



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Appeal of the Order of
Cancellation for the Failed Inspection of
Wisconsin title 24-24051419-4, 2019 Tesla

Case No. DOT-24-0016

FINAL DECISION

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Integrity Motorsports Inc. (Petitioner), by
Chris Kapenga, President
W357S8715 Chapman Lane #A
Eagle, WI 53119-2315

Wisconsin Department of Transportation (Department), by
Attorney Alicia Augsburger
4822 Madison Yards Way, 5th Floor South
P.O. Box 7910
Madison, WI 53705

PRELIMINARY RECITALS

On March 20, 2024, the Department of Transportation (Department) issued an Order of Cancellation – BR3301 to Integrity Motorsports LLC (Petitioner), cancelling the title for a 2019 Tesla. On April 10, 2024, the Division of Hearings and Appeals (DHA) received the Petitioner's request to appeal the cancellation order. Administrative Law Judge (ALJ) Angela Chaput Foy was assigned to preside over the matter. ALJ Chaput Foy conducted a telephonic prehearing conference on May 13, 2024, and issued scheduling orders and scheduled the hearing.

Pursuant to due notice, ALJ Chaput Foy conducted the hearing at the Hill Farms State Office Building on June 19, 2024. The hearing was digitally recorded, and the record includes the digital recording, the Department's exhibits 1 through 20, and the Petitioner's exhibits 100 through 115.¹

On July 18, 2024, the DHA, by ALJ Angela Chaput Foy, issued a Proposed Decision in favor of the Petitioner, which rescinded the Department's Order of Cancellation, and as a result,

¹ The Petitioner's eight exhibits are sequentially page numbered, beginning with page 100. For example, the Petitioner's first exhibit is two pages and labeled 100-101. Hereafter, any reference to the Petitioner's exhibits will be to the page number.

reinstated the title issued for the 2019 Tesla vehicle following the February 21, 2024 inspection. The Department timely filed objections to the Proposed Decision.

The Department objected to the Proposed Decision's interpretation of Wis. Stat. § 342.30(1g)(b), arguing that allowing any VIN decal to be removed and replaced with any other VIN decal if the vehicle is repaired would lead to allowing actions that are prohibited by Wis. Stat. § 342.30(1g), actions that are a Class H felony. The Department's reading of the Proposed Decision is too broad. The Proposed Decision found that the removal and replacement of the one VIN decal in this matter was reasonably necessary for the repair of this vehicle, as allowed by Wis. Stat. § 342.30(1g)(b). It did not allow for any removal and replacement of any VIN decal anytime a vehicle is repaired.

The Department urges the interpretation of the statutory exception to be one that requires the removal and replacement of the *same* VIN decal. However, the statute does not contain the word "same." In many instances, the removal and replacement will be of the same decal; however, there are circumstances, such as the present case, where it was reasonably necessary to replace the VIN decal of the underlying vehicle, and not of the vehicle which originally contained a replacement part.

The Department also objects to the Proposed Decision's determination that the removal and replacement was reasonably necessary. The Department argues that for removal and replacement to be necessary, the repair must impact the decal itself. This argument is a restatement of the Department's argument at hearing, which was found to be too narrow. The statute allows for the repair and replacement if the repair is to a vehicle or a vehicle part. The Department's argument would limit the exception to a vehicle part only. The Petitioner determined it was necessary to remove the VIN, and this was reasonable. There is no indication it was removed for any purpose other than because it was reasonably necessary. This is confirmed by Kapenga's testimony that the VIN on other replacement parts were not removed, and the Petitioner provided the major part statement, form MV2673, which listed the major parts that were replaced to repair the 9002 salvage vehicle, and the VIN# of the vehicle from which the part was obtained, the 0216 junked vehicle. (Ex. 3) In other words, Petitioner did not remove the VIN to hide its origin vehicle.

Accordingly, the Administrator hereby adopts the Proposed Decision as DHA's Final Decision, as follows:

ISSUE

The issue is whether the Department's March 20, 2024, cancellation order was properly issued under Wis. Stat. §§ 342.255 (2) and (3).

