

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0000555 CAF**

TERRAZAS CARRIERS LLC, Complainant	§ § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
JAGUAR LANDROVER NORTH AMERICA, LLC, Respondent		

DECISION AND ORDER

Terrazas Carriers LLC (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in its vehicle distributed by Jaguar Land Rover North America, LLC (Respondent). A preponderance of the evidence shows that the subject vehicle qualifies for 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 on March 24, 2021, in Plano, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Maria Terrazas represented the Complainant. John Chambless, attorney, represented the Respondent. Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.² A vehicle qualifies for repurchase or replacement if the respondent 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.”³ 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 currently exist after a “reasonable number of attempts” at repair.⁴ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a written notice of the defect to the respondent, (2) an opportunity to cure by the respondent, 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.⁵

b. Substantial Impairment of Use or Value

i. Impairment of Use

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use. Under this standard, the factfinder considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle” from the perspective of a reasonable prospective purchaser. For instance, “while a vehicle with a non-functioning air

² TEX. OCC. CODE § 2301.603.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.604(a).

⁵ TEX. OCC. CODE § 2301.601(4).

conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁶

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.”⁷

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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

⁷ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“We find that this interpretation of the standard required for demonstrating substantial impairment is reasonable and consistent with the statute’s plain language which requires a showing of loss in market value. . . . [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.”).

⁸ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.¹⁰

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹¹

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹² Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle 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.¹³

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, or the Department has provided written notice of the alleged defect or nonconformity to the respondent;¹⁴ (2) the respondent was given an opportunity to cure the defect or

⁹ TEX. OCC. CODE § 2301.605(a)(2).

¹⁰ TEX. OCC. CODE § 2301.605(a)(3).

¹¹ TEX. OCC. CODE § 2301.605(c).

¹² *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[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.’”).

¹³ *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

¹⁴ 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 satisfies the requirement to provide notice of the defect or nonconformity to the Respondent. TEX. OCC. CODE § 2301.606(c)(1).

nonconformity;¹⁵ 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.¹⁶

2. Warranty Repair Relief

If repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle”; the vehicle owner provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty's expiration; and the owner filed a complaint with the Department specifying the defect.¹⁷ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁸

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁹ The Complainant must prove all facts required for relief by a preponderance of the evidence. That is, the Complainant must present sufficient evidence to show that every required fact more likely than not exists.²⁰ Accordingly, the Complainant cannot prevail where the existence of any required fact appears unlikely or appears equally likely or unlikely.

¹⁵ TEX. OCC. CODE § 2301.606(c)(2). A respondent may delegate its opportunity to cure to a dealer. A repair visit to a dealer may satisfy the opportunity to cure requirement when the respondent authorizes a dealer to attempt repair after written notice to the respondent. *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221 and 226 (Tex. App.—Austin 2012); Texas Department of Transportation, *Kennemer v. Dutchman Manufacturing, Inc.*, MVD Cause No. 09-0091 CAF (Motor Vehicle Division Sept. 25, 2009) (Final Order Granting Chapter 2301, Subchapter M Relief). An opportunity to cure does not require an actual repair attempt but only a valid opportunity. *Id* at 2. A respondent forgoes its opportunity to repair by replying to a written notice of defect with a settlement offer instead of arranging a repair attempt. *Id* at 2.

¹⁶ TEX. OCC. CODE § 2301.606(d)(2).

¹⁷ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁸ TEX. OCC. CODE § 2301.603(a).

¹⁹ 43 TEX. ADMIN. CODE § 215.66(d).

²⁰ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

4. The Complaint Identifies the Relevant Issues in this Case

The complaint identifies the relevant issues to address in this case.²¹ The complaint must state “sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law.”²² However, the parties may expressly or impliedly consent to hearing issues not included in the pleadings.²³ Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent.²⁵

5. Incidental Expenses

When repurchase or replacement is ordered, the Lemon Law provides for reimbursing the Complainant for reasonable incidental expenses resulting from the vehicle’s loss of use because of the defect.²⁶ Reimbursable expenses include, but are not limited to: (1) alternate transportation; (2) towing; (3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; (4) meals and lodging necessitated by the vehicle’s failure during out-of-town trips; (5) loss or damage to personal property; (6) attorney fees, if the complainant retains counsel after notification that the respondent is represented by counsel; and (7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use. The expenses must be reasonable and verifiable (for example, through receipts

²¹ “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.” TEX. GOV’T CODE § 2001.051; “Notice of a hearing in a contested case must include . . . either: (A) a short, plain statement of the factual matters asserted; or (B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.” TEX. GOV’T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

²² 43 TEX. ADMIN. CODE § 215.202(a)(3).

