

IP Litigation in Scotland

The advantages of the Scottish Interdict

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Agenda



Introduction



Overview of Scottish Process



The tactical advantage of the
Interim Interdict



How does it work in practice –
Case studies



Questions





OVERVIEW OF SCOTTISH PROCESS



SCOTLAND IS DIFFERENT

Where does it happen? Jurisdiction

➤ **Court of Session –
IP Court.**

➤ **Sheriff court also possible
(but not advisable!).**

➤ **Rights holder
friendly forum.**

➤ **Less IP experience at the
judiciary for very complex
IP matters – all trade mark
matters suitable.**

➤ **But still plenty of expertise
and not bound by English/
other foreign law.**

Should we send a Letter Before Action (LBA)?



LBAs

LBAs not mandatory in Scotland.



In practice

In practice, may choose to send but Court generally understanding if not sent.



Timescales

Actions can be raised quicker.



Risk

Reduces risk of “unjustified threats” claim.



The “quirks” of the Scottish System



No Discovery/
Extensive
Disclosure.



Document
Recovery
Process more
limited.



No joint
tortfeasors in
Scotland –
piercing the
corporate veil
much more
difficult.



Damages
limited to
harm in
jurisdiction.

What will the Court award? Remedies

→ Interdict
primary remedy.

→ Damages and Account
of Profits more limited.

→ Delivery
up options.

→ Publicity
Orders.



What about Publicity?

↗ Publicity orders
common.

↗ Can be placed in local,
national, trade press
and online.

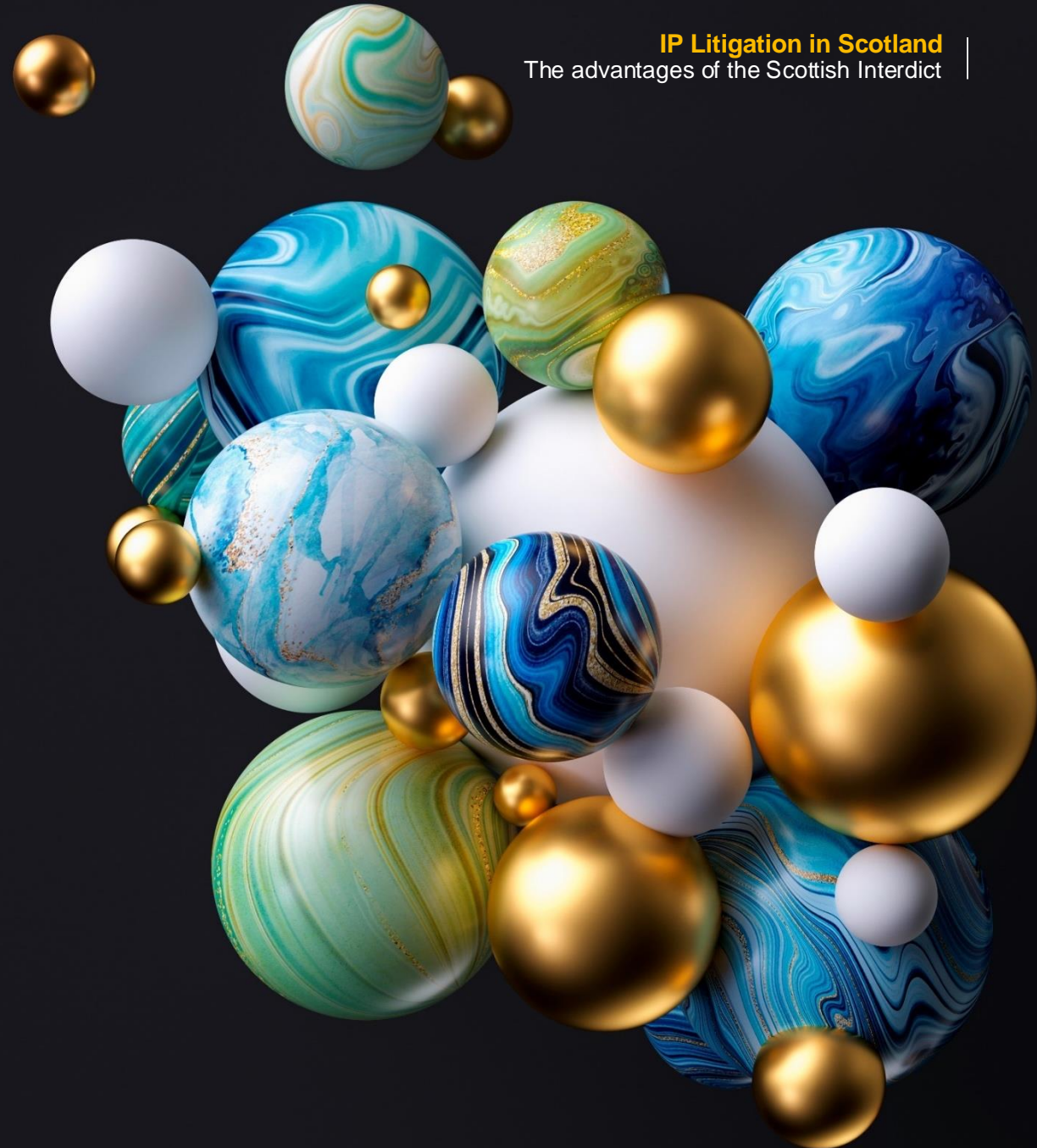
↗ Used in right way can
be very effective.