FINDINGS OF FACT

1. Integrity Motorsports LLC (Petitioner) is a licensed motor vehicle dealer located at W357 S8715 Chapman Lane #A in Eagle, Wisconsin. Chris Kapenga is the president and owner of the used car dealership. (Kapenga testimony; Ex. 1)

2. The Petitioner purchased a white 2019 Tesla Model S with vehicle identification number [REDACTED] (hereinafter “9002”), which was branded as salvage after the vehicle sustained damage to its exterior from a collision. ([REDACTED] testimony; Exs. 1, 10)
3. The Petitioner obtained a second white 2019 Tesla Model S with vehicle identification number 5YJSA1E28KF340216 (hereinafter “0216”), which was branded as junked² when the vehicle sustained damage to its interior and electronics in a flood. ([REDACTED] testimony; Exs. 3, 11)
4. The Petitioner took the hood, all of the doors, the bumper, both fenders, the liftgate, and the frame (worth about \$750 to \$3,000) from the 0216 junked vehicle and used them to repair the exterior of the 9002 salvage vehicle. The high voltage battery system (worth approximately \$24,000), the front and rear motors (worth approximately \$1,500 to \$3,000 each), the wiring harnesses, the electronics, the seats, and the full interior were kept in the 9002 salvage vehicle. The Petitioner’s net cost to repair the 9002 salvage vehicle was \$2,470.52. The Petitioner anticipated the repaired 9002 salvage vehicle to have a value of approximately \$50,000 in December 2023 after the repairs were completed. (Kapenga testimony, Exs. 3, 100, 103)
5. On December 18, 2023, the Petitioner submitted the repaired 9002 vehicle for inspection certification as a repaired salvage vehicle in Waukesha. With the vehicle, the Petitioner presented the required paperwork which included:
 - a. The Wisconsin Title and License Plate Application, form MV11 for the 9002 salvage vehicle. (Ex. 1)
 - b. The 9002 salvage title. (Ex. 2)
 - c. The major part statement, form MV2673, which listed the major parts that were replaced to repair the 9002 salvage vehicle, and the VIN# of the vehicle from which the part was obtained. In this case, the replacement parts all came from the 0216 junked vehicle. (Ex. 3)
 - d. A salvage vehicle statement, form MV2859, signed by Kapenga, regarding wheel alignment for the 9002 vehicle. (Ex. 5)
 - e. A form signed by Kapenga verifying that the 9002 vehicle’s airbag system had been checked. (Ex. 6)
 - f. Proof of purchase of the 0216 parts vehicle. (Ex. 7)
 - g. Pictures of the 9002 vehicle before it was repaired. (Ex. 8) ([REDACTED] testimony)³
6. State Patrol Inspector [REDACTED] [REDACTED] inspected the vehicle. He located the VIN in three locations on the vehicle during his inspection. The first was on the dashboard. The second

² At the time the Petitioner obtained the 0216 vehicle, it had a Certificate of Destruction from the state of Florida. The parties agree that the Florida Certificate of Destruction is equivalent to a junked brand in Wisconsin.

³ The parties dispute whether the certificate of destruction from Florida for the 0216 junked vehicle was also provided for this inspection on December 18, 2003. ([REDACTED] testimony, Kapenga testimony, Exs. 4, 101)

was the federal certification label on the inside of the driver's side door. The third was on the display screen. All three VINs were the 9002 salvage VIN. He had expected to still see the 0216 VIN for the parts vehicle, in particular on the federal certification label on the driver's side door.