²³ 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²⁴ *See Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref’d).

²⁵ *See* TEX. GOV’T CODE §§ 2001.141(b)-(c), 2001.051-2001.052; TEX. R. CIV. P. 301.

²⁶ TEX. OCC. CODE § 2301.604.

or similar written documents).²⁷ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁸

B. Summary of Complainant's Evidence and Arguments

On October 10, 2019, the Complainant, purchased a new 2019 Land Rover Range Rover Sport from Jaguar Land Rover Dallas, a franchised dealer of the Respondent, in Dallas, Texas. The vehicle had 70 miles on the odometer at the time of purchase. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.

On or about September 17, 2021, the Complainant provided a written notice of defect to the Respondent. On September 15, 2021, the Complainant filed a complaint with the Department alleging that the screens go black and have delays coming on, the air conditioning (AC) turns off by itself and the airflow is not strong, the AC recirculation would not stay on, the radio mutes on its own, and there is a delay when connecting to CarPlay.

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

²⁸ 43 TEX. ADMIN. CODE § 215.208(b)(1).

In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged issues as follows:

Date	Miles	Issue
04/10/2020	4,254	The vehicle had a rough idle, the entertainment screen takes several minutes to turn on at times, the hand motion for the sunroof shade was not working, and the vehicle hesitated when accelerating.
08/26/2020	7,638	The screens will sometimes go black and sometimes they will take two minutes to turn on when the vehicle is started. The AC would start by blowing cold and then would switch to blowing warm.
09/18/2020	7,960	The AC blew warm and the setting would go blank and started to glitch. CarPlay would not turn on automatically when the phone was plugged in.
11/02/2020	8,602	The AC recirculation function would not stay engaged, the AC will not blow cold, the rear quarter glass molding was separating, the left rear bumper was misaligned, and the front tow hook cover came out.
12/02/2020	9,434	The screen would black out while driving, the air recirculation would shut off while driving, the vehicle had a rough idle at when starting, the vehicle smelled like it was over heating after driving, and the auto start stop would engage when the button was disabled.
02/03/2021	11,184	The reverse camera would not work at times, the AC has a wet dog smell at times when starting, the screen would black out while driving, the air recirculation would shut off while driving, the front tow cover was loose, and the sun rood did not open automatically when the vehicle was started one time.
06/03/2021	15,514	The infotainment screen was lagging, the vehicle would fail to lower/lift itself, and the AC blew colder on the driver's side.
12/15/2021	20,685	The AC was not working properly and there were lines on the screen.

Ms. Terrazas described the issue with the infotainment screens going black. She explained that when she turned the car on, there was a delay before the top and bottom screens came on. She added that when she turned on the radio, it took several minutes to come on. She noted that the radio froze and when she turned the volume knob, the screen reflected the increased volume but the sound did not increase. She mentioned that after a delay, the screen eventually came on but after driving, the top screen would go black and the bottom screen would freeze. She pointed out that the screens also controlled the AC, the radio, the air circulation, and the rear and front cameras.

She estimated that she first noticed the issue with the screens sometime before April 10, 2020. She stated the issue at that time was the screen startup was delayed and she could not change the radio and the AC. She recalled that the screen first went blank around March 2020. She established that the screens froze up a couple times a month and the delay occurred daily. She most recently noticed the screen going blank within the month of the hearing and she most recently noticed the delay on the morning of the hearing.

She established that it took a minute to two minutes for the screen to come on after starting the vehicle. She testified that the delay could happen multiple times a day. She stated that the screen turned on and then stayed on the logo screen for a minute or two before displaying the options.

