryan Tedrow, Shop Foreman at BMW of San Antonio, and Victor Cheung, Technical Support Engineer, testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁴

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁶

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs 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 occurs first, immediately following the date of the second repair attempt.⁷

However, the statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.⁸ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for establishing a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. Section 2301.605(a)(2) only applies 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.

⁸ “[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’” *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.⁹

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;¹⁰ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹¹ and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹²

2. Burden of Proof

The law places the burden of proof on the Complainant.¹³ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present evidence showing that every required fact is more likely than not true.¹⁴ For example, the Complainant must show the fact that a warrantable defect more likely than not exists. For any required fact, if the

⁹ “[O]nly those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.” *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication).

¹⁰ TEX. OCC. CODE § 2301.606(c)(1). Note: the Lemon Law does not define the words “mailed” or “mail”, so under the Code Construction Act, the common usage of the word applies. TEX. GOV'T CODE § 311.011. Dictionary.com defines “mail” as “to send by mail; place in a post office or mailbox for brakes” or “to transmit by email.” mail. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/mail> (accessed: April 01, 2016). Also, 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department's notice of the complaint to the Respondent may satisfy the requirement that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

¹¹ TEX. OCC. CODE § 2301.606(c)(2). Note: a repair visit to a dealer can satisfy the “opportunity to cure” requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer's behalf. *See Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

¹² TEX. OCC. CODE § 2301.606(d)(2).

¹³ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁴ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

evidence weighs in favor of the Respondent or if the evidence equally supports the Complainant and the Respondent, the Respondent will prevail.

A. Complainant's Evidence and Arguments

On August 1, 2015, the Complainant, purchased a new 2016 BMW M6 Gran Coupe from BMW of San Antonio, a franchised dealer of the Respondent, BMW of North America, LLC, in San Antonio, Texas. The vehicle had 10 miles on the odometer at the time of purchase.¹⁵ On February 3, 2016, the Complainant's attorney, on behalf of the Complainant, mailed a written notice of defect to the Respondent.¹⁶ On February 17, 2016, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that the vehicle's braking system made a high pitch noise and a brake system warning light came on.

In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged nonconformity as shown below:

Date	Miles	Issue
August 8, 2015	406	Brakes squeak when braking while driving, concern is intermittent ¹⁷
September 30, 2015	2,694	When coming to a stop, brakes make a very high pitch sound ¹⁸
October 28, 2015	3,733	Squeak when slowing to a stop ¹⁹

Additionally, the vehicle was taken to the dealer on March 15, 2016, but Mrs. Trif declined to have the vehicle serviced for the brake warning.²⁰

The Complainant testified that he special ordered the subject vehicle as a gift for his wife. When picking up the vehicle, the dealer did not give any precautions or discuss brake noise. The Complainant did not test drive the vehicle before signing the purchase agreement and leaving the dealership. However, the Complainant and his wife noticed the brakes squeaking a few days later. They would notice the noise when slowing down. The noise was fairly constant. Additionally, a

¹⁵ Complainant's Ex. 1, Purchase Order.

¹⁶ Complainant's Ex. 6, Written Notice of Defect.

¹⁷ Complainant's Ex. 2, Invoice 606759.

¹⁸ Complainant's Ex. 3, Invoice 612301.

¹⁹ Complainant's Ex. 4, Invoice 615377.

²⁰ Respondent's Ex. 2, Invoice 630172.

warning light appeared on the display with a message to replace the brake pads. The Complainant stated that the vehicle would continue to have squeaking brake issues a couple of days to a week after the first repair. The noise could be heard with the windows up or down. The squeaking appeared worse after the second repair visit. Squeaking occurred when leaving the dealership after the second repair visit. He testified that the second time they took the vehicle in, the brake system warning appeared on the display. The warning reappeared about a week after being reset and stayed on. The Complainant stated that the squeaking occurred "pretty much all the time." The Respondent sent an engineer for the third repair visit. The Complainant represented that he and his wife were told that the brakes needed to squeak. The brake problem did not disappear after the latest repair visit. The Complainant notice the squeaking when leaving the dealership. Both he and his wife noticed that the brake warning light/message came on again. The Complainant provided a photo of the "Brake system" warning light and message ("Drive moderately. Replace brake pads. Consult service center.").²¹ The message appeared well before the mileage shown on the instrument panel. The Complainant affirmed that this message would typically appear between service visits. He explained that the message would not always come on when the brakes squeaked. The message said to drive moderately and replace the brake pads. As a result, the Complainant and his wife had to change the way they drive the vehicle and alter their lifestyle to accommodate the vehicle. The Complainant confirmed that the warning had not disappeared as of the day of the hearing and that the squeak remained the same. He expressed safety concerns, citing that they drive more moderately, well under the speed limit. He noted that he heard the squeaking on the way to the hearing.