7. [REDACTED] consulted with Master Trooper [REDACTED] regarding his inspection, the vehicle, and the repairs completed on the vehicle, and they also spoke with Kapenga, who had brought the vehicle in for the Petitioner. They researched the 9002 salvage vehicle and the 0216 parts vehicle VINs online to review pictures of the vehicles and the status of the frames. They determined that the 0216 parts vehicle had been damaged in a flood, which is why 0216 vehicle was junked. However, the 0216 frame appeared to be unharmed in the flood. ([REDACTED] testimony, Exs. 10 and 11)
8. [REDACTED] determined that the vehicle failed inspection. He stated in his report, "Further inspection showed vehicle presented for a salvage inspection was a junked vehicle with only the engine and battery from salvage vehicle. Junked vehicles cannot be un-junked. The VIN's above were from the salvage vehicle. No VIN ...0216, from the actual vehicle presented were found." ([REDACTED] testimony, Ex. 9)
9. On January 24, 2024, the Department mailed the Petitioner a letter with the salvage title for the 9002 vehicle and a copy of the failed inspection report. The letter also advised the Petitioner to contact Inspector [REDACTED] to make an appointment for reinspection and stated that the title for the vehicle presented at the reinspection must match the vehicle offered for inspection. (Exs. 12, 102)
10. On February 21, 2024, the Petitioner resubmitted the repaired 9002 vehicle for inspection certification as a repaired salvage vehicle, this time in Saukville instead of Waukesha. With the vehicle, the Petitioner presented the same required paperwork provided at the December inspection with the following additions or changes ([REDACTED] testimony; Exs. 13-19):
 - a. The Wisconsin Title and License Plate Application, form MV11 for the 9002 salvage vehicle was updated to account for the change in mileage. (Exs. 13, 115)
 - b. The certificate of destruction from Florida, equivalent to a junked vehicle brand in Wisconsin, for the 0216 vehicle that was used for parts. (Ex. 4)
 - c. The major part statement, form MV2673, which lists which major parts were replaced to repair the 9002 salvage vehicle from the 0216 junked vehicle. The parts listed were the same, but two boxes on the form (that the vehicle is for resale and that the parts listed above were changed) were marked and circled. (Ex. 15)
 - d. A Title/Registration Correction Request, form MV1020, for the 9002 salvage vehicle because the salvage title had the odometer as "not actual," and the correction provided the actual reading of 11,929. (Ex. 19)
11. Salvage Inspector Officer [REDACTED] of the Saukville Police Department inspected the vehicle and determined that the 9002 vehicle passed inspection. (Ex. 20)

12. On March 20, 2024, the Department issued an order of cancellation for the 9002 vehicle's title. The order specified that the February 21, 2024 inspection "is being denied as a passed inspection." It further stated that reinspection was to be completed by Inspector [REDACTED] and that the title presented at the reinspection must match the vehicle offered for inspection. (Ex. 113)
13. On April 5, 2024, the Petitioner appealed the Department's order of cancellation to the Division of Hearings and Appeals.

DISCUSSION

Applications for a new certificate of title for a repaired salvage vehicle must include: (a) the required fees; (b) a properly assigned salvage certificate of title, (c) any other transfer document required by law, and (d) a certificate of inspection. Wis. Stat. § 342.07(1). The purpose of the inspection is to determine whether the vehicle complies with safety equipment requirements and to verify the source and ownership of the major parts and components used to recondition the vehicle. Wis. Stat. § 342.07(2)(b)-(c). Additionally, the inspector must determine whether the vehicle is the same vehicle for which the title application is being submitted. Wis. Stat. § 342.07(2)(a). If a vehicle passes inspection, the inspector provides the applicant with an inspection certificate showing that the vehicle satisfies the inspection standards. Wis. Stat. § 342.07(4).

The Department bears the burden to prove by a preponderance of the evidence that its cancellation order was properly issued. Wis. Admin. Code § HA 1.12(3)(a) and 1.17(2).

In this case, the Petitioner repaired the 9002 salvage⁴ vehicle with parts from the 0216 junked⁵ vehicle. Both the 9002 salvage vehicle and the 0216 junked vehicle were white 2019 Model S Teslas. At the time the Petitioner obtained the 9002 salvage vehicle, it had suffered significant damage to its exterior from a collision, but the interior of the vehicle, including the electrical components, motors and batteries, were in good condition. Conversely, the 0216 junked vehicle had been in a flood; the exterior of the junked vehicle had little if any damage, but the interior of the vehicle, including the electrical components, were beyond repair. The Petitioner replaced 9002 salvage vehicle's frame and doors with the frame and doors from the 0216 junked vehicle. As part of these repairs, the Petitioner removed the federal certification decal with the 0216 junked vehicle VIN from the frame and replaced it with the federal certification decal with the 9002 salvage vehicle VIN.