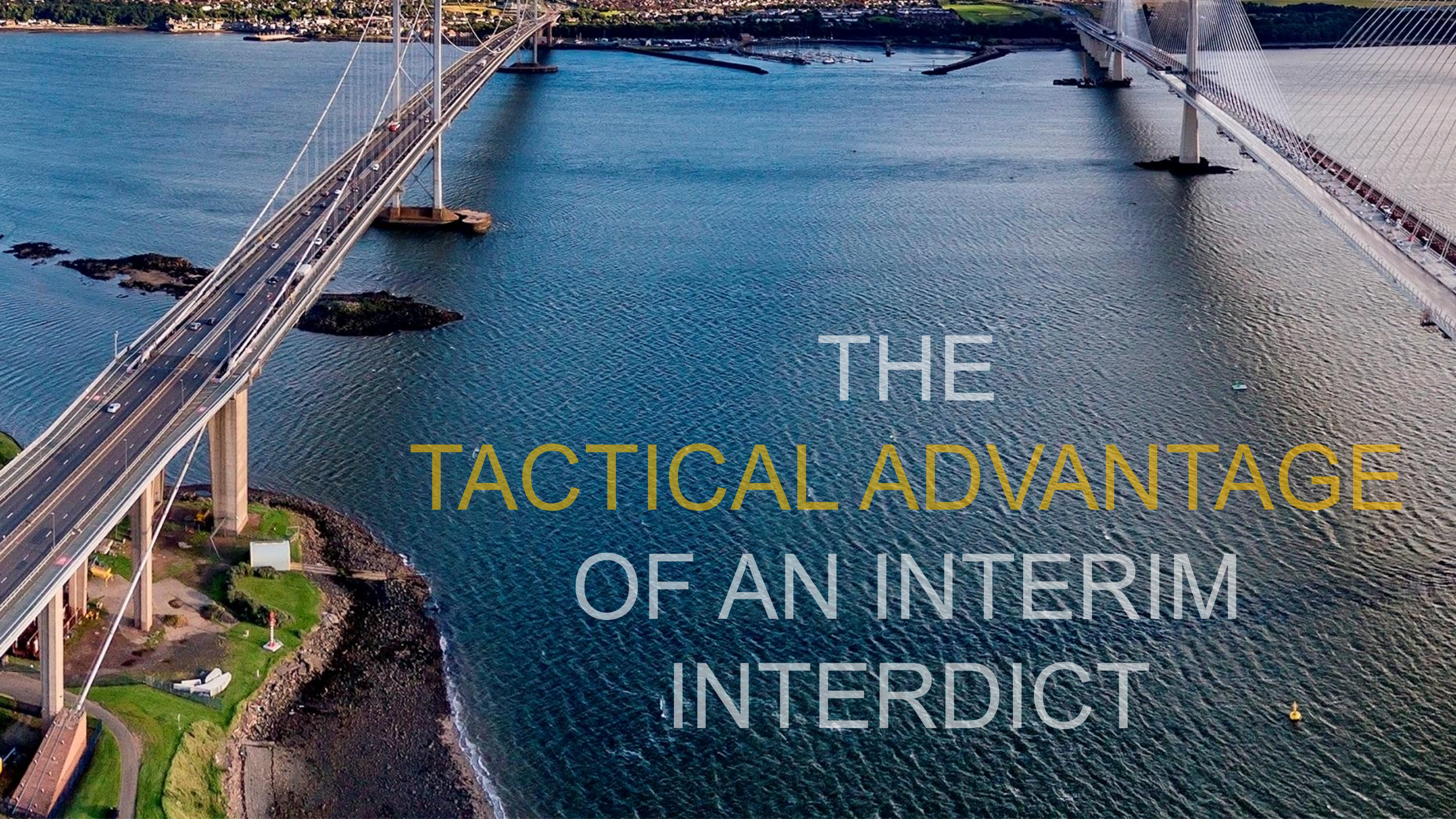
↗ Not right in every
case – social media
backlash?

