

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0008199 CAF**

**JASMON HOUSTON and AYESHA
KELLY,**

Complainants

v.

**TESLA MOTORS, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Ayesha Kelly and Jasmon Houston (Complainants) 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 their vehicle manufactured by Tesla Motors, Inc. (Respondent). A preponderance of the evidence shows that the subject vehicle has a warrantable defect that 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 July 27, 2022, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on September 6, 2022. The Complainants represented themselves. Albert Zheng, Business Partner, and Raymond Kim, Business Partner, represented 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 Complainants.¹⁹ The Complainants must prove all facts required for relief by a preponderance of the evidence. That is, the Complainants must present sufficient evidence to show that every required fact more likely than not exists.²⁰ Accordingly, the Complainants 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); see *Vance v. My Apartment Steak House, Inc.*, 677 S.W.2d 480, 482 (Tex. 1984) (“[A] civil litigant who asserts an affirmative claim for relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

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 Complainants 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 Complainants' Evidence and Arguments

On January 9, 2022, the Complainants, purchased a new 2021 Tesla Model S from the Respondent. The vehicle had 15 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 January 25, 2022, the Complainants provided a written notice of defect to the Respondent. On February 9, 2002, the Complainants filed a complaint, as amended, with the Department alleging the following defects: front fascia and underbody damage; bent front speaker mesh; improperly installed weather stripping fraying and snagging; misaligned headlights/bumper; wipers not contacting to clean the windshield; humming and whining noise; range not as advertised; Caraoke missing; windshield wiper fluid leaks; instrument cluster pixelated; patchy back up camera; tire required replacement for a bent rim; faulty module controller; faulty retrofitted hydraulic control unit wake-up wire; limited deceleration warning; regenerative braking warning; rear seat belts not staying latched; inconsistent tire pressure (as measured manually compared to the pressure displayed by the vehicle); and no warning for low tire pressure. Testimony showed that the issues with the front fascia and underbody damage; bent front speaker mesh; wipers not contacting to clean the windshield; windshield wiper fluid leaks; humming and whining noise; range not as advertised; instrument cluster pixelated; tire required replacement for a bent rim; and faulty retrofitted hydraulic control unit wake-up wire were resolved, leaving the following issues to be addressed here: **improperly installed weather stripping fraying and snagging; misaligned headlights/bumper; Caraoke missing; faulty module controller; patchy back up camera; limited deceleration warning/regenerative braking warning; rear seat belts not staying latched; inconsistent tire pressure; and no warning for low tire pressure.** In relevant part, the Complainants took the vehicle for repair of the alleged issues as follows:

²⁷ 43 TEX. ADMIN. CODE § 215.209(a).

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

| Date | Miles | Issue |
|------------|-------|--|
| 01/19/2022 | 540 | improperly installed weather stripping fraying and snagging; misaligned headlights/bumper |
| 01/22/2022 | 608 | improperly installed weather stripping fraying and snagging; tire pressure |
| 02/21/2022 | 849 | Caraoke missing; tire pressure |
| 04/21/2022 | 5,227 | limited deceleration warning/regenerative braking warning; tire pressure |

Ms. Houston testified that the weather stripping (gaskets) were frayed around the trunk and back doors, and did not appear to be attached properly. She noted that the vehicle had a gap between the headlight and bumper. The headlight and bumper were still slightly misaligned after repair. Caraoke was not installed. The backup camera may pixelate and pixelated the night before the hearing. Ms. Houston was unsure about the status and nature of the module controller, which she believed related to the main screen. Ms. Houston described that the limited deceleration warning occurred intermittently and stated something about braking manually. The rear seat belts would click but sometimes not latch and may pull apart. The tire pressure displayed in the vehicle varied from the pressure measured manually. Additionally, the tire pressure may be equal but then differ, but this did not concern because of weather affecting pressure. However, the tire pressure never synchronizes. On cross-examination, Ms. Houston confirmed that she had not seen Caraoke on the subject vehicle.

C. Inspection

Upon inspection at the hearing, the subject vehicle's odometer displayed 8,948 miles. The charge limit was set to 85%. The Caraoke feature did not appear on the infotainment display. However, Mr. Zhou noted that the vehicle did not have the Caraoke option. He also noted that, per the owner's manual, regeneration of the battery may vary if cold or when the battery is fully charged. The battery had a 55% charge. The tire pressure displayed by the vehicle varied by less than two psi of the pressure measured manually. The vehicle did not display any warning lights or messages. The wipers contacted the windshield and operated normally and the washer fluid did not leak. The weather stripping/gaskets exhibited cosmetic waviness. Ms. Houston confirmed that the vehicle did not leak. The rear seat belts were latched/unlatched over five times without any problems. The vehicle was test driven for 12 miles and appeared to perform normally.

D. Summary of Respondent's Evidence and Arguments

Mr. Zhou testified Caraoke was not available for 2021-2022. Also, the limited deceleration message merely advises about the state of the vehicle and does not indicate a defect. Mr. Zhou explained that service bulletins address improvement not defects. He also pointed out that cosmetic issues were not covered.

E. Analysis

The Lemon Law does not apply to all problems that may occur with a vehicle. As an initial matter, to qualify for any relief, whether warranty repair or repurchase/replacement, the law requires the vehicle to have a defect covered by the Respondent's warranty (warrantable defect)²⁹ that continues to exist, even after repair.³⁰ In part, the warranty generally states that: "the Basic Limited Warranty covers the repair or replacement necessary to correct defects in materials or workmanship of any parts manufactured or supplied by Tesla under normal use for a period of 4 years or 50,000 miles (80,000 km), whichever comes first."³¹ According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).³² Additionally, the warranty specifically excludes: "General appearance or normal noises and vibrations, including but not limited to, brake squeal, general knocks, creaks, rattles, and wind and road vibration for which there are no malfunctioning parts requiring replacement."³³

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.³⁴ A

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

³⁰ TEX. OCC. CODE § 2301.605.

³¹ Complainant's Ex. 2, New Vehicle Limited Warranty.

³² 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 or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

³³ Complainant's Ex. 2, New Vehicle Limited Warranty.

³⁴ *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

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.³⁵ 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.³⁶ 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.³⁷ Design characteristics, including design defects, exist in the vehicle's specifications and do not arise from any error during manufacturing.³⁸ Accordingly, a design characteristic exists in all vehicles of the same design, but the vehicle's intended configuration may produce unintended and unwanted results.³⁹ Unlike manufacturing defects, issues that do not arise from manufacturing, 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-

flawed, i.e., which do not conform to the manufacturer's own specifications, and are not identical to their mass-produced siblings.”).

³⁵ *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.”).

³⁶ *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].”).

³⁷ *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.”).

³⁸ 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).

³⁹ *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].”).

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. Weather Stripping Fraying and Snagging

Though the weather stripping exhibited some waviness, it appeared in good functional condition. Further, testimony confirmed that the weather stripping did not leak. Accordingly, weather stripping falls under the warranty provision that excludes general appearance issues where there are no malfunctioning parts.

2. Misaligned Headlights/Bumper

Testimony reflects that a slight misalignment remained. The vehicle did not have any obviously discernable misalignment during the inspection. Significantly, the repair invoices show that the alignment fell within specifications as not to be a defect.

3. Caraoke Missing

The vehicle as designed does not include Caraoke. Caraoke is an optional feature that the subject vehicle does not have. Accordingly, the absence of Caraoke is not a defect.

4. Faulty Module Controller

The record does not contain sufficient evidence to determine if the module controller continues to have a warrantable defect.

5. Back Up Camera

The record does not show whether the pixilation of the backup camera view results from a software/design issue or a manufacturing defect. Accordingly, the burden of proof has not been met for showing that this issue is a warrantable defect.

6. Limited Deceleration Warning/Regenerative Braking Warning

The evidence shows that regeneration of the battery may vary, if cold or when the battery is fully charged. However, this is a result of the vehicle's design and not a manufacturing defect.

