

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0006939 CAF**

VANESSA GARZA,
Complainant

v.

**VOLKSWAGEN GROUP OF
AMERICA, INC.,**
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Vanessa Garza (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2020 Volkswagen Tiguan. Complainant asserts that the vehicle has a defect which causes it to use an inordinate amount of oil. Volkswagen Group of America, Inc. (Respondent) argued that the vehicle is operating as designed, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not entitled to repurchase or replacement 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 on June 7, 2022, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Complainant, Vanessa Garza, represented herself and testified in the hearing. Respondent, Volkswagen Group of America, was represented by Robert Turner, contract representative. In addition, Melanie Dodson, Office of Administrative Hearings' summer intern, was present to observe. The hearing was continued for further testimony and for Complainant to provide requested documentation.

The continued hearing convened via Microsoft Teams before Hearings Examiner Edward Sandoval on July 21, 2022. Complainant, Vanessa Garza, represented herself and testified in the hearing. Respondent, Volkswagen Group of America, was represented by Robert Turner, contract representative. The hearing record closed on July 21, 2022.

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 mailed 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 can be established 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 by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the repair 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.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 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.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

Finally, a rebuttable presumption can be established 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 that substantially impairs the vehicle’s use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs 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.⁹

The 30 day out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner’s vehicle is being repaired by a franchised dealer.¹⁰

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2020 Volkswagen Tiguan on June 26, 2020, from Ancira Volkswagen (Ancira) in San Antonio, Texas with mileage of 15 at the time of delivery.¹¹ Respondent provided a new vehicle warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever comes first.¹² On the date of the initial hearing the vehicle’s mileage was 31,807. At the time of hearing, Respondent’s warranty was still in effect.

Complainant testified that she took the vehicle for a test drive prior to purchasing it. She did not notice anything unusual about the vehicle during the test drive. Complainant stated that part of the reason for purchasing the vehicle was because she was told by the salesperson that she would have to perform oil changes every 10,000 miles, rather than the standard 3,000 to 5,000 miles. In addition, she was told that she would get a certain amount of free oil changes if she purchased the vehicle.

Complainant testified that within a couple of months after purchasing the vehicle, the vehicle’s low oil warning light illuminated. She took the vehicle to Ancira as a result of the light

⁸ Tex. Occ. Code § 2301.601(4).

⁹ Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

¹⁰ Tex. Occ. Code § 2301.605(c).

¹¹ Complainant Ex. 8, Retail Purchase Agreement dated June 26, 2020.

¹² Respondent Ex. 1, Garza Hearing Summary Packet, p. 1.

illuminating. Ancira's service technician topped off the oil in the vehicle's engine. The vehicle's mileage at the time was between 5,300 and 5,600.

Complainant stated that the vehicle's low oil warning light illuminated in March of 2021. She took the vehicle to Ancira on March 15, 2021, to address the issue of the vehicle's oil consumption. Ancira's service technician indicated on the invoice that Complainant had taken the vehicle to them the previous Friday (March 12, 2021) for the same issue and that they had topped off the oil.¹³ On this occasion, the technician topped off the oil again and inspected the vehicle for oil leaks.¹⁴ He did not find any leaks and no repairs were performed, but he advised Complainant to return the vehicle to the dealer at 10,000 miles for scheduled maintenance and to follow up on the issue.¹⁵ The vehicle's mileage at the time was 9,489.¹⁶

Complainant returned the vehicle to Ancira on March 31, 2021, for the scheduled 10,000 mile maintenance. Ancira's service technician did not perform any repair for the oil consumption issue at that time.¹⁷ The vehicle's mileage on this occasion was 10,135.¹⁸ Complainant stated that she waited for the vehicle and no loaner was provided for her.

Complainant stated that sometime in August of 2021 the vehicle's low oil level warning light illuminated and she added 2½ quarts of oil to the vehicle's engine. On August 31, 2021, Complainant took the vehicle to Ancira for repair for the issue, although the warning light was not illuminated at the time. Ancira's service technician advised Complainant to return the vehicle for repair when the warning light was on and not to add oil to the engine.¹⁹ The vehicle's mileage on this occasion was 16,396.²⁰

On November 1, 2021, Complainant took the vehicle to Ancira for scheduled maintenance. At the time, she had an oil change performed on the vehicle. The vehicle's low oil warning light was not illuminated prior to this visit. The vehicle's mileage on this occasion was 19,808.²¹

The vehicle's low oil warning light illuminated again in January of 2022. On January 27, 2022, Complainant took the vehicle to Ancira to have the dealer address the issue of the vehicle's oil consumption. After checking for oil leaks and finding none, Ancira's service technician decided

¹³ Complainant Ex. 2, Repair Order dated March 15, 2021.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complainant Ex. 3, Repair order dated March 31, 2021.

