

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 23-0000363 CAF**

LINDSAY BENZA,
Complainant

v.

FORD MOTOR COMPANY,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Lindsay Benza (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for alleged warrantable defects in a vehicle manufactured by Ford Motor Company (Respondent). A preponderance of the evidence shows that Complainant's vehicle does not qualify for repurchase relief.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

Notice and jurisdiction were not contested and are only addressed in the Findings of Fact and Conclusions of Law. The hearing in this case convened on May 10, 2023, in Katy, Texas, before Chief Hearings Examiner Bennie Brown with the Department's Office of Administrative Hearings (OAH). Complainant appeared and represented herself. Respondent appeared electronically through its representative Anthony Gregory. The hearing concluded the same day, but the record was held open until May 17, 2023, to allow the submission of additional evidence.

II. APPLICABLE LAW

The Texas Lemon Law and Warranty Performance Law require a manufacturer, converter, or distributor to make repairs necessary to conform a new motor vehicle to an applicable warranty.¹ If this cannot be accomplished, the owner of the vehicle may seek relief by filing a complaint with the Department.² The case may be referred to OAH for a hearing on the merits to determine which type of relief, if any, is warranted pursuant to statute.³ The complaint filed with the Department identifies the relevant issues to address at the hearing.⁴ The Complainant has the burden of proof to prove, by a preponderance of the evidence, all facts required for relief.⁵ Failure to prove even one required fact results in denial of relief.

In this case, Complainant is seeking repurchase of the subject vehicle.

A. Repurchase/Replacement Relief Requirements

Repurchase and replacement relief only apply to new vehicles.⁶ A new vehicle may qualify for repurchase or replacement of the vehicle, along with reimbursement of incidental expenses resulting from the loss of use of the vehicle due to the defect(s).⁷ A vehicle qualifies for repurchase or replacement if all the following conditions are met:

- 1) the vehicle has a defect covered by an applicable warranty (applicable defect);
- 2) the defect must either:
 - a) create a serious safety hazard; or

¹ Tex. Occ. Code § 2301.603(a).

² Tex. Occ. Code § 2301.204(a); 43 Tex. Admin. Code § 215.202.

³ Tex. Occ. Code § 2301.204(d); 43 Tex. Admin. Code § 215.202(b)(4).

⁴ Because the complaint determines the relevant issues, the Department cannot order relief for an issue not included in the complaint unless tried by consent. *See* Tex. Gov't Code §§ 2001.051-.052, .141(b)-(c); Tex. R. Civ. P. 301.

⁵ 43 Tex. Admin. Code § 206.66(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 of relief has the burden to persuade the finder of fact of the existence of each element of his cause of action.”).

⁶ Tex. Occ. Code § 2301.603

⁷ Tex. Occ. Code § 2301.604.

- b) substantially impair the use or market value of the vehicle; and
- 3) the defect must currently exist after a “reasonable number of attempts” to repair the vehicle.⁸

The above terms are further defined by the Lemon Law statute and case law.

1. Serious Safety Hazard

The Lemon Law statute defines “serious safety hazard” as a life-threatening malfunction or non-conformity 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.⁹

2. Substantial Impairment of Use or Value

a. Impairment of Use

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs use of the vehicle. 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.¹⁰ For example, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”¹¹

b. 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

⁸ Tex. Occ. Code § 2301.604(a).

⁹ Tex. Occ. Code § 2301.601(4).

¹⁰ *Dutchmen Manufacturing, Inc. v. Texas Dep’t of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App. – Austin 2012).

¹¹ *Id.*

an owner to present an expert witness or any technical or market-based evidence to show decreased value.”¹² 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.”¹³

3. 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.¹⁴

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 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.¹⁵

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:

¹² *Id.*

¹³ *Id.*

¹⁴ Tex. Occ. Code § 2301.605(a)(1).

¹⁵ Tex. Occ. Code § 2301.605(a)(2).

[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.¹⁶

The 30 days described above do not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁷

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.¹⁸ 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.¹⁹

4. Other Requirements for Repurchase/Replacement

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;²⁰

¹⁶ Tex. Occ. Code § 2301.605(a)(3).

¹⁷ Tex. Occ. Code § 2301.605(c).

¹⁸ *Ford Motor Company v. Texas Dep't 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.’”).

¹⁹ *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.”).

²⁰ Tex. Occ. Code § 2301.606(c)(1); 43 Tex. Admin. Code § 215.204.

