

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0045 CAF**

AKASH PATEL and POOJA PATEL,	§	BEFORE THE OFFICE
Complainants	§	
v.	§	
	§	OF
LEXUS, A DIVISION OF TOYOTA	§	
MOTOR SALES, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Akash and Pooja Patel (Complainants) seek relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in their 2015 Lexus RX 350. Complainants assert that they intermittently hear a humming noise from the front dash of the vehicle upon start up. Lexus, a Division of Toyota Motor Sales, Inc. (Respondent) argued that the vehicle does not have a defect that requires repair. The hearings examiner concludes that the vehicle does have a currently existing warrantable defect and Complainants are 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 in Houston, Texas on February 2, 2017, before Hearings Examiner Edward Sandoval. Pooja Patel, co-Complainant, represented Complainants in the hearing. Respondent was represented by Matt Hennessey, Field Technical Specialist. Also testifying for Respondent was Scott Kaminga, Diagnostic Specialist.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.606(d) provides that a “[a] proceeding under this subchapter [Subchapter M – Warranties: Rights of Vehicle Owners (Lemon Law)] must be commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.” A Complainant must file his Lemon Law complaint within the above time frame in order to have the vehicle repurchased or replaced.

If the vehicle does not qualify for repurchase or replacement relief under the Lemon Law, repair relief is available to a Complainant 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." This section applies only if the Complainant raised his concern while the vehicle's warranty was still in effect.

B. Complainant's Evidence and Arguments

Complainants purchased a new 2015 Lexus RX 350 from Sterling McCall Lexus (McCall) in Houston, Texas on July 17, 2014.¹ The vehicle's mileage was 19 at the time of purchase.² Respondent's new vehicle limited bumper-to-bumper warranty provides coverage for four (4) years or 50,000 miles, whichever comes first. On February 2, 2017, the date of hearing, the vehicle's mileage was 56,200. At this time, Respondent's bumper-to-bumper warranty on the vehicle has expired.

Pooja Patel, co-Complainant, testified that a few months after purchasing the vehicle, she began to notice an unusual humming noise from the dashboard area of the vehicle. The noise would begin within 10 to 15 minutes after the vehicle had been turned on. The noise would seem to occur more often when the ambient temperature was warm. Ms. Patel thought the noise would stop occurring after a while. However, the noise continued to occur when she drove the vehicle.

Ms. Patel took the vehicle to McCall for an oil change on March 10, 2015. While at McCall's, Ms. Patel informed the service advisor that the vehicle was making an unusual noise from the dashboard area. However, the technician was not able to hear any abnormal noises and performed no repair for the issue. The noise concern was not included on the invoice given to Ms. Patel after the oil change. She doesn't know why the concern was omitted from the invoice. The vehicle's mileage on this occasion was 14,165.³

Ms. Patel testified that she began hearing the humming noise again in October of 2015. As a result, she took the vehicle to McCall for repair on October 13, 2015. McCall's service technician inspected and test drove the vehicle and did not hear any abnormal noises from the vehicle.⁴ The vehicle's mileage when it was taken to the dealer on this occasion was 28,465.⁵ Ms. Patel was asked to leave the vehicle with the dealer for further inspection, but she was not prepared to leave the vehicle for an extended period of time as she did not have transportation available. McCall did not have a loaner vehicle available at the time.

¹ Complainant Ex. 1, Motor Vehicle Purchase Order dated July 17, 2014.

² Complainant Ex. 2, Odometer Disclosure Statement dated July 17, 2014.

³ Complainant Ex. 3, Repair Order dated March 10, 2015.

⁴ Complainant Ex. 3, Repair Order dated October 13, 2015.

⁵ *Id.*

Ms. Patel took the vehicle back to McCall for repair for the noise issue on October 26, 2015. McCall's service technician was unable to duplicate the concern, although Ms. Patel showed him a video of the vehicle when the noise was occurring.⁶ No repair was performed on this occasion. The vehicle's mileage was 29,789.⁷ The vehicle was in the dealer's possession for three (3) days.⁸ Ms. Patel was provided with a loaner vehicle while her vehicle was being repaired.

