

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0186853 CAF**

TRANG TRAN,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
AMERICAN HONDA MOTOR CO.,	§	
INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Trang Tran (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her new 2018 Honda Odyssey Elite. Complainant asserts that the vehicle’s rear entertainment system intermittently stops working and makes a loud glitching noise through the speakers. American Honda Motor Co., Inc. (Respondent) argued that the issue does not rise to the level that warrants a repurchase or replacement of the vehicle and that it can be repaired to conform to their warranty. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainant is entitled only to repair relief, as the defect does not substantially impair the use or market value of the vehicle and it does not create a serious safety hazard as defined in the Occupations Code.

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 initially convened on September 26, 2018, in Austin, Texas before Hearings Examiner Edward Sandoval. Complainant, Trang Tran, was present and was represented by her husband, Ali Aghili. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. In addition, Maurice Narbona, District Parts and Service Manager, was present and testified for Respondent.

The hearing was continued and was conducted telephonically to allow the parties to present additional evidence. The continuance convened on December 7, 2018, before Edward Sandoval. Complainant, Trang Tran, was present and was represented by her husband, Ali Aghili. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. In addition, Maurice Narbona, District Parts and Service Manager, was present and testified for Respondent. The hearing record was closed on December 7, 2018.

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

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.⁵

However, if a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times and: (1) at least one repair attempt was made during the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) at least one other attempt was made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the first repair attempt.⁶

A “serious safety hazard” is defined as a “life-threatening malfunction or nonconformity that: (A) substantially impedes a person’s ability to control or operate a motor vehicle for ordinary use or intended purposes; or (B) creates a substantial risk of fire or explosion.”⁷

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code (a)(3) provides an alternative method 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. Section 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.

⁶ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁷ Tex. Occ. Code § 2301.601(4).

B. Complainant's Evidence and Arguments

Complainant purchased a new 2018 Honda Odyssey Elite from Round Rock Honda (Round Rock) in Round Rock, Texas on December 20, 2017.⁸ The vehicle's mileage was 26 at the time of delivery.⁹ Respondent provided a bumper-to-bumper warranty for the vehicle good for three (3) years or 36,000 miles from the date of delivery.¹⁰ The vehicle's mileage on the initial hearing date was 8,471.

1. Ali Aghili's Testimony

Ali Aghili, Complainant's husband, represented Complainant and testified in the hearing. He stated that Complainant is the primary driver of the vehicle. However, he also drives it periodically.

Mr. Aghili stated that the vehicle's rear entertainment system does not work properly. The DVD player shuts down after playing a DVD for about 30 minutes. He stated that the Cabin Watch function also shuts down. In addition, the entertainment system will intermittently make a "glitching" noise that can be heard through the stereo speakers. On occasions, the sound accompanying a DVD or from the radio will switch from the front speakers to the back on its own. Mr. Aghili stated that although he sometimes refers to the "glitching" noise as a "sparkling" sound, no actual sparks emit from the system. He said that they first noticed the problems with the entertainment system in January of 2018.

Mr. Aghili testified that they first took the vehicle to Round Rock for repair to the entertainment system on February 26, 2018. He stated that the dealer's service technician checked the vehicle's wiring, but couldn't solve the problem. Mr. Aghili was informed by a dealer representative that the issue was known to Respondent and that they were preparing a software fix for it.¹¹ In addition, the service technician informed Mr. Aghili that the Cabin Watch feature should be used only for quick glances to the back cabin of the vehicle and should not stay on during an entire drive.¹² The vehicle's mileage on this occasion was 1,803.¹³ The vehicle was in the dealer's possession for one (1) week during this repair visit. Complainant was provided with a loaner vehicle while the vehicle was being repaired.

⁸ Complainant Ex. 2, Motor Vehicle Purchase Order dated December 20, 2017.

⁹ Complainant Ex. 3, Odometer Disclosure Statement dated December 19, 2017.

¹⁰ Complainant Ex. 9, Honda Vehicle Warranty Manual, p. 9.

¹¹ Complainant Ex. 4, Repair Order dated February 26, 2018.

¹² *Id.*

¹³ *Id.*

Mr. Aghili stated that the problems with the entertainment system continued to occur. They took the vehicle for repair to Round Rock on April 10, 2018. The dealer's service technician informed Mr. Aghili that Respondent was still working on a software fix for the entertainment system.¹⁴ The vehicle's mileage when it was taken to the dealership on this occasion was 4,254.¹⁵ The vehicle was in the dealer's possession for two (2) days. Complainant was provided with a loaner vehicle while the vehicle was being repaired.

Mr. Aghili testified that he took the vehicle back to Round Rock for repair on April 18, 2018, because the DVD's ejected from the player seemed excessively hot and to see if the software update had been issued by Respondent. The dealer's service technician did not feel that the ejected DVD's were excessively hot.¹⁶ In addition, Mr. Aghili was informed that the software update was not yet available.¹⁷ The mileage on the vehicle on this occasion was 4,361.¹⁸ The vehicle was in the dealer's possession for two (2) days. Complainant was provided with a loaner vehicle while the vehicle was being repaired.