- (2) the respondent was given an opportunity to cure the defect or nonconformity;²¹ and
- (3) the Lemon Law complaint was filed within 6 months after the earliest of:
 - (a) the warranty's expiration date; or
 - (b) 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.²²

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 due to the defect.²³ 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.²⁴ However, the Department's rules expressly exclude compensation for "any interest, finance charge, or insurance premiums."²⁵

²¹ 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 Dep't of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 221, 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. 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.

²² Tex. Occ. Code § 2301.606(d).

²³ Tex. Occ. Code § 2301.604(a).

²⁴ 43 Tex. Admin. Code § 215.209(a).

²⁵ 43 Tex. Admin. Code § 215.208(b)(1).

B. Warranty Repair Relief

If a vehicle does not qualify for repurchase or replacement, the vehicle may still qualify for warranty repair relief.²⁶ A vehicle may qualify for warranty repair relief if all the following conditions are met:

- 1) the vehicle has a “defect . . . that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle;”
- 2) the vehicle owner, or the owner’s designated agent, provided written notice of the defect to the manufacturer, converter, distributor, or its authorized agent before the warranty’s expiration; and
- 3) the vehicle owner filed a complaint with the Department specifying the defect.²⁷

III. DISCUSSION**A. Summary of Complainant’s Evidence and Arguments**

On January 21, 2021, Complainant purchased a new 2020 Ford Expedition from Joe Myers Ford, a franchised dealer of Respondent, in Houston, Texas. The vehicle had 108 miles on the odometer at the time of purchase.²⁸

The vehicle’s limited warranty provides bumper-to-bumper coverage for 3 years or 36,000 miles, whichever occurs first, and powertrain coverage for 5 years or 60,000 miles, whichever occurs first.²⁹

On August 31, 2022, Complainant provided written notice to Respondent of the alleged defects with the subject vehicle. On September 10, 2022, Complainant filed a Lemon Law

²⁶ 43 Tex. Admin. Code § 215.208(e).

²⁷ Tex. Occ. Code § 2301.204(a),(b); 43 Tex. Admin. Code § 215.202(b)(1), (3).

²⁸ Complainant Ex. 1.

²⁹ Complainant Ex. 7.

complaint with the Department alleging that the subject vehicle's air conditioning (AC) produced a musty, mildew smell from the AC vents upon vehicle start up. On or about September 12, 2022, the Department sent a copy of the Lemon Law complaint to Respondent, providing written notice of the complaint and alleged defects. On March 30, 2023, Complainant filed an amended complaint and provided notice to Respondent by mail. Complainant alleged that a "kick" could be felt when the vehicle shifted between gears 7 and 8.

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

Date	Miles	Issue
07/29/2021	8,882	Bad odor emitting from AC vents
08/20/2021	9,184	Bad odor emitting from AC vents
08/27/2021	10,661	Bad odor emitting from AC vents
04/25/2022	17,523	Mold on floorboard; floorboard wet
08/08/2022	20,657	Bad odor emitting from AC vents; steering wheel making strange sound
01/16/2023	24,704	Vehicle "kicks"/slips while shifting between gears 7 and 8
03/08/2023	>24,704	Vehicle "kicks"/slips while shifting between gears 7 and 8
04/23/2023	28,035	Vehicle "kicks"/slips while shifting between gears 7 and 8

1. Odor Issue

Shortly after purchasing the vehicle, Complainant experienced problems with the vehicle unrelated to the Lemon Law complaint. In July 2021, however, Complainant began noticing a mildew odor coming from the AC vents. On July 29, 2021, she took the vehicle to the dealership where the vehicle was purchased. The dealership acknowledged the odor, serviced the HVAC system, replaced the cabin air filter, and deodorized the vehicle. The vehicle was at the dealership for 10 days. However, the day after Complainant received the vehicle from the dealership, the smell reappeared. On August 20, 2021, Complainant took the vehicle to Katy Auto Nation Ford. No odor was detected by that dealer, and no repairs were performed.

On August 27, 2021, Complainant took the vehicle to Ryan Ford in Sealy, Texas. The vehicle mileage was 10,661 miles. The vehicle was at the dealership for 9 days. The dealer detected a strong, vinegar and mold-like smell from the AC after it was turned on. The cabin filter was checked and found to be clean because it had recently been replaced. The evaporator core drain tube was checked for restrictions, and none were found. It was confirmed that the smell was coming from inside the evaporator case. The evaporator case was removed, and a strong smell was observed in the evaporator core. The housing unit was cleaned and disinfected with Lysol. After drying in the sun, the bad odor was still present. The heater core in the AC housing unit was replaced, and the concern was resolved. After this repair, Complainant did not observe the odor.