Ms. Patel continued to hear the humming noise in the vehicle. She took the vehicle to McCall on December 24, 2015. During the repair visit, Ms. Patel and McCall's service technician test drove the vehicle around the block and they both heard the noise. The technician determined that the noise was the result of the radio assembly's cooling fan having worn shaft bearings.⁹ As a result, the technician replaced the radio assembly.¹⁰ The vehicle's mileage on this occasion was 33,400.¹¹ The vehicle was in the dealer's possession for six (6) days. Ms. Patel was provided a rental vehicle while her vehicle was being repaired.

Ms. Patel testified that the humming noise went away for a couple of months, but then came back. She took the vehicle to McCall on February 5, 2016, because of the noise concern. On this occasion, McCall's service technician determined that the radio's cooling fan had suffered an internal failure and replaced the radio assembly.¹² The vehicle's mileage on this occasion was 35,781.¹³ Ms. Patel received a loaner vehicle during this repair visit, since the vehicle was in McCall's possession for six (6) days.

Ms. Patel stated that the humming noise went away for a few months, but then returned again. Complainants then decided to file a Lemon Law complaint due to their concerns regarding the noise that the vehicle continued to make.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) regarding the vehicle effective October 13, 2016.¹⁴ In addition, Complainants mailed a letter expressing their dissatisfaction with the vehicle to Respondent.¹⁵

⁶ Complainant Ex. 5, Repair Order dated October 26, 2015.

⁷ *Id.*

⁸ *Id.*

⁹ Complainant Ex. 6, Repair Order dated December 24, 2015.

¹⁰ *Id.*

¹¹ *Id.*

¹² Complainant Ex. 7, Repair Order dated February 5, 2016.

¹³ *Id.*

¹⁴ Complainant Ex. 8, Lemon Law complaint dated October 13, 2016. Although the complaint was signed by Complainants on October 10, 2016, it was not received by Texas Department of Motor Vehicles until October 13, 2016, which is the effective date of the complaint.

¹⁵ Complainant Ex. 9, Undated Letter to Lexus.

Ms. Patel stated that she continues to hear a humming noise from the vehicle's dashboard when she's driving the vehicle. It occurs on a daily basis, usually upon first starting the vehicle. The noise level varies. Sometimes the noise gets louder the longer she drives the vehicle. At other times, the noise will go away after a few minutes. Ms. Patel stated that the last time she heard the noise was on the morning of the hearing, February 2, 2017. The noise lasted for about a minute, before going away.

C. Respondent's Evidence and Arguments

1. Matt Hennessey's Testimony

Matt Hennessey, Field Technical Specialist, represented Respondent in the hearing. Mr. Hennessey is an Automotive Service Excellence (ASE) Certified Master Technician. He has worked for Toyota/Lexus for the past 20 years. Prior to being employed by Toyota/Lexus, Mr. Hennessey worked for four (4) years as an independent technician.

Mr. Hennessey stated that he believes the noise Ms. Patel is hearing is a normal characteristic of the vehicle. The radio has a fan in the back of the assembly that is used to cool the radio when it's being used. The fan is a new addition to the radio assembly and makes some noise. This is common for the Lexus RX350. The fan cannot be replaced on its own, since it is part of the radio assembly. Mr. Hennessey indicated that he has heard the noise from other, similar vehicles.

2. Scott Kaminga's Testimony

Scott Kaminga, Diagnostic Specialist, testified for Respondent. Mr. Kaminga has worked for 41 years as an automotive technician. He has been an ASE Certified Master Technician for 30 years. He's worked for Respondent as a technician for the past 20 years.

Mr. Kaminga testified that he has heard the noise from the vehicle's dashboard as Ms. Patel described. Mr. Kaminga feels that the noise sounds like a fan running, but that it was louder than normal. He heard the noise on February 5, 2016, at McCall's. McCall's technician pulled some panels from the vehicle and felt where the noise was emanating from which was from the radio assembly. The noise lasted about 15 minutes. He's not sure if the noise is a characteristic of the radio assembly.