On April 28, 2018, Complainant mailed a letter to Respondent advising them of the problem with the vehicle's rear entertainment system and that she was dissatisfied with the vehicle.¹⁹

Mr. Aghili testified that he took the vehicle back to Round Rock for repair on May 2, 2018, complaining about the rear entertainment system and the fact that the ejected DVD's seemed excessively hot. The service technician compared the DVD's ejected from the player to those ejected from another similar vehicle's DVD player and the temperature was the same on both (120 degrees).²⁰ The technician performed no repair as he determined that there was not an issue since the DVD player seemed to be performing the same as a comparable vehicle's.²¹ In addition, Mr. Aghili was informed that the software update for the entertainment system was not yet available.²² Mr. Aghili testified that he was told that the vehicle's entertainment system may need to be replaced. The vehicle's mileage on this occasion was 4,563.²³ The vehicle was in the dealer's possession for two (2) days during this repair visit. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on May 20, 2018.²⁴

¹⁴ Complainant Ex. 5, Repair Order dated April 10, 2018.

¹⁵ *Id.*

¹⁶ Complainant Ex. 6, Repair Order dated April 18, 2018.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 8, Letter to American Honda Motor Co., Inc. dated April 28, 2018.

²⁰ Complainant Ex. 7, Repair Order dated May 2, 2018.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Complainant Ex. 1, Lemon Law complaint dated May 20, 2018.

Mr. Aghili testified that neither he nor Complainant were ever contacted by Respondent requesting a final repair or inspection of the vehicle.

Mr. Aghili stated that the entertainment system's DVD player is still acting up and doesn't play correctly. He stated that he feels that the problems with the entertainment system substantially affect his ability to control the vehicle. He states that the "glitching" noise is loud and distracting. In addition, Mr. Aghili feels that this is a serious safety hazard and a life threatening malfunction of the vehicle. He feels that the DVD player is necessary for him and his wife to use the vehicle as it keeps their children quiet during any drive.

During cross-examination, Mr. Aghili stated that he was informed by a dealer representative that the vehicle's Cabin Watch feature is related to the entertainment system. Mr. Aghili was told that the feature could not be kept on while driving because it would cause the entertainment system to close down. Mr. Aghili feels that Respondent's advertising campaign seems to indicate that the Cabin Watch feature can be running during an entire trip.

Mr. Aghili also stated that the "glitching" noise continues even if the DVD is not playing. The only way to stop the noise is to eject the DVD from the player. Mr. Aghili stated that the "glitching" noise also occurs intermittently when the radio is playing.

2. Trang Tran's Testimony

Trang Tran, Complainant, testified in the hearing. She is the primary driver of the vehicle. Complainant first noticed an issue with the vehicle's rear entertainment system in January of 2018. She mentioned the issue to a dealer representative when she picked up the new vehicle's license plates at the dealer's location. No action was taken at the time.

Complainant stated that the DVD player would indicate that there was an error with the network connection system. She also heard what she describes as a "sparkling" or "crackling" sound emitting from the vehicle's stereo speakers. The DVD player itself did not have any sparks emitting from it. Also, the DVD sound jumps from speaker to speaker. Complainant felt that all of the issues were connected. She stated that she is not happy with the vehicle and that it is not what she and her husband paid for.

Complainant testified that on a road trip to Arizona, the entertainment system would not play an entire DVD through. The DVD would stop playing, although the soundtrack could still be heard through the speakers. Complainant stated that in order to reset the system they had had to pull over to the side of the road and turn the vehicle on and off.

Complainant stated that the problems occur intermittently, at different times of the day, and lasts for an indeterminate amount of time, sometimes as long as 15 minutes. She stated that the problem occurs on almost every drive when they're attempting to use the DVD player. Complainant also stated that she wanted the Cabin Watch feature to keep an eye on her children when she's driving the vehicle. She said that the feature was turned off by a service technician during one of the repair visits.

Complainant stated that the last time that there was a problem with the rear entertainment system prior to the initial hearing was on September 25, 2018. The DVD player stopped working and there was a "glitching" sound for a few seconds. Complainant stated that the "glitching" sound also occurs almost every time she plays the vehicle's radio.

Complainant feels that the vehicle is unsafe to drive because she uses the entertainment system to keep her children occupied in the vehicle. When the DVD player is not working, the children will start screaming and distract her when she's driving. Complainant did state that the problems with the DVD player or rear entertainment system do not actually affect her ability to drive the vehicle. The problems with the entertainment system don't affect how the vehicle drives.

C. Respondent's Evidence and Arguments

Maurice Narbona, District Parts and Service Manager, testified for Respondent. Mr. Narbona has been in the automotive industry since 1992. He has worked for respondent for 19 years and has been in his present position for the past 15 years. As a district parts and service manager, Mr. Narbona is responsible for meeting with customers, providing training for dealers' service managers, and selling vehicle accessories and parts.