She described that while she drove, the AC light would turn off and the AC would blow warm air. She added that she would have to push the button again to make the air blow cold. She estimated that she first noticed the issue in July of 2020. She clarified that the fan was still blowing but the air was not cold. She estimated that the issue occurred roughly every other day, around two to three times a week. She most recently noticed the issue the week before the hearing.

She testified that there was an issue with the AC fan speed and even when it was set on the max speed, the air did not blow fast. She added that the left and middle left vents did not blow cold air but the right-side vents would blow cold air. She approximated that this issue occurred intermittently roughly two times a week, but it could happen up to two times a day. She recalled that she first noticed the issue around August 6, 2020. She most recently noticed the issue the week before the hearing.

She confirmed that she was having an issue with her AC recirculation staying on. She stated that she pressed the button for five seconds to turn the AC light on and it turned off after a short time. She established that the issue occurred on her way to the hearing. She recalled that she first noticed the issue around November 1, 2020. She claimed that the issue occurred every time she drove the vehicle.

She described that she would drive the vehicle and the radio would mute itself while the screen stayed on. She could not recall when she first noticed the issue. She testified that the issue occurred roughly every other day. She most recently noticed the issue the week before the hearing. She believed that the lower screen was replaced but the issue was still occurring.

She described that there was a delay when connecting her phone to CarPlay. She added that sometimes she had to select an option in order to make CarPlay appear. She confirmed that she was using a cable to connect to CarPlay. She approximated that she first noticed the issue before September 28, 2020. She most recently noticed the issue two days before the hearing. She mentioned that the issue occurred a few times a week.

She testified that she received a loaner vehicle every time her vehicle was in the shop except for the last two visits because the dealer did not have one available. She recalled that her vehicle was out of service for repairs for roughly three months. She noted that the two visits where she did not receive a loaner vehicle, her vehicle was in the shop for roughly three days and for a week or two respectively. Ms. Terrazas expressed a preference for repurchase of the vehicle. She confirmed that she was the only driver of the vehicle.

On cross examination, Ms. Terrazas confirmed that the car was a company car and it was the only SUV the company owned. She confirmed that she owned BMWs in the past. She noted that this was her only vehicle and she was the primary driver. She stated that she read some of the owner's manual.

She indicated that she used an original Apple cable. She agreed that there was no complaint to a dealership about the radio muting issue. She clarified that the AC blowing speed issue included both the air not blowing evenly and that the air not blowing strongly. She added that the AC button turned off. She reiterated that the issue could be either that the screen went off or that the AC button turned off. She testified that there were lines on the screen that appeared in August 2021 that were separate from the screen going blank. She stated that the last time she took the vehicle into the dealership was December 15, 2021. She admitted the last time she took the car to the dealership about the screen going blank issue was February 3, 2021. She also admitted that the last time she took the car to the dealership for the screen lagging was June 3, 2021.

She described that she had been in a collision in September 2021 in the vehicle that damaged the right side of the vehicle by the spoiler. She stated that she took the vehicle to MAACO for repairs. She added she had tapped yellow cement poles with the right front fender and the paint transferred to the vehicle but there were no dents. She explained that she cleaned the paint herself.

C. Inspection

The vehicle's odometer displayed 22,554 miles at the time of the hearing. During the inspection, both screens turned on normally when the vehicle turned on. The Hearings Examiner noticed that the center left vent felt warmer than the right vent and it blew harder. The radio started playing roughly a minute after the vehicle was turned on. The Hearings Examiner noticed that the AC was set on auto. Mr. Sangster explained that the auto function controlled recirculation, fan speed, and which vents blew. He pointed out that recirculation could turn off unless latched. Ms. Terrazas held the air circulation button for several seconds and the setting did not latch. CarPlay initially turned on normally when plugging the cable from the vehicle to the phone. A second attempt to connect failed but CarPlay turned on normally during four subsequent attempts.

D. Summary of Respondent's Evidence and Arguments

Brandon Sangster, Customer Satisfaction Senior Technical Specialist, testified for the Respondent. He indicated that he had inspected the vehicle in question two or three weeks before the hearing.

