

SECURITIES AND EXCHANGE COMMISSION

FORM S-8 POS

Post-effective amendment to a S-8 registration statement

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FILER

FOTOBALL USA INC

CIK: **922251** | IRS No.: **330614889** | State of Incorpor.: **DE** | Fiscal Year End: **1231**
Type: **S-8 POS** | Act: **33** | File No.: **333-59669** | Film No.: **1696640**
SIC: **3949** Sporting & athletic goods, nec

Mailing Address
3738 RUFFIN ROAD
3738 RUFFIN ROAD
SAN DIEGO CA 92123

Business Address
3738 RUFFIN RD
SAN DIEGO CA 92123
85879900

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

POST EFFECTIVE AMENDMENT NO. 2
TO
FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

FOTOBALL USA, INC.
(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation or organization)

33-0614889
(I.R.S. Employer
Identification No.)

6740 COBRA WAY
SAN DIEGO, CALIFORNIA 92121
(Address of Principal Executive Offices) (Zip Code)

FOTOBALL USA, INC. 1998 STOCK OPTION PLAN
(Full title of the plan)

| | |
|---|---|
| MICHAEL FAVISH CHAIRMAN AND CHIEF EXECUTIVE OFFICER FOTOBALL USA, INC. 6740 COBRA WAY SAN DIEGO, CALIFORNIA 92121 (858) 909-9900 | CHARLES I. WEISSMAN, ESQ. SWIDLER BERLIN SHEREFF FRIEDMAN, LLP 405 LEXINGTON AVENUE NEW YORK, NEW YORK 10174 (212) 973-0111 |
|---|---|

(Name, address and telephone number, including area code,
of agents for service)

<TABLE>
<CAPTION>

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CALCULATION OF REGISTRATION FEE

| TITLE OF SECURITIES TO BE REGISTERED | AMOUNT TO BE REGISTERED (1) (2) | PROPOSED MAXIMUM OFFERING PRICE PER SHARE (3) | PROPOSED MAXIMUM AGGREGATE OFFERING PRICE (3) | AMOUNT OF REGISTRATION FEE |
|--|---------------------------------|---|---|----------------------------|
| <S> Common Stock, par value \$.01 per share | <C> 100,000 shares | <C> \$1.80 | <C> \$180,000 | <C> \$47.52 |

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</TABLE>

- (1) Pursuant to Rule 416, this registration statement also covers such additional securities as may become issuable to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) The securities registered hereby represent an addition to the 500,000 shares of common stock issuable under the Fotoball USA, Inc. 1998 Stock Option Plan which were registered previously on a registration statement on Form S-8 (File No. 333-59669, filed on July 23, 1998) and 200,000 shares of common stock issuable under the Fotoball USA, Inc. 1998 Stock Option Plan which were registered previously on a registration statement on Form S-8, Post Effective Amendment No. 1 (File No. 333-59669, filed on August 16, 1999).
- (3) Estimated in accordance with Rule 457(c) and (h) of the Securities Act, solely for the purpose of calculation of the registration fee. Based on the average of the high and low sale prices of Fotoball's common stock as reported by the Nasdaq National Market on July 31, 2001.

Item 3. Incorporation of Documents by Reference.

WE HAVE INCORPORATED CERTAIN IMPORTANT BUSINESS AND FINANCIAL INFORMATION ABOUT FOTOBALL THAT IS NOT INCLUDED IN OR DELIVERED WITH THIS DOCUMENT, INCLUDING ANY EXHIBITS THAT ARE SPECIFICALLY INCORPORATED BY REFERENCE INTO SUCH INFORMATION. WE WILL PROVIDE TO EACH PERSON, INCLUDING ANY BENEFICIAL OWNER, TO WHOM THIS DOCUMENT IS DELIVERED, A COPY OF ANY OR ALL OF THE INFORMATION THAT HAS BEEN INCORPORATED BY REFERENCE IN THIS DOCUMENT, WITHOUT CHARGE, UPON WRITTEN OR ORAL REQUEST TO FOTOBALL USA, INC., 6740 COBRA WAY, SAN DIEGO, CALIFORNIA 92121, TELEPHONE (858) 909-9900, ATTENTION: SECRETARY.

The following documents filed by Fotoball with the SEC are hereby incorporated by reference into this document and made a part hereof:

- o our Annual Report on Form 10-KSB for the fiscal year ended December 31, 2000, as amended on Form 10-KSB/A
- o our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2001
- o the description of our securities contained in our Registration Statement on Form 8-A, filed with the SEC on August 1, 1994, as amended by Forms 8-A filed with the SEC on August 30, 1996, October 18, 1996 and August 19, 1999.

All documents and reports filed by Fotoball pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this document and before the termination of the offering shall be deemed to be incorporated by reference in this document and to be a part hereof from the dates of filing of such documents or reports. Any statement contained herein or in a document incorporated herein by reference will be deemed to be modified or superseded for the purpose of this document to the extent that a statement contained herein or in any subsequently filed document which also is incorporated herein by reference modifies or supersedes such statement. Any such statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this document.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

The indemnification of officers and directors of Fotoball is governed by Section 145 of the DGCL and the Certificate of Incorporation (the "Certificate") and By-Laws of Fotoball.