Mr. Narbona testified that he was not familiar with the vehicle's entertainment system. He's aware that the vehicle has the cabin watch system and stated that leaving the cabin watch function turned on constantly overloads the entertainment system and causes it to shut down. The cabin watch function is supposed to provide the vehicle's driver a quick opportunity to look at what's occurring in the back seat area of the vehicle. It's not supposed to be left on, as it could create a distraction for the driver. Mr. Narbona also stated that Respondent had developed a software update for the entertainment system which was available to the dealers' service technicians in August of 2018.

The rear entertainment system is for passengers' comfort and convenience according to Mr. Narbona. The system doesn't affect the control or operation of the vehicle. He also stated that the issue with entertainment system is not a life-threatening malfunction. Mr. Narbona does not feel that the issue substantially affects the vehicle's market value.

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 a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the 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, Complainant is entitled to have the vehicle repurchased or replaced.

The evidence presented at the hearing established that there is an issue with the vehicle's rear entertainment system. The system intermittently shuts down while playing DVD's and emits a "glitching" noise through the car speakers. In addition, Complainant has provided Respondent with a reasonable number of attempts to repair the issue (at least four [4] attempts), written notice of the nonconformity, and a final opportunity to cure, of which Respondent did not avail themselves. However, the issue regarding the rear entertainment system does not create a serious safety hazard as defined in Section 2301.601(4) of the Occupations Code. The issue does not *substantially* impede Complainant's ability to control or operate the motor vehicle nor does it create a risk of fire or explosion. In addition, the issue does not *substantially* impair the use or market value of the vehicle. The issue is annoying, inconvenient, and probably can be disconcerting, but does not create sufficient grounds to order repurchase or replacement of the vehicle. Instead, the hearings examiner will order Respondent to repair the issue.

Complainant's request for repurchase or replacement relief is denied. However, Respondent will be ordered to repair the defect in the vehicle's rear entertainment system. The repairs must be completed within the time frame specified below.

III. FINDINGS OF FACT

1. Trang Tran (Complainant) purchased a new 2018 Honda Odyssey Elite on December 20, 2017, from Round Rock Honda (Round Rock) in Round Rock, Texas, with mileage of 26 at the time of delivery.
2. American Honda Motor Co., Inc. (Respondent) is the manufacturer of the vehicle.
3. Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first.
4. The vehicle's mileage on the date of the initial hearing was 8,471.

5. Respondent's bumper-to-bumper warranty was still in effect at the time of hearing.
6. Complainant discovered in January of 2018 that the vehicle's rear entertainment system intermittently stops working and makes a loud "glitching" noise through the speakers.
7. Complainant took the vehicle to Respondent's authorized dealer, Round Rock, in order to address her concerns with the rear entertainment system, on the following dates:
 - a. February 26, 2018, at 1,803 miles;
 - b. April 10, 2018, at 4,254 miles;
 - c. April 18, 2018, at 4,361 miles; and
 - d. May 2, 2018, at 4,563 miles.
8. On February 26, 2018, the dealer's service technician informed Complainant that there was a known issue regarding the model's entertainment system, that a software update for the problem was being developed and that it would be available soon.
9. On April 10, 2018, the dealer's service technician informed Complainant that there was a known issue regarding the model's entertainment system, that a software update for the problem was being developed and that it would be available soon.
10. On April 18, 2018, Complainant was informed by the dealer's service technician that software update was not available. In addition, regarding the complaint that DVD's ejected from the DVD player felt extremely hot, the technician found no problem with the DVD player.
11. On April 28, 2018, Complainant mailed a letter to Respondent regarding her dissatisfaction with the vehicle.
12. On May 2, 2018, the dealer's service technician informed Complainant that there was a known issue regarding the model's entertainment system, that a software update for the problem was being developed and that it would be available soon. In addition, the technician determined that an ejected DVD from the system was not abnormally hot when compared to an ejected DVD from a similar vehicle's entertainment system.
13. On May 20, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On June 27, 2018, 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 initially convened on September 26, 2018, in Austin, Texas before Hearings Examiner Edward Sandoval. Complainant, Trang Tran, was present and was represented by her husband, Ali Aghili. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. In addition, Maurice Narbona, District Parts and Service Manager, was present and testified for Respondent. The hearing was continued and conducted telephonically to allow the parties to present additional evidence. The continuance convened on December 7, 2018, before Edward Sandoval. Complainant, Trang Tran, was present and was represented by her husband, Ali Aghili. Respondent was represented by Abigail Mathews, attorney with FrancisMathews PLLC. In addition, Maurice Narbona, District Parts and Service Manager, was present and testified for Respondent. The hearing record was closed on December 7, 2018.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (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 bears the burden of proof in this matter.
6. Complainant proved by a preponderance of the evidence that the vehicle has a verifiable defect or nonconformity. However, that defect does not present a serious safety hazard nor substantially impair the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainant's vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.

8. Respondent did not request a final opportunity to cure the defect. Tex. Occ. Code § 2301.606(c)(2).
9. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
10. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.
11. Complainant is entitled to repair relief under the terms of Respondent's warranty. 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 repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**. It is **FURTHER ORDERED** that Respondent shall make any repairs needed to conform the vehicle to the applicable warranty. Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.²⁵ Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED January 14, 2019



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

²⁵ (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.