

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0003682 CAF**

**WILLIAM LANZET,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

William Lanzet (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2017 Ford Edge Titanium. Complainant asserts that the vehicle has a defect or nonconformity which causes the vehicle’s SYNC system to not maintain connectivity with his cell phone. Ford Motor Company (Respondent) argued that the vehicle is operating as designed, does not have a manufacturing defect, 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 telephonically on May 8, 2020, before Hearings Examiner Edward Sandoval. William Lanzet, Complainant, represented himself at the hearing. Respondent was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared and testified at the hearing for Respondent. During the course of the hearing, the parties experienced technical difficulties which resulted in the hearing being continued until May 18, 2020.

At the continuance, William Lanzet, Complainant, represented himself. Respondent was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared and testified at the continuance for Respondent. The hearing record closed on May 18, 2020.

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 manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have provided 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 these 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

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.⁷

¹ Tex. Occ. Code § 2301.604(a).

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).

⁷ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.⁸

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2017 Ford Edge Titanium on July 11, 2017, from Spikes Ford (Spikes) in Mission, Texas.⁹ The vehicle’s mileage at the time of delivery was 9.¹⁰ Respondent provided a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for the vehicle for three (3) years or 36,000 miles, whichever comes first. On the date of hearing the vehicle’s mileage was 22,413. At the time of hearing the vehicle’s warranty was still in effect.

Complainant stated that he has had issues with his personal cell phone (a Samsung Galaxy S9) maintaining connectivity with the vehicle’s SYNC system. He’s also had other issues with the system, including an outdated navigation map, a voice activation issue, and USB ports not working. However, at the time of hearing, the only concern was that the system does not maintain connectivity with Complainant’s phone, as the other concerns had been repaired. Complainant stated that he first noticed an issue with connectivity during his first year of ownership of the vehicle.

Complainant stated that he took the vehicle to Spikes for repair for the connectivity issue on January 10, 2019. Spikes’ service technician inspected the vehicle and determined that the vehicle’s accessory protocol interface module (APIM) needed to be replaced as it failed a diagnostic test.¹¹ The technician special ordered the APIM for Complainant’s vehicle.¹² No repairs were performed at the time. The vehicle’s mileage on this occasion was 13,695.¹³ Complainant did not receive a loaner vehicle while his vehicle was being repaired on this occasion.

On January 15, 2019, Complainant took the vehicle to Spikes for the APIM to be installed. The vehicle’s mileage at the time was 13,737.¹⁴ The vehicle was in Spikes’ possession for 1 day.¹⁵ Complainant received a loaner vehicle while his vehicle was being repaired.¹⁶

⁸ Tex. Occ. Code § 2301.601(4).

⁹ Complainant Ex. 1, Motor Vehicle Buyer’s Order dated July 11, 2017.

¹⁰ *Id.*

¹¹ Complainant Ex. 12, Repair Order dated January 10, 2019.

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex. 13, Repair Order dated January 15, 2019.

¹⁵ *Id.*

¹⁶ *Id.*

Complainant began experiencing problems with the vehicle's SYNC voice activation system. On March 26, 2019, Complainant took the vehicle to Spikes for repair for the issue. Spikes' service technician updated the APIM's programming and replaced the vehicle's microphone in order to resolve the issue with the voice activation system.¹⁷ The vehicle's mileage on this occasion was 15,553.¹⁸

Complainant continued to experience issues with the SYNC system's connectivity with his phone. He took the vehicle to Spikes for repair for the issue on April 25, 2019. Spikes' service technician determined that the APIM failed the diagnostic test and replaced it in order to resolve the issue.¹⁹ The vehicle's mileage on this occasion was 16,674.²⁰ The vehicle was in Spikes' possession until April 26, 2019.²¹ Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant testified that he continued to experience the connectivity issue. He took the vehicle to Spikes on May 9, 2019, in order to have the issue repaired. The vehicle's APIM failed the diagnostic test performed by Spikes' technician.²² Spikes' technician replaced the vehicle's APIM in order to resolve the issue.²³ The vehicle's mileage on this occasion was 16,791.²⁴ The vehicle was in Spikes' possession until May 13, 2019. Complainant received a loaner vehicle while his vehicle was being repaired.