↗ Infringer
pays.

How much does it cost?

- | Court costs fixed – currently under £400.
- | Legal costs likely to be substantially cheaper than England/larger jurisdictions.
- | No judicial involvement in costs budgeting.
- | No costs or damages cap.
- | Costs generally follows success.
- | Recovery of 50% - 60%.
- | Uplift on costs often recovered – indemnity costs or additional fees.



An aerial photograph of a large cable-stayed bridge spanning a wide body of water. The bridge has multiple lanes of traffic and is supported by several tall, white, A-frame pylons. The water is a deep blue-green color. In the background, a coastal town is visible on a hillside. The text "THE TACTICAL ADVANTAGE OF AN INTERIM INTERDICT" is overlaid on the right side of the image in a bold, sans-serif font. "THE" and "OF AN INTERIM INTERDICT" are in white, while "TACTICAL ADVANTAGE" is in yellow.

THE
TACTICAL ADVANTAGE
OF AN INTERIM
INTERDICT

Element of surprise

Interim Interdict – what is it?

Ex parte interim interdicts (Scottish equivalent of preliminary injunction) regularly granted.

Caveats.

Delay perhaps not as strictly interpreted.

No cross-undertaking for damages required: though interdict granted “at risk”.



Element of surprise

Interim Interdict – why do it?



Option available at outset of any action.



Less common but also available when action ongoing.



Quick decisive action vs lengthy correspondence.



No one outside Scotland expects to be sued in Scotland.



Negotiate from position of strength.

Court of Session Intellectual Property Action



Default judgment

- If no defences lodged within required timescales – default judgment.
- Once awarded can be registered for enforcement in England and Wales and other jurisdictions depending on reciprocal judgment position.

- Default judgment can be granted without need for hearing.
- Could provide UK wide/wider protection on basis of Scottish court order.

A woman with blonde hair in a bun, wearing a dark pinstriped blazer, is seated and looking at a blue tablet held by a man. The man is smiling and looking at the tablet. They are in a bright office with large windows in the background. The text 'SOUNDS GOOD' is overlaid on the left side of the image.

SOUNDS GOOD

But how does it work in
practice?



Case Study

William Grant v Lidl and others – [2021] CSIH 38





Case Study

Taking on the USA and online infringers





Any
Questions? —



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