He mentioned that he had seen the issue of lines on the screen before in other vehicles and the cause was the APIX connection. He established that he had the vehicle for two to three hours and drove the vehicle for less than 100 miles. He stated that he did not notice any screens going blank or any delays in the screens.

Mr. Sangster explained how the AC worked in the vehicle. He stated that the system was a sophisticated system that used sensors inside and outside of the vehicle. He continued that the AC depended on ambient temperature. He pointed out that some of the systems still functioned automatically, even when the system was not set to auto. He explained that these automatic systems could affect the flow of the air and the temperature, as well as turning off the recirculation. He elaborated that the vehicle had a four-zone climate system and that each seat had its own temperature controls. He confirmed that there was no specification for all four zones to be the same temperature. He claimed that a variation in air speed was expected between vents. He recounted that he tested the AC system with FLIR (forward looking infra-red) optics and the readings matched the expected output. He reiterated that the vehicle used a multitude of inputs to determine whether or not the air recirculation should stay on.

He confirmed that he inspected the iPhone cord that was present in the vehicle. He opined that it was not an Apple original cord. He recalled that the cord was crimped and pinched and that some of the terminals were not in the best condition. He admitted that the cord did work without fault during his inspection.

Mr. Sangster claimed that he did not see any issues with the vehicle that were related to the complaint. He stated that he believed the vehicle was operating as designed. He testified that there was nothing that would have substantially impacted the value of the vehicle. Mr. Sangster noted that there were no DTCs for the infotainment system.

E. Analysis

As explained in the discussion of applicable law, the law requires the Complainant to prove every element under the Lemon Law, or Warranty Performance Law for repair relief, by a preponderance. In other words, the Complainant must prove that every required fact is more likely than not true. The vehicle clearly has had a variety of problems; however, Lemon Law relief does not apply to all problems that may occur with a vehicle but only to warrantable defects that continue to exist (i.e., currently exist) after repairs.²⁹ The Lemon Law does not require that a respondent provide any particular warranty coverage nor does the Lemon Law impose any specific standards for vehicle characteristics. Rather, the Lemon Law requires a respondent to conform its vehicles to whatever coverage the warranty provides. In part, the subject vehicle's warranty states that: "JLRNA warrants that during the warranty period, if a Land Rover vehicle is properly operated and maintained, repairs required to correct defects in factory-supplied materials or factory workmanship will be performed without charge upon presentment for service at an authorized Land Rover retailer."³⁰ According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³¹

²⁹ TEX. OCC. CODE §§ 2301.603(a), 2301.604(a); TEX. OCC. CODE § 2301.204.

³⁰ Complainant's Ex. 4, Warranty Statement.

³¹ Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues. *E.g.*, *Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials

A defectively manufactured vehicle has a flaw so that it does not conform to the manufacturer's specifications, and is not identical to other same model vehicles.³² A manufacturing defect occurs when the vehicle varies from the manufacturer's design standards, causing that vehicle to differ from other vehicles of the same kind.³³ In other words, a manufacturing defect is an isolated aberration, an unintended configuration occurring only in those vehicles not produced according to the manufacturer's specifications.³⁴ Stated another way, 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. Accordingly, manufacturing defects occur during manufacturing and exist when the vehicle leaves the manufacturing plant. In contrast, design issues result from the manufacturer's design of the vehicle, even though manufactured without any flaws.³⁵ Design characteristics, including design defects, exist in the vehicle's specifications and do not arise from any error during manufacturing.³⁶ Accordingly, a design characteristic exists in all vehicles of the same design, but the vehicle's intended configuration may produce unintended and unwanted results.³⁷ Unlike manufacturing defects, issues that do not arise from manufacturing,

or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.”).

³² *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.--Texarkana 1985), *aff'd* in part on other grounds, *rev'd* in part on other grounds, 715 S.W.2d 629 (Tex. 1986) (“Manufacturing defect cases involve products which are flawed, i.e., which do not conform to the manufacturer's own specifications, and are not identical to their mass-produced siblings.”).

³³ *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) (“A manufacturing defect may be distinguished from a design defect. A manufacturing defect occurs when the product varies from the manufacturer-established design standards, causing that product to deviate from the normal safety of other products of its kind.”).