In June of 2019, Complainant discovered that the vehicle's USB ports were not working. He took the vehicle to Spikes for repair for the issue on June 25, 2019. Spikes' service technician verified the issue and replaced the vehicle's media hub in order to resolve the issue.²⁵ The vehicle's mileage on this occasion was 18,441.²⁶ The vehicle was in Spikes' possession until June 26, 2019. Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant testified that he continued to experience problems with his cell phone's connectivity with the vehicle's SYNC system. He contacted Spikes to complain about the problem. On August 8, 2019, Spikes sent a service technician to Complainant's home to resolve

¹⁷ Complainant Ex. 14, Repair Order dated March 26, 2019.

¹⁸ *Id.*

¹⁹ Complainant Ex. 3, Repair Order dated April 25, 2019.

²⁰ *Id.*

²¹ *Id.*

²² Complainant Ex. 4, Repair Order dated May 9, 2019.

²³ *Id.*

²⁴ *Id.*

²⁵ Complainant Ex. 5, Repair Order dated June 25, 2019.

²⁶ *Id.*

the connectivity issues.²⁷ The technician could not find any stored trouble codes on the vehicle's computers and programmed the SYNC system to the latest calibration.²⁸ The vehicle's mileage at the time was 19,817.²⁹ Complainant did not receive a loaner vehicle while the vehicle was being repaired.

Complainant continued to have connectivity issues with the SYNC system after the programming update performed on August 8, 2019. Complainant took the vehicle to Spikes for repair for the connectivity issue on August 19, 2019. Spikes' service technician could not duplicate the connectivity issue after connecting multiple cell phones to the vehicle's SYNC system.³⁰ No repairs were performed at the time as the technician indicated that no further calibrations were available for the system.³¹ The vehicle's mileage on this occasion was 19,398.³² The vehicle was Spikes' possession until August 26, 2019.³³ Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that his cell phone continued to lose connectivity with the vehicle's SYNC system. He took the vehicle to Spikes for repair for the issue on September 23, 2019. In addition, Complainant raised the issue that the vehicle's navigation system's map was outdated. He had been raising the issue with the vehicle's navigation system to Spikes' personnel for several months and had been told that an update was not available. During the repair visit, Spikes' service technician updated the vehicle's SYNC system and the navigation map in order to resolve Complainant's concerns.³⁴ The vehicle's mileage on this occasion was 19,836.³⁵ The vehicle was in Spikes' possession until October 28, 2019, on this occasion.³⁶ Complainant was provided with a loaner vehicle while his vehicle was being repaired. Complainant testified that he was provided with two (2) different loaner vehicles during this period of time, a 2018 Ford Edge and 2019 Ford Edge Titanium, and that he did not have any trouble with his phone's connectivity with either of the vehicles' SYNC systems.

Complainant did contact Respondent's consumer affairs department to see if Respondent would repurchase the vehicle due to the problems Complainant was experiencing with the SYNC connectivity. Respondent denied the request to repurchase. Complainant, thereupon, filed a

²⁷ Complainant Ex. 6, Repair Order dated August 8, 2019.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Complainant Ex. 7, Repair Order dated August 19, 2019.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Complainant Ex. 15, Repair Order dated September 23, 2019.

³⁵ *Id.*

³⁶ *Id.*

Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on November 4, 2019, in which he complained about the vehicle's SYNC system.³⁷

Complainant testified that after filing the Lemon Law complaint he was contacted by Respondent's representative and asked to take the vehicle to Spikes for an inspection by Respondent's field service engineer (FSE). Complainant was also asked to provide his phone to the FSE in order to attempt to recreate the problem. Complainant took the vehicle to Spikes for the inspection on January 16, 2020. However, he refused to give his phone to the FSE. During the inspection the vehicle's APIM was reprogrammed in an attempt to resolve the connectivity issue.³⁸ The vehicle's mileage on this occasion was 20,757.³⁹ The vehicle was in Spikes' possession until January 17, 2020.⁴⁰ Complainant was provided with a loaner vehicle while his vehicle was being inspected. Complainant had informed Respondent's representative prior to the inspection that he was willing to speak to the FSE and would ride with him while his cell phone was connected to the SYNC system during the inspection, but he was not requested to do so.