However, around April 25, 2022, Complainant noticed what appeared to be white, fuzzy mold on the vehicle floor, near the all-weather mat. She lifted the mat and observed water coming up from the floorboard. Mold was present all over the floorboard. Complainant took the vehicle to Ryan Ford that same day. The vehicle's mileage was 17,523 miles. The dealership noted that the vehicle's carpet was wet and a water leak was present on the passenger side of the vehicle. It was determined that water was leaking into the vehicle from the AC water drain. A new elbow was installed, and heat shield tape was applied. Excessive mold was observed on the carpet. The seats and center console were removed. New carpet was installed, and all parts were reinstalled. Complainant was unsure if the carpet pad was replaced. However, the odor was not detected when the vehicle was returned to Complainant 18 days later.

About a month later, Complainant noticed the odor again. On August 8, 2022, Complainant took the vehicle to Ryan Ford. The mileage was 20,657 miles. In addition, the steering wheel made a strange sound when the vehicle doors opened. The steering wheel issue was repaired. However, the paperwork from the dealership stated the musty smell could not be verified. Nevertheless, the cabin air filter was replaced.

However, Complainant testified that the service advisor acknowledged the odor, and during this time, the dealership worked with the Field Service Engineer to resolve the issue. The vehicle was at the dealership for approximately 16 days. Complainant was told that an oxidized treatment

was performed on the vehicle, and a deodorizer was utilized approximately three times. The issue was resolved after this visit.

Complainant testified that the odor returned on May 7, 2023. She observed the odor after starting the vehicle and turning on the AC. The odor lasted briefly, less than 10 seconds. She explained that the odor is usually detectable with the first gust of air from the AC vents, after the vehicle is started. In addition, the odor appears every time the vehicle has sat for a prolonged period and is started. Complainant advised that she drives the vehicle to work and parks in a parking garage or lot. At home, the vehicle is parked in the garage. Complainant testified that the issue has never been completely resolved, and the odor always returns.

Complainant reviewed the Field Service Engineer (FSE) Vehicle Inspection Report and disagrees with some of the findings and listed dates.³⁰ She pointed out that the FSE report stated no odor was observed; however, the repair orders say an odor was detected.

Complainant testified that the vehicle has been in and out of dealerships for approximately 2 years. Specifically, she did not have possession of the vehicle for 56 days while it was being serviced for the odor issue. She added that a rental vehicle was not provided because the vehicle was not serviced at the dealership where she purchased the vehicle. Complainant does not trust that the odor issue has been resolved and requests repurchase of the vehicle.

2. Shifting Issue

On December 20, 2022, Complainant was driving the vehicle and noticed that the vehicle would not accelerate. She explained that it felt like the vehicle was stuck in neutral gear. The vehicle finally made a noise and shifted back into gear. This type of incident occurred on another occasion as well. Complainant also noticed around this time that the vehicle would “kick” when shifting between gears 7 and 8. She stated that it seemed like the gears were slipping.

³⁰ Respondent Exs. 1, 3.

On January 16, 2023, Complainant took the vehicle to Appel Ford in Brenham, Texas, for service. The vehicle mileage was 24,704 miles. They were unable to duplicate the shifting issue.³¹ However, when Complainant's husband went to pick up the vehicle, he and the service manager test drove the vehicle. During the test drive, the "kick" was observed and acknowledged by the service manager who described it as "erratic."³²

On March 8, 2023, Complainant took the vehicle back to Appel Ford to have the testing recommended by Respondent. Complainant was advised that the issue could not be duplicated. After picking up the vehicle, Complainant observed the "kick" three times on the way home.³³

On April 24, 2023, Complainant took the vehicle to Cavender Ford for inspection by a field service engineer. However, the field service engineer did not inspect the vehicle because he stated that he knew what was going on with the vehicle. Repairs were performed pursuant to a Technical Service Bulletin, and the transmission adaptive tables were reset.³⁴

Complainant testified that the shifting problem has improved over the last few weeks. She stated that there is still an erratic shift between gears 4 and 5. However, she described it as a "little kick back" or pull and explained that it was not as bad as the previous "kick" between gears 7 and 8.

