



## OEM BULLETIN

### KUBOTA

The Union of the European Lubricant Industry (UEIL) is the umbrella association of the European Lubricants Industry, representing their members and, in particular, the interests of SMEs and independent lubricant companies. To date, the UEIL represents more than 450 lubricant companies, who manufacture and distribute lubricant products under their own various trademarks throughout the European Union. With members in 21 European Countries and a unique collective experience of lubricants and the lubricants market, UEIL is the sole representative body for independent manufacturers of lubricants in Europe and has been recognised as such by the European Commission. It is UEIL's policy to favour free and fair competition within the scope of prevailing EU and national laws.

In July 2020, three national associations (CSNIL, GAIL FEDERCHIMICA and UNITI) members of UEIL contacted KUBOTA in their respective countries.

Indeed, several of their members informed them about the **lack of technical specifications** on lubricants in KUBOTA owners' manuals regarding notably agricultural tractors, garden tractors and other utility vehicles.

For many applications (transmission, axle, gear ...), there are **no references to international specifications** such as API or SAE norms, but only the name of a product from the OEM range : KUBOTA SUPER UDT-2 fluid.

In order to avoid any problem linked to the use of a product which would not comply with its requirements, the three associations requested from KUBOTA to indicate, on the basis of international norms, what were the technical specifications for fluids to be used in its equipment when it was mentioned KUBOTA SUPER UDT-2 fluid.

After long technical discussions with KUBOTA<sup>1</sup>, **exchanges started with KUBOTA's lawyer** based in Brussels.

In May 2021, KUBOTA's lawyer sent a draft service bulletin to CSNIL and UNITI stating :

- « For products that are recommended to use Kubota Super UDT or Kubota UDT as transmission oil, other oils may be used if they have both ZF transmission oil standards TE-ML06R and 06N approved. »
- « However, please note that only repair and maintenance work performed using Kubota Super UDT or Kubota UDT is subject to Kubota warranty. »

CSNIL and UNITI responded to KUBOTA's lawyer and proposed an amended wording as follows :

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<sup>1</sup> Except in Italy where KUBOTA has not even had the courtesy to respond to GAIL FEDERCHIMICA letters.



- « For products that are recommended to use KUBOTA Super UDT or KUBOTA UDT as transmission oil, other oils meeting ZF transmission oil standards TEL-ML06R and 06N may be used. »
- « Please note that only repair and maintenance work performed using KUBOTA Super UDT, KUBOTA UDT or transmission oils meeting ZF transmission oil standards TEL-ML06R and 06N is subject to KUBOTA warranty. »

The two national associations explained that :

- A warranty claim could not be rejected because the oil used was not approved or was not a KUBOTA product.
- The key issue was the compliance with the technical specifications required.

In July 2021, KUBOTA's lawyer answered that its client was not in a position to respond favorably to CSNIL and UNITI requests and its position was in line with EU Regulation.

CSNIL and UNITI disagreed on the analysis of the situation and stated that :

- A non-approved product can match KUBOTA technical requirements. If KUBOTA wants to challenge the use of a product, evidence that the oil used is not suitable for the application has to be brought. The burden of proof cannot be reversed. It is anticompetitive to denigrate non-approved products just because they are not approved and unfoundedly create doubt and suspicion on them.
- KUBOTA cannot generally declare in its Service Bulletin that « *only repair and maintenance work performed using KUBOTA Super UDT or KUBOTA UDT is subject to KUBOTA warranty.* » Such communication is clearly misleading as repairers and end users are led to believe that if they use another product for any repair or for the maintenance of their vehicles, the KUBOTA warranty will be void.

The two national associations consequently requested again amendments in KUBOTA Service Bulletin.

In September 2021, KUBOTA's lawyer confirmed the position of its client which claims that it does not want to take any risk regarding the use of inadequate transmission oil. But, it also brought a clarification regarding the warranty issue. Indeed, in the conclusion of its letter it said :

**« Customers are free to use the transmission oil of their choice. However, if the equipment is still under warranty, KUBOTA's warranty will not cover repair which would be caused by technical failure resulting from the use of non-KUBOTA approved transmission oil. »**

CSNIL and UNITI agrees on this last statement which is a basic principle of civil liability.

UEIL thanks CSNIL, GAIL FEDERCHIMCA and UNITI for their involvement in this case and invite its members to bring to its attention any problem they may face with KUBOTA in relation to the above issues.

Brussels, December 2021