When the repaired vehicle was presented for inspection to obtain a repaired salvage title in December 2023, the Department determined that the vehicle failed inspection for two reasons.

⁴ "Salvage vehicle" means a vehicle less than 7 years old that is not precluded from subsequent registration and titling and that is damaged by collision or other occurrence to the extent that the estimated or actual cost, whichever is greater, of repairing the vehicle exceeds 70 percent of its fair market value." Wis. Stat. § 340.01(55g).

⁵ "Junked" means dismantled for parts or scrapped." Wis. Stat. § 340.01(25g).

"Junk vehicle" means . . . (a) A vehicle which is incapable of operation or use upon a highway and which has no resale value except as a source of parts or scrap [or] (b) A vehicle for which an insurance company has taken possession of or title to if the estimated cost of repairing the vehicle exceeds its fair market value." Wis. Stat. § 340.01(25j).

First, the inspector determined that the vehicle being presented for inspection was the 0216 junked vehicle, because that was the vehicle frame that was used. Second, the inspector saw that the 0216 junked vehicle VIN decal had been removed. The Department notified the Petitioner of this determination by letter dated January 24, 2024, and instructed the Petitioner to contact the inspector for reinspection with the title for the correct vehicle being inspected. The Petitioner then brought the repaired vehicle to a different inspector, with minor changes to the application and paperwork, in February 2024. The vehicle initially passed the inspection. However, on March 20, 2024, the Department issued an Order of Cancellation pursuant to Wis. Stat. §§ 342.255(2) and (3), which denied the February 21, 2024 inspection as a passed inspection. The Petitioner appeals this Order.

The Department is required to cancel a title or registration if the Department subsequently discovers fraud or that the issuance of a title or registration is prohibited by law. Wis. Stat. §§ 342.255(2) and (3). Here, the Department asserts that the cancellation was required because (1) this is a junked vehicle that cannot be titled, (2) the removal of the 0216 junked vehicle VIN decal prevents this vehicle from ever being titled, and (3) the Petitioner committed fraud when he sought reinspection in February 2024 from a different inspector than December 2023. The Department bears the burden of proof to show that its order was properly issued. For the reasons discussed below, the cancellation order was not properly issued.

1. Whether the repaired vehicle was the 0216 junked vehicle or the 9002 salvage vehicle.

The Department argues that the repaired vehicle is unable to be titled because it views the repaired vehicle as the 0216 junked vehicle, since the repaired vehicle is built on the 0216 junked vehicle's frame. Both Inspector [REDACTED] and Master Trooper [REDACTED] testified that, from training, they defined the vehicle as the frame. However, neither had any statutory or legal support for this conclusion. Statutory definitions of vehicle and motor vehicle do not mention a vehicle's frame. *See* Wis. Stat. §§ 340.01(35),⁶ 218.0101(22),⁷ 340.01(74).⁸

Nothing in the administrative code, statutes, or the Department's forms indicates that the frame or door from a junked vehicle cannot be used in the repair of a salvaged vehicle. To the contrary, the Department's form, MV2673, specifically allows for these parts to be replaced on a repaired salvaged vehicle. As a result, it was proper for the Petitioner to present the repaired 9002 salvage vehicle for title; the vehicle was not defined by the frame from the 0216 junked vehicle. The frame of the vehicle was only a part.

⁶ Wis. Stat. § 340.01(35) "Motor vehicle" means a vehicle, including a combination of 2 or more vehicles or an articulated vehicle, which is self-propelled, except a vehicle operated exclusively on a rail. "Motor vehicle" includes, without limitation, a commercial motor vehicle or a vehicle which is propelled by electric power obtained from overhead trolley wires but not operated on rails. A snowmobile, an all-terrain vehicle, a utility terrain vehicle, an electric scooter, and an electric personal assistive mobility device shall be considered motor vehicles only for purposes made specifically applicable by statute. "Motor vehicle" does not include an electric bicycle.