¹⁸ *Id.*

¹⁹ Complainant Ex. 4, Repair Order dated August 31, 2021.

²⁰ *Id.*

²¹ Complainant Ex. 5, Repair Order dated November 1, 2021.

to perform an oil consumption test on the vehicle.²² The technician started the test and advised Complainant to return the vehicle to Ancira after driving it for 630 miles.²³ The vehicle's mileage on this occasion was 24,913.²⁴

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on January 28, 2022.²⁵

Complainant returned the vehicle to Ancira on February 10, 2022, to complete the oil consumption test. Ancira's service technician determined that the vehicle had used .02 grams of oil after being driven 616 miles.²⁶ This was considered to be within manufacturer's specifications for the vehicle.²⁷ The vehicle's mileage on this occasion was 25,530.²⁸

In late May of 2022, the vehicle's low oil warning light illuminated. Complainant took the vehicle to Ancira on May 26, 2022, to have an oil change performed. Ancira's service technician checked the vehicle's oil level and determined that it was 1½ quarts low.²⁹ The vehicle's mileage on this occasion was 31,420, indicating that Complainant had driven almost 6,000 miles in the vehicle since the oil consumption test was completed.³⁰

C. Respondent's Evidence and Arguments

Robert Turner, contract representative, appeared and represented Respondent at the hearing. Mr. Turner is not Respondent's employee and did not have any dealings with the vehicle prior to the hearing on the merits. He presented Respondent's evidence and statement packet for the hearing.

Respondent feels that the vehicle is operating normally. In addition, Respondent feels that the "repair history does not show an unreasonable number of repair attempts, or a substantial impairment of use, value or safety of the vehicle."³¹ Respondent also provided a document regarding vehicle oil consumption which indicated that "there is no standard oil consumption rate, however a maximum of 1 quart per 1,200 miles (1 liter per 2,000 km) would be within factory specifications."³² Mr. Turner testified that the oil consumption test performed on the

²² Complainant Ex. 6, Repair Order dated January 27, 2022.

²³ *Id.*

²⁴ *Id.*

²⁵ Complainant Ex. 10, Lemon Law Complaint dated January 28, 2022.

²⁶ Respondent Ex. 3, Repair Order dated February 10, 2022.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Complainant Ex. 7, Repair Order dated May 26, 2022.

³⁰ *Id.*

³¹ Respondent Ex. 1, Garza Hearing Summary Packet, p. 13.

³² Respondent Ex. 4, Understanding Engine Oil Consumption, undated.

vehicle in January and February of 2022 indicated that the vehicle's oil consumption was within factory specifications.³³

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 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.

The first issue to address is whether Complainant's vehicle has a defect or condition that *substantially* impairs its use or market value, or which creates a serious safety hazard. The totality of the evidence presented at the hearing reveals that the vehicle is operating within manufacturer specifications and no defect is present. Respondent's authorized dealer performed an oil consumption test on the vehicle in January and February of 2022 and it was determined that the vehicle's oil consumption was within factory specifications, specifically no more than one quart of oil lost per 1,200 miles of driving. This was further verified by the fact that when Complainant took the vehicle for an oil change on May 26, 2022, (the first oil change after the oil consumption test had been performed) the vehicle's engine was low 1½ quarts of oil after Complainant had driven approximately 6,000 miles. This exceeds the factory specifications for oil usage. Therefore, the hearings examiner finds that there is no defect with the vehicle as defined in the Occupations Code and, as such, repurchase or replacement relief for Complainant is not warranted.

On the date of the initial hearing, the vehicle's mileage was 31,807 and it remains under warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the vehicle's warranty.

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

³³ Respondent Ex. 3, Repair Order dated February 10, 2022.