Complainant testified that he is still experiencing problems with his cell phone's connectivity to the vehicle's SYNC system. Prior to the hearing on May 8, 2020, Complainant had last experienced a problem with the system the week before the hearing date. The SYNC system did not recognize his phone and Complainant was not able to complete a call, even though the display screen showed that the phone was connected.

Complainant stated that his phone worked on two (2) different vehicles manufactured by Respondent, the 2018 Edge and 2019 Edge Titanium. He also stated that he purchased his current cell phone in 2018, after having purchased the subject vehicle. Complainant stated that his prior cell phone was also a Samsung and that it worked fine with the vehicle's SYNC system. Complainant stated that he feels that the connectivity issue is a safety issue, since he cannot rely on the hands free system to access his cell phone while he's driving.

C. Respondent's Evidence and Arguments

Sayed Asad Bashir, Automotive Technical Consultant, testified for Respondent at the hearing. Mr. Bashir testified that he has worked in the automotive industry since 1999. For the first eight (8) years of his career, Mr. Bashir worked for various independent automotive repair shops. He was hired by Respondent in 2007, as a claims adjuster. In 2009, Mr. Bashir was hired in his present position. He is an Automotive Service Excellence (ASE) Master Certified Technician and is enrolled in Respondent's senior master technician certification program.

³⁷ Complainant Ex. 2, Lemon Law Complaint dated May 11, 2019.

³⁸ Complainant Ex. 16, Repair Order dated January 16, 2020.

³⁹ *Id.*

⁴⁰ *Id.*

Mr. Bashir stated that the SYNC system developed by Respondent includes the vehicle's information touch screens, steering wheel controls, voice controls, and console controls. The APIM is the computer which controls the system. Sometimes the system may not be compatible with a particular phone, although there is an attempt by Respondent's engineers to make the system backward compatible to older technology. Sometimes system updates can cause problems with backward compatibility.

Mr. Bashir stated that most of the time an FSE will not interact with a customer. However, they may do so if there is a need to do so. Mr. Bashir does not know why the assigned FSE did not talk to Complainant when the vehicle was inspected on January 16, 2020.

In regards to the fact that Complainant's cell phone did not have any connectivity issues with the 2018 Edge and 2019 Edge Titanium, Mr. Bashir stated that the SYNC system may be similar to what was installed in Complainant's vehicle. However, some things may be different, *i.e.*, the software level, the hardware connection, or the vehicle/customer interface profile.

Mr. Bashir stated that vehicle inspection was performed on January 16, 2020, at Spikes by Respondent's FSEs Steven Kyle and Andy Shank. Mr. Kyle and Mr. Shank test drove the vehicle for approximately 26 miles, connecting an iPhone 6 to the SYNC system and did not have any connectivity issues.⁴¹ The navigation system worked correctly, as did all voice commands.⁴² Mr. Kyle and Mr. Shank concluded that the vehicle was working as designed and that the issue was that Complainant's phone was not compatible with the SYNC software.⁴³

Mr. Bashir stated that the vehicle's firmware has been updated several times. He does not feel that the connectivity issue is a safety concern.

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

⁴¹ Respondent Ex. 2, FSE Vehicle Inspection Report dated January 16, 2020.

⁴² *Id.*

⁴³ *Id.*

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.

Complainant initially had several concerns with the vehicle's SYNC system, including the connectivity issue with his cell phone, an outdated navigation map, a voice activation issue, and the USB ports not working. However, all concerns except for the connectivity issue were resolved prior to the hearing date and Complainant indicated that he was no longer concerned with the other issues. As such, the hearings examiner will only address the connectivity issue in this decision.

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 feels that the vehicle has a defect or nonconformity which causes the vehicle's SYNC system to not maintain connectivity with his cell phone. Respondent argues that Complainant's cell phone (a Samsung Galaxy S9) is not compatible with the vehicle's SYNC system and that there is no defect or nonconformity with the vehicle which would warrant repurchase or replacement of the vehicle.

A manufacturing defect is an isolated aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle's design (which exists before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing) are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.⁴⁴ In sum, because the warranty only covers manufacturing defects, the Lemon Law does not apply to design characteristics or design defects.

The evidence indicates that incompatibility with the vehicle's SYNC system's design is as likely to have caused the connectivity issues with Complainant's cell phone as a manufacturing defect. The record reflects that the use of an incompatible phone may lead to connectivity concerns. However, phone compatibility is a design issue not subject to the warranty. Accordingly, the vehicle does not qualify for repurchase/replacement or warranty repair.