Mrs. Trif testified that the brake system warning appeared on the display after the second service visit. She indicated that after the third service visit, the warning may have disappeared for a while but came on again. She explained that the noise was fairly consistent, mainly occurring on regular street driving when coming to a stop. She described the noise as a very high pitched squeaking. She stated that she did not really feel safe in the vehicle.

On cross-examination, Mr. Gatti, the service manager for BMW of San Antonio, confirmed that the repair invoices did not state that the brakes may normally squeak because the vehicle is a high performance vehicle. However, he pointed out that Invoice 615377 noted that noises may be

²¹ Complainant's Ex. 5, iDrive Display Brake System Warning Light and Message.

heard from compound brakes and that the customer brochure states that noise may occur. He could not recall whether they gave the brochure to the Trifs at that visit but said that doing so would have benefited everyone.

During cross-examination, Mr. Tedrow explained that brake pad and rotor replacement had no set mileage recommendation. Likewise, brake pad and rotor inspection had no set mileage recommendation but on average inspection and replacement may occur at 18,000 to 20,000 miles. He confirmed that such brake pad and rotor replacement would be done under warranty. Mr. Tedrow answered that he did not instruct anyone to provide the "BMW Brake Systems" brochure to the Complainant and did not know if anyone actually gave the brochure.

On cross-examination, Mr. Cheung answered that he did not know if the brochure was ever given to the Trifs and that he never had any personal interaction with them. He also confirmed that he did not actually inspect the vehicle. Mr. Cheung explained that not only did brake dust cause squealing, but brakes squealed for other reasons too, such as temperature, driving habits, two foot driving, etc. Even with the dust cleaned off, depending on the customer, if riding the brakes, brake dust will come back and it will not disappear by itself but has to be cleaned. He elaborated that the first two repairs really involved just cleaning and chamfering the pads. The last repair involved replacing the pads and rotors. Mr. Cheung stated that the brake squeal is a normal characteristic of the vehicle, especially the M vehicles, and also depends on temperature, but never (completely) goes away. Brake squeal may occur in the morning when cold. The brake noise depends on numerous things. With regard to SIB 340614, Mr. Cheung explained that play between the spring and pads could cause more vibration causing resonance, heard as a squeal. However, the technicians checked the spring and found it normal and therefore did nothing in regard to this bulletin. Mr. Cheung confirmed that the vehicle had a check control message, but the message, to drive moderately, was inactive (i.e., the message came on at some point in the past but was not on now). The message relates to monitoring for maintenance. Anytime the brake pad level wears down to a certain level, the system tells to check if the brake pads need to be replaced. In this case, the message came on at five miles. Sometimes the check control message is not correct. The vehicle may be in transport mode and the message may be erroneous. During pre-delivery inspection, the vehicle would be taken out of transport mode and inspected to determine if the message was inaccurate. During transport, certain systems are deactivated.

B. Respondent's Evidence and Arguments

On cross-examination, the Complainant acknowledged the high-performance nature of the vehicle, including the "M" designation for Motorsport, engine horsepower in the mid-500s, and a zero to sixty time in the 4 second range. He confirmed that he did not mention the brake system warning until after the third (October 28, 2015) repair attempt. He also affirmed that the warning was not on during the first three repair visits. However, he noticed the warning light in September, after the second repair attempt on September 30, 2015. The Complainant affirmed that they (specifically Mrs. Trif) declined service for the brake system warning at the March 15, 2016, service visit.²² On cross-examination, Mrs. Trif affirmed that the brake warning came on after the second repair visit. However, she did not subsequently feel the need to mention it to the service advisor because it was visible on the display.

Mr. Gatti testified that M cars are high-performance vehicles, essentially race cars for the street, with brake systems set up for performance that give up some driveability, like more noise and brake dust. The high performance brake pads and rotors are more conducive to stopping quicker—the cross-drilled rotors dissipate heat. The high performance set up produces more noise but helps the vehicle stop in high-performance driving. The vehicle's rotors and brake pads were essentially taken from the race track. The brake pad materials used are more conducive for resisting heat in racing conditions. Mr. Gatti stated that brake squeaking did not indicate a safety issue. Rather, he affirmed that noise was an issue of perception that some did not have a problem with but others would want to fix. He recounted that when Mrs. Trif came in for the March service visit, she was advised of the service needed and the brake warning light, but did not want to address it because she preferred to go through their attorney. He explained that when writing up customer concerns, service advisors walk around the vehicle with the customer, go over the concerns, type them up and get a signature. Mr. Gatti did not agree that the brake squeak related to the warning light and stated that he never experienced a squeak related to a warning light. He confirmed that all three repairs only related to the squeak and not any safety concerns.

