Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

AMERICAN NEEDLE, INC. *v.* NATIONAL FOOTBALL LEAGUE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 08–661. Argued January 13, 2010—Decided May 24, 2010

Respondent National Football League (NFL) is an unincorporated association of 32 separately owned professional football teams, also respondents here. The teams, each of which owns its own name, colors, logo, trademarks, and related intellectual property, formed respondent National Football League Properties (NFLP) to develop, license, and market that property. At first, NFLP granted nonexclusive licenses to petitioner and other vendors to manufacture and sell team-labeled apparel. In December 2000, however, the teams authorized NFLP to grant exclusive licenses. NFLP granted an exclusive license to respondent Reebok International Ltd. to produce and sell trademarked headwear for all 32 teams. When petitioner's license was not renewed, it filed this action alleging that the agreements between respondents violated the Sherman Act, §1 of which makes "[e]very contract, combination . . . or, conspiracy, in restraint of trade" illegal. Respondents answered that they were incapable of conspiring within §1's meaning because the NFL and its teams are, in antitrust law jargon, a single entity with respect to the conduct challenged. The District Court granted respondents summary judgment, and the Seventh Circuit affirmed.

Held: The alleged conduct related to licensing of intellectual property constitutes concerted action that is not categorically beyond §1's coverage. Pp. 4–20.

(a) The meaning of "contract, combination . . . , or, conspiracy" in §1 of the Sherman Act is informed by the Act's " 'basic distinction between concerted and independent action.' " *Copperweld Corp.* v. *Independence Tube Corp.*, 467 U. S. 752, 767. Section 1 "treat[s] concerted behavior more strictly than unilateral behavior," *id.*, at 768,

because, unlike independent action, "[c]oncerted activity inherently is fraught with anticompetitive risk" insofar as it "deprives the marketplace of independent centers of decisionmaking that competition assumes and demands," *id.*, at 768–769. And because concerted action is discrete and distinct, a limit on such activity leaves untouched a vast amount of business conduct. That creates less risk of deterring a firm's necessary conduct and leaves courts to examine only discrete agreements. An arrangement must therefore embody concerted action in order to be a "contract, combination . . . or, conspiracy" under §1. Pp. 4–6.

(b) In determining whether there is concerted action under §1, the Court has eschewed formalistic distinctions, such as whether the alleged conspirators are legally distinct entities, in favor of a functional consideration of how they actually operate. The Court has repeatedly found instances in which members of a legally single entity violated §1 when the entity was controlled by a group of competitors and served, in essence, as a vehicle for ongoing concerted activity. See, *e.g., United States* v. *Sealy, Inc.*, 388 U. S. 350, 352–356. Conversely, the Court has found that although the entities may be "separate" for purposes of incorporation or formal title, if they are controlled by a single center of decisionmaking and they control a single aggregation of economic power, an agreement between them does not constitute a "contract, combination . . . or, conspiracy." *Copperweld,* 467 U. S., at 769. Pp. 6–10.

(c) The relevant inquiry is therefore one of substance, not form, which does not turn on whether the alleged parties to contract, combination, or conspiracy are part of a legally single entity or seem like one firm or multiple firms in any metaphysical sense. The inquiry is whether the agreement in question joins together "separate economic actors pursuing separate economic interests," *Copperweld,* 467 U. S., at 768, such that it "deprives the marketplace of independent centers of decisionmaking," *id.*, at 769, and therefore of diversity of entrepreneurial interests and thus of actual or potential competition. If it does, then there is concerted action covered by §1, and the court must decide whether the restraint of trade is unreasonable and therefore illegal. Pp. 10–11.

(d) The NFL teams do not possess either the unitary decisionmaking quality or the single aggregation of economic power characteristic of independent action. Each of them is a substantial, independently owned, independently managed business, whose "general corporate actions are guided or determined" by "separate corporate consciousnesses," and whose "objectives are" not "common." *Copperweld*, 467 U. S., at 771. They compete with one another, not only on the playing field, but to attract fans, for gate receipts, and for contracts with

managerial and playing personnel. See, *e.g., Brown* v. *Pro Football, Inc.*, 518 U. S. 231, 249. Directly relevant here, the teams are potentially competing suppliers in the market for intellectual property. When teams license such property, they are not pursuing the "common interests of the whole" league, but, instead, the interests of each "corporation itself." *Copperweld*, 467 U. S., at 770. It is not dispositive, as respondents argue, that, by forming NFLP, they have formed a single entity, akin to a merger, and market their NFL brands through a single outlet. Although the NFL respondents may be similar in some sense to a single enterprise, they are not similar in the relevant functional sense. While teams have common interests such as promoting the NFL brand, they are still separate, profit-maximizing entities, and their interests in licensing team trademarks are not necessarily aligned. Nor does it matter that the teams may find the alleged cooperation necessary to compete against other forms of entertainment. Although decisions made by NFLP are not as easily classified as concerted activity, the NFLP's decisions about licensing the teams' separately owned intellectual property are concerted activity and thus covered by §1 for the same reason that decisions made directly by the 32 teams are covered by §1. In making the relevant licensing decisions, NFLP is "an instrumentality" of the teams. *Sealy,* 388 U. S., at 352–354. Pp. 11–17.

(e) Football teams that need to cooperate are not trapped by antitrust law. The fact that the NFL teams share an interest in making the entire league successful and profitable, and that they must cooperate to produce games, provides a perfectly sensible justification for making a host of collective decisions. Because some of these restraints on competition are necessary to produce the NFL's product, the Rule of Reason generally should apply, and teams' cooperation is likely to be permissible. And depending upon the activity in question, the Rule of Reason can at times be applied without detailed analysis. But the activity at issue in this case is still concerted activity covered for §1 purposes. Pp. 18–19.

538 F. 3d 736, reversed and remanded.

STEVENS, J., delivered the opinion for a unanimous Court.