D. Analysis

In the present case, the only remedy available to Complainants is an order to repair the vehicle under the provisions of Section 2301.204 of the Occupations Code, since Complainants filed the Lemon Law complaint on October 13, 2016, more than six months after the date on which the vehicle's mileage surpassed 24,000.¹⁶

In order to determine whether Complainants have a remedy under this section of the Occupations Code, there has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent.

Ms. Patel's first hand testimony establishes that the vehicle does intermittently make an unusual humming noise from the dash board. Respondent's agents have attempted to resolve the issue, but have been unable to completely correct the concern. The evidence indicates that the problem continues to occur and that Ms. Patel heard the noise the morning of the hearing. The hearings examiner must therefore hold that Complainant has met her 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.

Respondent's warranty applicable to Complainants' vehicle provides bumper-to-bumper coverage for four (4) years or 50,000 miles whichever comes first. The vehicle's bumper-to-bumper warranty has expired, since the vehicle's mileage on the date of hearing was 56,200. However, Respondent is still responsible to make repairs to the vehicle for any issue raised before the expiration of the warranty. *See* Tex. Occ. Code § 2301.603(b)(1).

Complainant's request for repair relief is granted. Respondent is hereby ordered to perform any necessary repairs within 20 days to conform the vehicle to Respondent's bumper-to-bumper warranty.

III. FINDINGS OF FACT

1. Akash and Pooja Patel (Complainants) purchased a new 2015 Lexus RX 350 on July 17, 2014, with mileage of 19 from Sterling McCall Lexus (McCall) in Houston, Texas.
2. The manufacturer of the vehicle, Lexus, A Division of Toyota Motor Sales, Inc.

¹⁶ Complainant Ex. 8, Lemon Law Complaint Form dated October 13, 2016. Complainants indicated on the form that the vehicle's mileage exceeded 24,000 sometime in September of 2015, more than a year prior to Complainants filing the Lemon Law complaint.

(Respondent), issued an express bumper-to-bumper warranty for the vehicle good for four (4) years or 50,000 miles.

3. On February 2, 2017, the date of hearing, the vehicle's mileage was 56,200.
4. At the time of hearing the vehicle's bumper-to-bumper warranty was expired.
5. In early 2015, Complainants began to hear a humming noise from the vehicle's dashboard area.
6. Complainants' vehicle was serviced by Respondent's authorized dealer, McCall, for the noise issue on the following dates:
 - a. March 10, 2015, at 14,165 miles;
 - b. October 13, 2015, at 28,465 miles;
 - c. October 26, 2015, at 29,789 miles;
 - d. December 24, 2015, at 33,400 miles; and
 - e. February 5, 2016, at 35,781 miles.
7. On March 10, 2015, McCall's service technician couldn't duplicate the noise concern. However, the issue was not included on the repair order for the service visit.
8. On October 13, 2015, McCall's service technician could not duplicate the noise concern.
9. On October 26, 2015, McCall's service technician could not duplicate the noise concern.
10. On December 24, 2015, McCall's service technician determined that the noise was caused by worn shaft bearings on the radio cooling fan. The vehicle's radio assembly was replaced to address the issue.
11. On February 5, 2016, McCall's service technician determined that the new radio's cooling fan had suffered an internal failure. The radio assembly was replaced.
12. On October 13, 2016, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On December 9, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainants 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.

14. The hearing in this case convened and the record closed in Houston, Texas on February 2, 2017, before Hearings Examiner Edward Sandoval. Pooja Patel, co-Complainant, represented Complainants in the hearing. Respondent was represented by Matt Hennessey, Field Technical Specialist. Also testifying for Respondent was Scott Kaminga, Diagnostic Specialist.

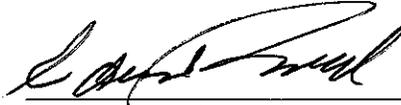
IV. CONCLUSIONS OF LAW

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. Complainants 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. Complainants bear the burden of proof in this matter.
6. Complainants proved 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 repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent is further **ORDERED** to **PERFORM ALL NECESSARY REPAIRS** within 20 days in order to conform the vehicle to Respondent's bumper-to-bumper warranty.

SIGNED March 10, 2017.



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