Mr. Tedrow, the shop foreman for BMW of San Antonio, testified that he was familiar with the M6 model and aware of M6 brakes squeaking but had not heard of brake squeaking as a safety issue. With regard to the Complainant's vehicle, Mr. Tedrow stated that at the first visit,

²² Respondent's Ex. 2, Invoice 630172.

they chamfered the pads to remove dust from the system; at the second visit they did the same thing on a different axle; and on the third visit, they replaced the pads and rotors. Mr. Tedrow stated that he actually “touched” the vehicle at the third repair. At the third repair, he did not notice the brake warning light on and the service advisor nor other dealer personnel ever told him about a brake warning light. Mr. Tedrow essentially explained that the M6 had a lot of horsepower and needed the type of brakes it had to provide the stopping power necessary to make it track ready. He explained that the technician inspected the vehicle several times and looked at the brakes for anything causing excessive noise, and replaced the pads and rotors to make the brakes as quiet as possible. After the repair, he test drove the vehicle with the Respondent’s technical service engineer (David Kaiser) present who found the noise to be normal. Mr. Tedrow affirmed that he never experienced the brake warning light coming on and stated that he would never release a vehicle with a brake malfunction. He added that they briefly inspect the brakes at every visit for anything obvious and that the braking noise was never a safety issue.

Mr. Cheung testified that he had experienced braking squeaks with the M6 model and confirmed that it was a normal characteristic but not a safety issue. He elaborated that the brake squeal came from the vibration of brake components. The M6 has performance brakes to stop the car in a short distance. The brakes create a lot of heat and the brake pad compound (a different material than in other brake pads) creates more dust and more dust creates more noise as compared to other vehicles. Mr. Cheung explained that the Respondent specifically created documentation because of the brake squeak in M cars. The document (the “BMW Brake Systems” brochure) explains in layman’s terms what causes the brake squeak – brake component resonance, which can be caused by many factors, including outside influences and driving style. Mr. Cheung concluded that the brake squeal has nothing to do with the safety or stopping ability of the car. Additionally, the brake system warning has nothing to do with the brake squeal. Mr. Cheung explained that the key data showed an inactive check control message for the brakes at five miles. Any malfunctions would appear on the key data, which accumulates all malfunctions from day one. The key data (Complainant’s Ex. 9) was read on September 29, 2015, but did not have malfunctions recorded corresponding to the August or September 2015 service visits. Mr. Cheung testified that he has seen erroneous messages before coming out of transport mode. Usually, these messages are cleared and the car is inspected again. He confirmed that a vehicle would be repaired at the time of the pre-delivery inspection if the error came up again.

C. Inspection and Test Drive

The vehicle had 9,959 miles upon inspection at the hearing. The test drive consisted of approximately four miles over flat and hilly terrain on a freeway service road and neighborhood streets with stop signs, and an intersection controlled by a traffic light. The vehicle did not exhibit any brake noise during the test drive.

D. Analysis

1. Brake Noise

A preponderance of the evidence indicates that the vehicle's brake noise is not a defect but a normal characteristic of the vehicle's design that does not qualify for relief. The Lemon Law does not apply to issues arising from the intended design of the vehicle. To qualify for replacement or repurchase or for warranty repair, the law requires the existence of a warrantable defect (a manufacturing defect rather than a design issue). A manufacturing defect is an unintended condition that occurs when the vehicle departs from the manufacturer's intended design (such as incorrect assembly or the use of a substandard part).²³ In contrast to manufacturing defects, design characteristics result from the vehicle's intended design and not from any error in the manufacturing process. In this case, the record reflects that the noise is a normal characteristic of the vehicle's particular design (specifically the sport brakes). The evidence shows that the vehicle's sport brakes may normally squeak and squeak more than conventional brakes because the sport brakes sacrifice quietness to achieve greater stopping power. The Respondent created a brochure explaining that such brakes may make braking noise. The brochure states that "[i]n addition to enhanced performance, expect some more brake dust and, in some cases, slight noise when braking."²⁴ Also, as explained in testimony and in the brochure, "Brake noise has various causes and can be triggered by things like driving style, environmental conditions and wear to the brake."²⁵ Although the vehicle's brake noise may be undesirable, the record shows that this characteristic arises from the design of the vehicle's brakes and not from a manufacturing defect.