³⁴ *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) (“This distinction between ‘aberrational’ defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].”).

³⁵ *Ford Motor Co. v. Pool*, 688 S.W.2d 879, 881 (Tex. App.--Texarkana 1985), *aff'd* in part on other grounds, *rev'd* in part on other grounds, 715 S.W.2d 629 (Tex. 1986) (“Defective design cases, however, are not based on consumer expectancy, but on the manufacturer's design of a product . . . even though not flawed in its manufacture.”).

³⁶ In contrast to manufacturing defects, “[a] design defect exists where the product conforms to the specification but there is a flaw in the specifications themselves.” *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), *writ denied*, (Feb. 13, 1997).

³⁷ *Harduvel v. Gen. Dynamics Corp.*, 878 F.2d 1311, 1317 (11th Cir. 1989) (“This distinction between ‘aberrational’ defects and defects occurring throughout an entire line of products is frequently used in tort law to separate defects of manufacture from those of design. . . . Stated another way, the distinction is between an unintended configuration [a manufacturing defect], and an intended configuration that may produce unintended and unwanted results [a design defect].”).

such as the vehicle's design characteristics or dealer representations and improper dealer repairs, are not warrantable defects. Because the warranty only covers manufacturing defects, the Lemon Law does not provide relief for design characteristics, design defects, or any other non-manufacturing problem. Even though an issue may be unintended and unwanted, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

1. Blank Screens and Screen Delay Turning On

The evidence indicates that no vehicle has problem-free screens that operate without a glitch. In other words, the issues with the screens relate to characteristics inherent to a vehicle's design limitations, as distinguished from warranted manufacturing defects.

2. Air Conditioning Turning Off, Low Airflow and Recirculation Turning Off

The record reflects that the airflow and temperature may normally vary between vents. Moreover, the AC system as designed may operate some functions automatically, even without the AC system set to auto. This automatic operation may affect air flow, temperature, and recirculation. Accordingly, the AC concerns do not appear more likely to result from a warranted defect rather than an unwarranted design issue.

3. Radio Mutes

Unrebutted evidence shows that the radio spontaneously muted. However, the Department previously determined that an issue with the radio does not constitute a substantial impairment or a safety hazard.³⁸ Moreover, the repair history does not appear to show any repair attempts for this issue. Accordingly, the radio issue cannot support repurchase or replacement but qualifies for repair relief.

4. CarPlay Delay

Though CarPlay may intermittently exhibit a delay, the evidence shows that the USB cable used with CarPlay was crimped and pinched and the terminals appeared in a less than optimal condition, suggesting that the state of the cable may have contributed to the intermittent connection delay. In sum the record does not show that the delay more likely than not resulted from a warranted manufacturing defect.

³⁸ Texas Department of Transportation, *Alvarez v. Ford Motor Company*, MVD Cause No. 08-0440, Final Order Denying § 2301.604 Relief (Motor Vehicle Division Dec. 11, 2008).

III. Findings of Fact

1. On October 10, 2019, the Complainant, purchased a new 2019 Land Rover Range Rover Sport from Jaguar Land Rover Dallas, a franchised dealer of the Respondent, in Dallas, Texas. The vehicle had 70 miles on the odometer at the time of purchase.
2. The vehicle's limited warranty provides bumper to bumper coverage for four years or 50,000 miles, whichever occurs first.
3. The Complainant took the vehicle to a dealer for repair as shown below:

Date	Miles	Issue
04/10/2020	4,254	The vehicle had a rough idle, the entertainment screen takes several minutes to turn on at times, the hand motion for the sunroof shade was not working, and the vehicle hesitated when accelerating.
08/26/2020	7,638	The screens will sometimes go black and sometimes they will take two minutes to turn on when the vehicle is started. The AC would start by blowing cold and then would switch to blowing warm.
09/18/2020	7,960	The AC blew warm and the setting would go blank and started to glitch. CarPlay would not turn on automatically when the phone was plugged in.
11/02/2020	8,602	The AC recirculation function would not stay engaged, the AC will not blow cold, the rear quarter glass molding was separating, the left rear bumper was misaligned, and the front tow hook cover came out.
12/02/2020	9,434	The screen would black out while driving, the air recirculation would shut off while driving, the vehicle had a rough idle at when starting, the vehicle smelled like it was over heating after driving, and the auto start stop would engage when the button was disabled.
02/03/2021	11,184	The reverse camera would not work at times, the AC has a wet dog smell at times when starting, the screen would black out while driving, the air recirculation would shut off while driving, the front tow cover was loose, and the sun rood did not open automatically when the vehicle was started one time.
06/03/2021	15,514	The infotainment screen was lagging, the vehicle would fail to lower/lift itself, and the AC blew colder on the driver's side.
12/15/2021	20,685	The AC was not working properly and there were lines on the screen.

4. On or about September 17, 2021, the Complainant provided a written notice of defect to the Respondent.

5. On September 15, 2021, the Complainant filed a complaint with the Department alleging that the screens go black and have delays coming on, the air conditioning (AC) turns off by itself and the airflow is not strong, the AC recirculation would not stay on, the radio mutes on its own, and there is a delay when connecting to CarPlay.
6. On November 15, 2021, the Department's Office of Administrative Hearings issued a notice of hearing directed to all parties, giving them 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 factual matters asserted.
7. The hearing in this case convened on March 24, 2021, in Plano, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. Maria Terrazas represented the Complainant. John Chambless, attorney, represented the Respondent. Brandon Sangster, Customer Satisfaction Senior Technical Specialist, Testified for the Respondent.
8. The vehicle's odometer displayed 22,554 miles at the time of the hearing.
9. The vehicle's warranty was in effect at the time of the hearing
10. During the inspection, both screens turned on normally when the vehicle turned on. The center left vent felt warmer than the right vent and it blew harder. The radio started playing about a minute after the vehicle was turned on. The AC was set on auto. The auto function controlled recirculation, fan speed, and which vents blew. Recirculation can turn off unless latched. Ms. Terrazas held the air circulation button for several seconds and the setting did not latch. CarPlay turned on normally when plugging the cable from the vehicle to the phone. A second attempt to connect failed but CarPlay turned on normally during four other attempts.
11. The radio spontaneously muted about twice a week. This issue occurred as late as the week before 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 and 2301.204.
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 filed a sufficient complaint with the Department. 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's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. TEX. OCC. CODE § 2301.604(a). Also, the vehicle did not have a reasonable number of repair attempts. TEX. OCC. CODE §§ 2301.604(a) and 2301.605(a).
7. The Complainant does not qualify for reimbursement of incidental expenses because the vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE §§ 2301.603, 2301.604(a); 43 TEX. ADMIN. CODE § 215.209.
8. If the Complainant's vehicle does not qualify for replacement or repurchase, this Order may require repair to obtain compliance with the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603; 43 TEX. ADMIN. CODE § 215.208(e).
9. The Complainant's vehicle qualifies for warranty repair. The Complainant proved that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.204 and 2301.603. The Complainant or an agent of the Complainant notified the Respondent or Respondent's agent of the alleged defect(s). TEX. OCC. CODE §§ 2301.204 and 43 TEX. ADMIN. CODE § 215.202(b)(3).

10. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

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**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the subject vehicle to the applicable warranty; specifically, the Respondent shall resolve the issues concerning the radio spontaneously muting. Upon this Order becoming final under Texas Government Code § 2001.144:³⁹ (1) the Complainant shall deliver the vehicle to the Respondent within 20 days; and (2) the Respondent shall complete the repair of the vehicle within **20 days** after receiving it. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider the 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 June 2, 2022



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

³⁹ This Order does not become final on the date this Order is signed, instead: (1) this Order becomes final if a party does not file a motion for rehearing within 25 days after the date this Order is signed, or (2) if a party files a motion for rehearing within 25 days after the date this Order is signed, this Order becomes final when: (A) an order overruling the motion for rehearing is signed, or (B) the Department has not acted on the motion within 55 days after the date this Order is signed. Accordingly, this Order cannot become final (1) while a motion for rehearing remains pending; or (2) after the grant of a motion for rehearing.