Complainant requests that the vehicle be repurchased due to the recurring odor issue and shifting issue. Complainant does not feel that either issue has been completely resolved.

B. Vehicle Inspection

The vehicle's mileage on the day of the hearing was 28,437 miles. Although the vehicle was present at the hearing site, Complainant advised that an inspection was not necessary because

³¹ Complainant Ex. 5.

³² Complainant Ex. 5.

³³ *Id.*

³⁴ Complainant Ex. 8.

the odor from the AC vents only appears after the vehicle has sat for a while. Since the vehicle was recently driven to the hearing site, Complainant did not believe the odor would be present.

C. Summary of Respondent's Evidence and Arguments

Mr. Gregory made a statement on behalf of Respondent. He stated that the subject vehicle does not qualify for repurchase under the Texas Lemon Law statute. Specifically, he asserted that the moldy odor and shifting issues had been addressed and resolved. He noted that the odor issue was not due to a manufacturer defect but was due to condensation from the AC unit, which is common in all vehicles. Further, Respondent's Manufacturer Response Form asserts that the shifting issue does not qualify for relief under the Texas Lemon Law because the first repair attempt was beyond the 24 month/24,000 statutory presumption period.³⁵

Asad Bashir, Automotive Technical Consultant for Respondent, testified on behalf of Respondent regarding the following issues.

1. Odor Issue

Mr. Bashir confirmed the repairs on the vehicle for the odor issue. He explained that when the air conditioner is running, water drips to the ground and the evaporator drain tube allows condensation to drain out. However, when the vehicle is parked and not running, water sits inside the evaporator housing and can become stagnant, especially in humid environments. When the vehicle is started, and the air condition is turned on, a musty smell may emit from the vents momentarily as the fan pushes out the stagnant water.

He concluded in his inspection report, that the evaporator case is the likely source of the odor since it is in a dark, humid space. When combined with excessive heat and the vehicle

³⁵ Respondent Ex. 2.

remaining stationary, the stagnation and odor is a naturally occurring phenomena for which there is no remedy.³⁶

Given these circumstances, Mr. Bashir recommended turning off the air condition prior to coming to a stop and parking the vehicle. He explained that this will allow the fan to dry out the evaporator housing and push out the water so it does not become stagnant. This technique should help minimize the odor, but it is not certain to eliminate it. He opined that the issue is environmental and a result of the conditions in which the vehicle operates.

2. Shifting Issue

Mr. Bashir confirmed the service dates and work performed on the vehicle regarding this issue. He explained that the vehicle is equipped with an adaptive transmission shift strategy which allows the vehicle's computer to learn the transmission's unique parameters and improve shift quality. The adaptive drive cycle is the learning strategy where the transmission adapts to the way the vehicle is driven and makes accommodations for driver demand, driver style, or driving conditions. When the adaptive strategy resets, the computer will begin a relearning process, which may result in firming up the normal up and down shifts for several days. However, the vehicle will adjust and minimize the occurrences as it is driven longer. He noted that a firm shift is not an indication of failure but a self-preservation measure for the transmission to prevent slippage or premature wear. Additionally, if there are multiple drivers with different driving styles, the transmission may adapt to one driving style and then shift differently for another driving style.

He continued that the vehicle's computer keeps a driving history and records shift quality and driving conditions. The adaptive strategy looks back to the last 500 to 1,500 miles of driving and considers such things as accelerator input, weather conditions, and temperatures. As more input is stored while driving, the older memory is pushed out.

³⁶ Respondent Ex. 1.

Mr. Bashir stated that the shifting issue was addressed during the service visit to Cavender Ford on April 24, 2023. The transmission adaptive tables were reset, and the powertrain control module and transmission control module were reprogrammed. A test drive was performed, and the adaptive learning drive cycle was initiated. After performing the adaptive drive cycle, the transmission shifted as expected, and the repair was complete.

D. Analysis

Complainant had the burden of proof to show that the subject vehicle qualified for relief. To qualify for relief, Complainant must prove, by a preponderance of the evidence, that the vehicle's problems arose from a manufacturing defect and that the problems continue to exist after a reasonable number of repair attempts.³⁷ Based on the evidence presented, Complainant failed to establish the facts necessary for relief.

1. Odor Issue

The evidence presented failed to establish that the odor from the AC vents was due to a warrantable manufacturing defect. Even though an issue may be unintended or unwanted, the Lemon Law provides no relief unless the issue constitutes a manufacturing defect.