²³ See *Ridgway v. Ford Motor Co.*, 82 S.W.3d 26, 31-32 (Tex. App.—San Antonio 2002), *rev'd on other grounds*, 135 S.W.3d 598 (Tex. 2004).

²⁴ Respondent's Ex. 3, BMW Brake Systems: High Performance Stopping Power.

²⁵ Respondent's Ex. 3, BMW Brake Systems: High Performance Stopping Power.

Accordingly, the brake noise will not support repurchase/replacement or warranty repair relief under TEX. OCC. CODE § 2301.604(a) and § 2301.204.

2. Brake System Warning

The “Brake system” warning does not qualify the vehicle for relief. Although the record indicates that the brake system warning does not relate to the complained of brake noise, the brake system warning could have arisen from a nonconformity. The brake system warning displayed a message to “Drive moderately. Replace brake pads. Consult service center.” The brake system warning’s language ostensibly relates to routine maintenance (brake pad replacement) rather than a malfunction. However, the repair history shows that the brake pads, as well as the brake pad wear sensors, were replaced relatively recently (about 6,000 miles ago),²⁶ suggesting the possibility of a malfunction, such as a defective brake pad wear sensor. However, the vehicle had no repair attempts for this issue and the Complainant expressly declined to have the warning light addressed by the dealer.²⁷ Further, the record does not contain sufficient evidence to determine whether a warranty applies to this issue.²⁸ Accordingly, no Lemon Law relief applies.

III. Findings of Fact (

1. On August 1, 2015, the Complainant, purchased a new 2016 BMW M6 Gran Coupe from BMW of San Antonio, a franchised dealer of the Respondent, BMW of North America, LLC, in San Antonio, Texas. The vehicle had 10 miles on the odometer at the time of purchase.
2. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
August 8, 2015	406	Brakes squeak when braking while driving, concern is intermittent
September 30, 2015	2,694	When coming to a stop, brakes make a very high pitch sound
October 28, 2015	3,733	Squeak when slowing to a stop

²⁶ Complainant’s Ex. 4, Invoice 615377.

²⁷ Respondent’s Ex. 2, Invoice 630172.

²⁸ The record does not include the warranty’s coverage terms as to support a decision under TEX. OCC. CODE § 2301.204 or TEX. OCC. CODE §§ 2301.601-2301.613. Nevertheless, the Respondent has an obligation to conform the vehicle to a warranty that does apply. TEX. OCC. CODE §§ 2301.603 and 2301.204.

3. On February 3, 2016, the Complainant's attorney on behalf of the Complainant mailed a written notice of defect to the Respondent.
4. On February 17, 2016, the Complainant filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that the vehicle's braking system made a high pitch noise and a brake system warning light came on.
5. On April 4, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, BMW of North America, LLC, 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.
6. The hearing in this case convened and the record closed on June 14, 2016, in San Antonio, Texas, before Hearings Examiner Andrew Kang. David Dilley, attorney, represented the Complainant. Ligia Trif, the Complainant's spouse, testified for the Complainant. Stephen Soncini, After Sales Area Manager, represented the Respondent. Lou Gatti, Service Manager at BMW of San Antonio, Ryan Tedrow, Shop Foreman at BMW of San Antonio, and Victor Cheung, Technical Support Engineer, testified for the Respondent.
7. The vehicle's odometer displayed 9,959 miles at the time of the hearing.
8. The vehicle displayed a "Brake system" warning light with the message to "Drive moderately. Replace brake pads. Consult service center." On March 15, 2016, the Complainant declined service for the brake system warning and the vehicle did not otherwise have any repair attempts for the brake system warning.
9. The vehicle's sport brakes may normally make more noise than conventional brakes due to the design of the sport brakes.
10. The vehicle operated normally and the brakes did not squeal during the test drive at the hearing.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles 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. The Complainant timely filed a sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. The Complainant did not meet the statutory requirement for a reasonable number of repair attempts. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
8. The Complainant's vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.
9. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranties. TEX. OCC. CODE §§ 2301.204, 2301.603.
10. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent or franchised dealer before the warranty expires. TEX. OCC. CODE §§ 2301.603 and 2301.204.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED August 10, 2016



ANDREW KANG
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES