

Takaful and design intellectual property rights — a new dawn

What do design rights in intellectual property mean? In the registered designs context of the UK, designs are defined in Section 1(2) of the Registered Designs Act 1949 as the appearance of a product (full or partial) focusing on its “lines, contours, colours, shape, texture or materials”. Product is defined in Section 1(3) as “industrial or handicraft item” excluding computer programs. DR MEHEDI IBNE RAHIM delves further.



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Registration gives the owner sole rights up to 25 years in the UK. Additionally, design rights exist from unregistered contexts on two fronts. One is for copyright, under Section 51 of the Copyright, Designs and Patents Act 1988, for artistic work which includes the shape or configuration excluding surface decoration [but even that has some protection under Part I of the Act]. The duration of this copyright is 70 years plus the life of the author. The second one is with regards to the UK Unregistered Design Rights where, notwithstanding any registration, designs are still protected for 15 years from creation or 10 years from first marketing, in the UK or one of the qualifying countries in essence.

Takaful is an alternative to traditional insurance, which works in the form of a solidarity basis which, to an extent and possibly arguable, is akin to mutual insurance. Although the dynamics of Takaful are very different, in particular depending on the model chosen, but the ultimate aim of Takaful is the same, in essence, to traditional insurance, ie to ensure that the end user/participant/policyholder/insured/assured are covered for the underwritten risks.

Why Takaful should focus on designs

Part I

If I may put this bluntly, Takaful had, for far too long, been trying to play the ‘catching up’ game with traditional insurance and simply had been lagging behind. That perhaps, to an extent, is due to the fact that Takaful itself only became effective commercially in the latter part of the 20th century.

The industry kept growing but in the grand scheme of things, I humbly opine, it still has many significant strides to achieve and hurdles to overcome, which may possibly be due to the insurance environment that is already established by Lloyds of London which had the early entrant advantage from the 17th century. Clearly, to overcome those additional centuries of advantage is always going to be a near-impossible challenge for Takaful.

What Takaful needs is, instead of looking at the past and trying to overcome the outstanding laps, to short-circuit the situation and look at the future and gain an upper-hand advantage that traditional insurance does not have. The post-coronavirus era is going to be much more different than the one that existed before 2020. The new world will be more focused on intellectual aspects than on tangible items. Why? Simply because of convenience.

The whole world has gone digital. Work, for many professional services, no longer requires in-person attendance. Conversations no longer necessarily need to be verbal but rather in writing, be it emails or Twitter feeds. Currency is no longer required to be minted in precious metals; rather digital is more sought-after.

Negotiated instruments are no longer required to be negotiated physically or stored in the metal stronghold cupboard in a vault; rather, they are signed and sealed digitally, all secured by blockchain in the cloud.

Advertisements are no longer required to be on high street billboards; rather, social media is the significant way forward. All these call, and will continue to call, for further innovations intellectually and that will require, at the very basic level, innovations on

designs of products. Why? Simply to attract customers. Average customers pre-COVID-19 were bombarded with product varieties and now, in the new world, the attention span would be limited even further and that will naturally create casualties for further innovative designs.

Part II

Islam has always emphasized on intellectuality, just to mention a few salient aspects. The first word mentioned by Jibrail to Prophet Muhammad was ‘Iqra’, ie read. In Islam, the Hadith by authority of Abu Hurairah mentioned that Prophet Muhammad said one of the three deeds that continue after death is “knowledge from which benefit is gained”. Numerous outstanding intellectual designs were, in fact, created by Muslims and these are self-evident from the amazing calligraphic designs, fascinating manuscripts and artistic works that such designs encompass.

Conclusion

This is an area that Takaful should consider as it is rewarding and gives it the advantage that it desperately needs. The concept of intellectual property, and more specifically designs, is something that traditional insurance itself struggles to appreciate.

That is understandable, as these are emerging markets and when Lloyds was created, the focus was more on tangible objects such as ships, rather than intellectual creations. It was only in 2018 that Aon created a product described as a “first for IP [intellectual property] in the London market” and followed by Marsh in 2019. Takaful can capitalize on the Islamic roots of designs and be in a stronger position to capture these forward-thinking innovative markets and perhaps, even dominate and obtain the rewards that it rightfully deserves. ☺