7. Rear Seat Belts Not Staying Latched

During the inspection at the hearing the seat belts operated normally in every instance and would not pull apart. However, testimony showed that the seat belt unlatched a couple of months

before the hearing. The repair history does not show any repair attempts for this issue. Accordingly, the seat belt issue qualifies for repair relief only.

8. Inconsistent Tire Pressure and No Warning for Low Tire Pressure

The tire pressure shown on the vehicle was within about two lbs. of a manual pressure measurement during the inspection. Though not exact, the variance does not appear to arise from a defect but rather results from the vehicle design and environmental conditions.

III. Findings of Fact

1. On January 9, 2022, the Complainants, purchased a new 2021 Tesla Model S from the Respondent. The vehicle had 15 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 warranty generally states that: "the Basic Limited Warranty covers the repair or replacement necessary to correct defects in materials or workmanship of any parts manufactured or supplied by Tesla under normal use for a period of 4 years or 50,000 miles (80,000 km), whichever comes first." Additionally, the warranty specifically excludes: "General appearance or normal noises and vibrations, including but not limited to, brake squeal, general knocks, creaks, rattles, and wind and road vibration for which there are no malfunctioning parts requiring replacement."
4. The Complainants took the vehicle to a dealer for repair as shown below:

| Date | Miles | Issue |
|-------------|--------------|--|
| 01/19/2022 | 540 | improperly installed weather stripping fraying and snagging; misaligned headlights/bumper |
| 01/22/2022 | 608 | improperly installed weather stripping fraying and snagging; tire pressure |
| 02/21/2022 | 849 | Caraoke missing; tire pressure |
| 04/21/2022 | 5,227 | limited deceleration warning/regenerative braking warning; tire pressure |

5. On or about January 25, 2022, the Complainants provided a written notice of defect to the Respondent.

6. On February 9, 2002, the Complainants filed a complaint, as amended, with the Department alleging the following defects: front fascia and underbody damage; bent front speaker mesh; improperly installed weather stripping fraying and snagging; misaligned headlights/bumper; wipers not contacting to clean the windshield; humming and whining noise; range not as advertised; Caraoke missing; windshield wiper fluid leaks; instrument cluster pixelated; patchy back up camera; tire required replacement for a bent rim; faulty module controller; faulty retrofitted hydraulic control unit wake-up wire; limited deceleration warning; regenerative braking warning; rear seat belts not staying latched; inconsistent tire pressure (as measured manually compared to the pressure displayed by the vehicle); and no warning for low tire pressure. The issues with the front fascia and underbody damage; bent front speaker mesh; wipers not contacting to clean the windshield; windshield wiper fluid leaks; humming and whining noise; range not as advertised; instrument cluster pixelated; tire required replacement for a bent rim; and faulty retrofitted hydraulic control unit wake-up wire were resolved.
7. On April 19, 2022, 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.
8. The hearing in this case convened on July 27, 2022, in San Antonio, Texas, before Hearings Examiner Andrew Kang, and the record closed on September 6, 2022. The Complainants represented themselves. Albert Zheng, Business Partner, and Raymond Kim, Business Partner, represented the Respondent.
9. The vehicle's odometer displayed 8,948 miles at the time of the hearing.
10. The vehicle's warranty was in effect at the time of the hearing.
11. The vehicle operated normally during the test drive at the hearing.
12. The rear seatbelts may spontaneously unlatch, which occurred as late as two months 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 Complainants 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 Complainants bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainants' vehicle does not qualify for replacement or repurchase. The vehicle did not have a reasonable number of repair attempts. Tex. Occ. Code §§ 2301.604(a) and 2301.605(a).
7. Reimbursement of incidental expenses does not apply 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. The Complainants' 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).
9. 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 Complainants' 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 following issues: rear seatbelts spontaneously unlatching. Upon this Order becoming final under Texas Government Code § 2001.144:⁴⁰ (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 Complainants' 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 February 1, 2023



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

⁴⁰ 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.