III. FINDINGS OF FACT

1. Vanessa Garza (Complainant) purchased a new 2020 Volkswagen Tiguan on June 26, 2020, from Ancira Volkswagen (Ancira) in San Antonio, Texas with mileage of 15 at the time of delivery.
2. The manufacturer of the vehicle, Volkswagen Group of America, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle good for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of the initial hearing was 31,807.
4. At the time of the initial hearing the vehicle's warranty was still in effect.
5. A few months after purchasing the vehicle, Complainant noticed that the vehicle's low oil level warning light illuminated prior to the vehicle having been driven 6,000 miles.
6. Complainant, when she purchased the vehicle, had been told by Ancira's salesperson that the vehicle would need an oil change every 10,000 miles or so.
7. Prior to filing the Lemon Law complaint, Complainant took the vehicle to Respondent's authorized dealer, Ancira, on the following dates in order to address her concerns with the vehicle's oil consumption:
 - a. March 12, 2021, at 9,374 miles;
 - b. March 15, 2021, at 9,489 miles;
 - c. March 31, 2021, at 10,134 miles;
 - d. August 31, 2021, at 16,396 miles;
 - e. November 1, 2021, at 19,808 miles;
 - f. January 27, 2022, at 24,913 miles;
 - g. February 10, 2022, at 25,530 miles; and
 - h. May 26, 2022, at 31,420 miles.
8. On March 12, 2021, Ancira's service technician topped off the engine's oil as it was low, and the vehicle's low oil level warning light had illuminated.
9. On March 15, 2021, Ancira's service technician topped off the engine's oil as it was low, and the vehicle's low oil level warning light had illuminated. The technician did not find any oil leaks in the vehicle after inspecting it.

10. On March 31, 2021, Ancira's service technician performed a follow up on the vehicle to see if the low oil warning light was illuminated and whether the engine was low on oil. The technician determined that no correction for those issues was needed at the time. (Complainant had take the vehicle to Ancira for scheduled maintenance on this occasion.)
11. Sometime just prior to August 31, 2021, the vehicle's low oil level warning light illuminated, and Complainant put 2½ quarts of oil into the vehicle's engine.
12. On August 31, 2021, Ancira's service technician advised Complainant to return the car to Ancira the next time the oil warning light turned on and not to put oil in the vehicle.
13. On November 1, 2021, Ancira's service technician performed an oil change on the vehicle as part of the regular maintenance schedule.
14. On January 27, 2022, Ancira's service technician began an oil consumption test on the vehicle to determine if it was using oil excessively.
15. On January 28, 2022, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
16. On February 10, 2022, Ancira's service technician completed the oil consumption test.
17. During the service visit described in Findings of Fact #16, Ancira's service technician determined that the vehicle's oil usage was within manufacturer's specifications and no repair was performed.
18. A maximum of one (1) quart of oil used by this model vehicle per 1,200 miles is within factory specifications.
19. During the oil consumption test, the technician determined that the vehicle had used .02 grams of oil after having been driven 616 miles.
20. On May 26, 2022, Ancira's service technician performed an oil change on the vehicle and determined that it had used 1½ quarts of oil since the conclusion of the oil consumption test.
21. The vehicle's mileage upon the conclusion of the oil consumption test on February 10, 2022, was 25,530 and the vehicle's mileage at the time of the May 26, 2022, oil change

was 31,420. This indicates that the vehicle used 1½ quarts of oil while being driven almost 6,000 miles.

22. The vehicle's oil consumption is within the manufacturer's specifications.
23. On April 4, 2022, 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.
24. The hearing in this case convened on June 7, 2022, in San Antonio, Texas before Hearings Examiner Edward Sandoval. Complainant, Vanessa Garza, represented herself and testified in the hearing. Respondent, Volkswagen Group of America, was represented by Robert Turner, contract representative. In addition, Melanie Dodson, Office of Administrative Hearings' summer intern, was present to observe. The hearing was continued for further testimony and for Complainant to provide requested documentation.
25. The continued hearing convened via Microsoft Teams before Hearings Examiner Edward Sandoval on July 21, 2022. Complainant, Vanessa Garza, represented herself and testified in the hearing. Respondent, Volkswagen Group of America, was represented by Robert Turner, contract representative. The hearing record closed on July 21, 2022.

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 25, 2022



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