In this case, the presence of the odor appears to be intermittent and only lasts a few seconds after the vehicle is started and the air conditioning is turned on. Mr. Bashir concluded that the collection of water inside the evaporator case is the likely source of the odor since it is in a dark, humid space. When combined with excessive heat and the vehicle remaining stationary, the water becomes stagnant and causes a momentary odor. He explained that this issue is not a manufacturing defect but is a product of the environment and the conditions in which the vehicle operates. The preponderance of the evidence supports this conclusion.

³⁷ Tex. Occ. Code § 2301.604(a), .605.

Even if a manufacturing defect did exist, however, the Lemon Law statute only provides relief for currently existing defects. Complainant testified that the issue was resolved after the August 8, 2022, repair visit. No odor was observed during the inspection on November 9, 2022. Although Complainant testified that she noticed the odor one time on May 7, 2023, nearly a year after the August 2022 repair, she also stated that the odor would not be present if the vehicle was inspected on the day of the hearing. Therefore, there is insufficient evidence that the odor issue currently exists, and the subject vehicle does not qualify for repurchase or replacement relief for this issue.

2. Shifting Issue

Complainant testified that she first noticed the shifting issue in December 2022. However, the first repair attempt was on January 16, 2023, after the vehicle had reached 24,000 miles.³⁸ The Lemon Law statute requires that repair attempts be made before the earlier of: (1) the date the express warranty expires, or (2) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to a consumer.³⁹ Therefore, the subject vehicle's mileage was beyond the Lemon Law's presumption period and does not qualify for repurchase or replacement relief due to the shifting issue.

Nor does the vehicle qualify for warranty repair as the preponderance of the evidence fails to establish that the vehicle has a warrantable manufacturing defect.⁴⁰ For these reasons, Complainant's request for relief is denied.

IV. FINDINGS OF FACT

1. On January 21, 2021, Lindsay Benza (Complainant) purchased a new 2020 Ford Expedition from Joe Myers Ford, a franchised dealer of Ford Motor Company (Respondent), located in Houston, Texas.

³⁸ Complainant Ex. 5. Invoice from Appel Ford shows the vehicle mileage as 24,704 miles on January 16, 2023.

³⁹ Tex. Occ. Code § 2301.605(a).

⁴⁰ To qualify for warranty repair, it must be shown, by a preponderance of the evidence, that the vehicle currently has a defect covered by a manufacturer's warranty. Tex. Occ. Code § 2301.204(a),(b); 43 Tex. Admin. Code § 215.208(e).

2. The vehicle had 108 miles on the odometer at the time of purchase.
3. The vehicle's limited warranty provides basic coverage for 3 years or 36,000 miles, whichever occurs first, and powertrain coverage for 5 years or 60,000 miles, whichever occurs first.
4. In relevant part, the Complainant took the vehicle to a dealer for repair of the alleged defect as follows:

Date	Miles	Issue
07/29/2021	8,882	Bad odor emitting from AC vents
08/20/2021	9,184	Bad odor emitting from AC vents
08/27/2021	10,661	Bad odor emitting from AC vents
04/25/2022	17,523	Mold on floorboard; floorboard wet
08/08/2022	20,657	Bad odor emitting from AC vents; steering wheel making strange sound
01/16/2023	24,704	Vehicle "kicks"/slips while shifting between gears 7 and 8
03/08/2023	>24,704	Vehicle "kicks"/slips while shifting between gears 7 and 8
04/23/2023	28,035	Vehicle "kicks"/slips while shifting between gears 7 and 8

5. In July 2021, Complainant began noticing a mildew odor coming from the AC vents. The smell lasted less than 10 seconds after the air condition was activated.
6. On July 29, 2021, Complainant took the vehicle in for service. The dealership acknowledged the odor, serviced the HVAC system, replaced the cabin air filter, and deodorized the vehicle.
7. The day after Complainant received the vehicle from the dealership, the odor reappeared.
8. On August 20, 2021, Complainant took the vehicle to Katy Auto Nation Ford. No odor was detected by that dealer, and no repairs were performed.
9. On August 27, 2021, Complainant took the vehicle to Ryan Ford in Sealy, Texas. The dealer detected a strong, vinegar and mold-like smell from the AC after it was turned on. The cabin filter was checked and found to be clean. The evaporator core drain tube was checked for restrictions, and none were found.
10. The dealer confirmed the smell was coming from inside the evaporator case. The evaporator case was removed, and the housing unit was cleaned and disinfected with Lysol. After drying in the sun, the bad odor was still present. The heater core in the AC housing

unit was replaced, and the concern was resolved. After this repair, Complainant did not observe the odor.