⁷ Wis. Stat. § 218.0101(22) "Motor vehicle" means any motor-driven vehicle required to be registered under ch. 341 except mopeds.

⁸ Wis. Stat. § 340.01(74) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile, an all-terrain vehicle, a personal delivery device, an electric scooter, and an electric personal assistive mobility device shall not be considered a vehicle except for purposes made specifically applicable by statute.

Inspector [REDACTED] testified that he thought the Petitioner was trying to hide the identity of the junked vehicle; however, the record does not support this conclusion. The Petitioner disclosed the identity of the junked vehicle, the vehicle it used for parts, in its documentation that it presented to the Department at the time of inspection.

2. The removal of the 0216 junked vehicle VIN decal.

The Department takes the position that when the Petitioner removed the 0216 junked vehicle VIN from the frame, it violated state and federal law, which prohibits removal of the VIN on a vehicle or part. *See* Wis. Stat. § 342.30(1g); 18 U.S.C. 511. Wis. Admin. Code § Trans 149.06(4)(d).

There is also an exception to this law:

A person who repairs a vehicle or vehicle part may remove and replace a decal that contains an identification number if the removal and replacement is reasonably necessary for the repair.

Wis. Stat. § 342.30(1g)(b). The Petitioner argues this exception applies to its repairs of the salvage vehicle.

The Department argues that this exception is not met in this instance because the frame of the junked vehicle, the vehicle part itself, did not require repair. Kapenga testified that the 0216 junked frame was in “perfect” condition. Therefore, there was no reason to remove the decal from that part if the part did not require repair.

The Department’s reading of the statute is too narrow. If the statute read, “a person who repairs a vehicle part may remove...” then this application would be correct. But the statute includes the repair of a vehicle or a vehicle part, and the repair of the vehicle is what occurred here. It was reasonably necessary to remove and replace a decal when the Petitioner replaced the 9002 frame with the 0216 frame. This action was allowable under the exception provided in the statute.

3. Fraud.

The Department argues that Petitioner committed fraud when it sought reinspection in February 2024 from and different inspector than December 2023 because it was instructed to return to Inspector [REDACTED] for reinspection. Kapenga testified that the Petitioner was not trying to misrepresent the status of the vehicle; however, he also did not believe that Inspector [REDACTED] commonly inspected Teslas, knew how the VIN numbers were included on Teslas, or understood that the vehicle was not defined by the frame.

Fraud requires, at a minimum, some kind of misrepresentation. *See e.g.* Wis. Stat. §§ 551.501, 100.18, 943.82. The Department did not establish that the Petitioner made any misrepresentations to either inspector.

Additionally, the Department did not fully communicate its position in its January 24, 2024 letter, and because some information was missing, it could be viewed as misleading. (Ex.

12) The letter states that the title must be presented before the vehicle can be reoffered for inspection. It does not say that this vehicle cannot be titled in Wisconsin, but that was the actual determination of the Department. By indicating that the vehicle could be reoffered for inspection, the Department opened the door to allowing the Petitioner to submit the vehicle for reinspection.

The communication from both parties may have been incomplete, but the record does not support a determination that the Petitioner engaged in fraud.

CONCLUSIONS OF LAW

1. The Department has authority to issue or cancel vehicle titles and registration pursuant to Wis. Stat. §§ 342.07, 342.255.
2. The Department bears the burden to prove by a preponderance of the evidence that its cancellation order was properly issued. Wis. Admin. Code § HA 1.12(3)(a) and 1.17(2).
3. The Department did not meet its burden to show that the cancellation order was proper because the repaired vehicle was the 9002 salvage vehicle, not the 0216 junked vehicle and the removal of the VIN decal met the statutory exception in Wis. Stat. § 342.30(1g)(b) for repairs.
4. The Division of Hearings and Appeals has authority to issue this proposed decision and order pursuant to Wis. Stats. §§ 342.26 and 227.43.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that the Department's March 20, 2024, Order of Cancellation is RESCINDED. Therefore, the title issued for the 9002-vehicle following the February 21, 2024 inspection is reinstated.

Dated at Madison, Wisconsin on August 30, 2024.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: _____
Brian Hayes
Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.