The evidence indicates that the issue complained of is a design issue with the vehicle. As such, the hearings examiner must find that there is no defect with the vehicle itself. No evidence was presented to indicate that the issue *substantially* impairs the use or market value of the vehicle

⁴⁴ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

and it does not create a serious safety hazard. Therefore, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 22,413 and it remains covered under Respondent's warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

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

III. FINDINGS OF FACT

1. William Lanzet (Complainant) purchased a new 2017 Ford Edge Titanium on July 11, 2017, from Spikes Ford (Spikes) in Mission, Texas with mileage of 9 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Ford Motor Company (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to bumper coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 22,413.
4. At the time of hearing the vehicle's warranty was still in effect.
5. Complainant has experienced numerous issues with his personal cell phone not maintaining connectivity with the vehicle's SYNC system.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, Spikes, in order to address his concerns with the SYNC system not maintaining connectivity with his phone on the following dates:
 - a. January 10, 2019, at 13,695 miles;
 - b. January 15, 2019, at 13,737 miles;
 - c. March 26, 2019, at 15,553 miles;
 - d. April 25, 2019, at 16,674 miles;
 - e. May 9, 2019, at 16,791 miles;
 - f. June 25, 2019, at 18,441 miles;
 - g. August 8, 2019, at 19,817 miles;
 - h. August 19, 2019, at 19,398 miles; and
 - i. September 23, 2019, at 19,836 miles.

7. On January 10, 2019, Spikes' service technician determined that the vehicle's accessory protocol interface module (APIM) which controls the SYNC system had failed and ordered a new APIM to replace it.
8. On January 15, 2019, Spikes' service technician replaced the vehicle's APIM in order to address the issue with the vehicle's SYNC system.
9. On March 26, 2019, Spikes' service technician updated the APIM programming to the latest calibration and then replaced the vehicle's overhead microphone in order to address concerns regarding the vehicle's voice activation system.
10. On April 25, 2019, Spikes' service technician replaced the vehicle's APIM to resolve the issue of Complainant's cell phone losing connectivity with the SYNC system.
11. On May 9, 2019, Spikes' service technician replaced the vehicle's APIM to resolve the issue of Complainant's cell phone losing connectivity with the SYNC system.
12. On June 25, 2019, Spikes' service technician replaced the vehicle's media hub in order to resolve the issue of the USB ports not working.
13. On August 8, 2019, Spikes' service technician updated the SYNC system to the latest calibrations in order to resolve the issue of the cell phone losing connectivity with the SYNC system.
14. On August 19, 2019, Spikes' service technician could not verify the concern regarding the vehicle's SYNC system losing connectivity with Complainant's cell phone.
15. On September 23, 2019, Spikes' service technician updated the SYNC system in order to resolve the issue of the SYNC system losing connectivity with Complainant's cell phone and updated the vehicle's navigation map.
16. On November 4, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
17. On January 16, 2020, Complainant took the vehicle to Spikes to allow Respondent's field service engineer (FSE) to inspect the vehicle to see if the issue with Complainant's phone not being able to maintain connectivity with the vehicle's SYNC system. The vehicle's mileage was 20,757.

18. During the inspection described in Findings of Fact #17, the service technician reprogrammed the vehicle's APIM to the latest software as instructed by Respondent's field service engineer.
19. As of the date of hearing, Complainant's personal cell phone still will not consistently maintain connectivity with the vehicle's SYNC system.
20. Also, as of the date of hearing, the vehicle's navigation map has been updated and the microphone and the USB ports have been working properly.
21. On February 6, 2020, 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.
22. The hearing in this case convened telephonically on May 8, 2020, before Hearings Examiner Edward Sandoval. William Lanzet, Complainant, represented himself at the hearing. Respondent was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared and testified at the hearing for Respondent. Due to technical issues, the hearing was continued until May 18, 2020, for further testimony. Mr. Lanzet represented himself at the continuance. Respondent was represented at the continuance by Mr. Gregory. Mr. Bashir was also present to offer testimony for Respondent. The hearing record closed on May 18, 2020.

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 July 13, 2020.



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