11. On April 25, 2022, Complainant noticed white, fuzzy mold on the vehicle floor, near the all-weather mat. She observed water coming up from the floorboard. Mold was present all over the floorboard. Complainant took the vehicle to Ryan Ford that same day.
12. A new elbow was installed on the AC water drain to prevent water from leaking into the passenger compartment. Heat shield tape was applied, and the seats and center console were removed. New carpet was installed, and all parts were reinstalled. Complainant did not detect the odor after this repair.
13. On August 8, 2022, Complainant noticed the odor again and took the vehicle to Ryan Ford. The dealership worked with the field service engineer to resolve the issue.
14. The odor could not be verified, but the cabin air filter was replaced, an oxidized treatment was performed, and a deodorizer was utilized approximately three times. The issue was resolved after this visit.
15. On May 7, 2023, Complainant observed the odor for few seconds after the vehicle was started and the AC was turned on.
16. Complainant advised that the odor would not be present on the day of the hearing.
17. The odor is the result of water that pools in the evaporator housing and becomes stagnant due to humidity and the vehicle remaining stationary for periods of time. This is a result of the environment and the conditions in which the vehicle is operated.
18. The preponderance of the evidence shows that the odor is not due to a manufacturing defect and does not qualify for relief.
19. In December 2022, Complainant observed the vehicle had a “kick” when shifting between gears 7 and 8.
20. On January 16, 2023, Complainant took the vehicle for the first repair attempt of the shifting issue. The vehicle mileage was 24,704 miles.
21. On April 24, 2023, the vehicle was serviced for the shifting issue. The vehicle mileage was 28,035 miles. The transmission adaptive tables were reset, and the powertrain control module and transmission control module were reprogrammed. The adaptive learning drive cycle was performed. After the service, the transmission shifted as expected, and the repair was complete.
22. The shifting issue between gears 7 and 8 has been resolved.

23. The first repair attempt for the shifting issue was beyond the 24 month/24,000 miles requirement and does not qualify for relief.
24. On August 31, 2022, Complainant provided written notice to Respondent regarding the odor issue.
25. On September 10, 2022, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) alleging that the vehicle emitted a mildew odor from the air conditioning vents.
26. On or about September 12, 2022, the Department sent a copy of the Lemon Law complaint to Respondent, providing written notice of the complaint and alleged defects.
27. On March 30, 2023, Complainant filed an amended complaint and provided notice to Respondent by mail. Complainant alleged that a “kick” could be felt when the vehicle shifted between gears 7 and 8.
28. On February 2, 2023, the Department’s Office of Administrative Hearings (OAH) issued a Notice of Hearing directed to all parties, providing not less than 10 days’ notice of the hearing date and advising the parties of their rights under the applicable rules and statutes.
29. The Notice of Hearing advised the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the Department.
30. On May 10, 2023, a hearing on the merits was convened in Katy, Texas, before OAH Chief Hearings Examiner Bennie Brown. Complainant appeared and represented herself. Respondent appeared electronically through its representative Anthony Gregory. The hearing concluded the same day, but the record was held open until May 17, 2023, to allow the submission of additional evidence.
31. The vehicle’s mileage on the day of the hearing was 28,437 miles.

V. CONCLUSIONS OF LAW

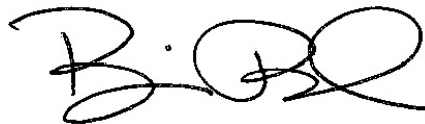
1. The Texas Department of Motor Vehicles has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204, 601-.613.
2. A Hearings Examiner with the Department’s Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation 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. Proper and timely notice of the hearing was provided. Tex. Gov't Code ch. 2001.051-.052; 43 Tex. Admin. Code § 215.206(2).
5. The Complainant bears the burden of proof in this proceeding. 43 Tex. Admin. Code § 206.66(d).
6. The Complainant failed to show, by a preponderance of the evidence, that the subject vehicle had a warrantable manufacturing defect that continued to exist after a reasonable number of repair attempts. Tex. Occ. Code § 2301.604(a), .605.
7. The Respondent remains responsible to address and repair or correct any defects covered by the Respondent's warranty. Tex. Occ. Code § 2301.603.

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-.613 is **DENIED**.

SIGNED July 17, 2023



**BENNIE BROWN
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**