Among other things, the DGCL permits indemnification of a director, officer, employee or agent in civil, criminal, administrative or investigative actions, suits or proceedings, other than an action by or in the right of the corporation, to which such person is a party or is threatened to be made a party by reason of the fact of such relationship with the corporation or the fact that such person is or was serving in a similar capacity with another entity at the request of the corporation against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful. No indemnification may be made in any such suit to any person adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which the action was brought determines that, despite the adjudication of liability, such person is under all circumstances, fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Under the DGCL, to the extent that a director, officer, employee or agent is successful, on the merits or otherwise, in the defense of any action, suit or proceeding or any claim, issue or matter therein (whether or not the suit is brought by or in the right of the corporation), he shall be indemnified against expenses including attorneys' fees actually and reasonably incurred by him. In all cases in which indemnification is permitted, unless ordered by a court, it may be made by the corporation only as authorized in the specific case upon a determination that the applicable standard of conduct has been met by the party to be indemnified. The determination must be made by a majority vote of a quorum consisting of the directors who were not parties to the action or, if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested

directors so directs, by independent legal counsel in a written opinion, or by the stockholders.

The DGCL authorizes the corporation to pay expenses incurred by an officer or director in advance of a final disposition of a proceeding upon receipt of an undertaking by or on behalf of the person to whom the advance will be made, to repay the advances if it shall ultimately be determined that he was not entitled to indemnification. The DGCL provides that indemnification and advances of expenses permitted thereunder are not to be exclusive of any rights to which those seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested directors, or otherwise. The DGCL also authorizes the corporation to purchase and maintain liability insurance on behalf of its directors, officers, employees and agents regardless of whether the corporation would have the statutory power to indemnify such persons against the liabilities insured.

The Certificate provides that no director of Fotoball shall be personally liable to Fotoball or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability:

- o for any breach of the director's duty of loyalty to Fotoball or its stockholders

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- o for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law
- o for paying a dividend or approving a stock repurchase in violation of Section 174 of the DGCL
- o for any transaction from which the director derived an improper personal benefit

The By-Laws provide that directors, officers and others shall be indemnified to the fullest extent authorized by the DGCL, as now in effect or as then may be in effect, whichever is more favorable to such persons, against any and all judgments, fines and amounts paid in settling or otherwise disposing of threatened, pending or completed actions, suits or proceedings, whether civil, criminal, administrative or investigative and expenses incurred by such person in connection therewith. The By-Laws further provide that, to the extent permitted by law, expenses so incurred by any such person in defending a civil or criminal action or proceeding shall, at his request, be paid by Fotoball in advance of the final disposition of such action or proceeding.

The By-Laws provide that the right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition shall not be exclusive of any other right which any person may have or acquire.

Fotoball maintains directors and officers liability and company reimbursement insurance which, among other things,

- o provides for payment on behalf of its officers and directors against loss as defined in the policy stemming from acts committed by directors and officers in their capacity as such
- o provides for payment on behalf of Fotoball against such loss but only when Fotoball shall be required or permitted to indemnify directors or officers for such loss

Item 7. Exemption from Registration Claimed.

Not Applicable.

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Item 8. Exhibits.

The following exhibits are filed as part of this Registration Statement:

| Exhibit Number. | Description. |
|-----------------|--|
| ----- | ----- |
| 4.1* | Fotoball USA, Inc. 1998 Stock Option Plan, as amended. |
| 4.2* | Form of Stock Option Agreement for the Fotoball USA, Inc. 1998 Stock Option Plan (incorporated by reference to Exhibit 4.2 of the Registration Statement on Form S-8 (File No. 333-59669). |
| 5.1 | Opinion of Swidler Berlin Shereff Friedman, LLP. |

- 23.1 Consent of Good, Swartz, Brown, Berns and Co. LLP.
- 23.2 Consent of Swidler Berlin Shereff Friedman, LLP (contained in Exhibit 5.1).

* Indicates exhibits relating to executive compensation.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
- (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the change in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

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provided, however, that paragraphs (a)(1)(i) and (ii) do not apply if the registration statement is on Form S-3 or S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for the purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the

Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California on this 3rd day of August, 2001.

FOTOBALL USA, INC.

By: /s/ Michael Favish

Michael Favish
Chairman, Chief Executive
Officer and Director

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement was signed by the following persons in the capacities and on the dates indicated:

| Signature ----- | Titles ----- | Date ---- |
|---|---|----------------|
| /s/ Michael Favish ----- Michael Favish | President, Chief Executive Officer and Director (Principal Executive Officer) | August 3, 2001 |
| /s/ Thomas R. Hillebrandt ----- Thomas R. Hillebrandt | Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer) | August 3, 2001 |
| /s/ Nicholas A. Giordano ----- Nicholas Giordano | Director | August 3, 2001 |
| /s/ Joel K. Rubenstein ----- Joel K. Rubenstein | Director | August 3, 2001 |
| /s/ John J. Shea ----- John Shea | Director | August 3, 2001 |

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EXHIBIT INDEX

| Exhibit Number ----- | Description ----- |
|-------------------------|--|
| 4.1 | Fotoball USA, Inc. 1998 Stock Option Plan, as amended. |
| 5.1 | Opinion of Swidler Berlin Shereff Friedman, LLP. |
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FOTOBALL USA, INC.
1998 STOCK OPTION PLAN

SECTION 1. PURPOSE

The purposes of this Fotoball USA, Inc. 1998 Stock Option Plan (the "Plan") are to encourage selected employees and directors of Fotoball USA, Inc., a Delaware corporation (together with any successor thereto, the "Company"), or any present or future Subsidiary Corporation (as defined below) of the Company to acquire a proprietary interest in the growth and performance of the Company, to generate an increased incentive to contribute to the Company's future success and prosperity, thus enhancing the value of the Company for the benefit of its stockholders, and to enhance the ability of the Company to attract and retain qualified individuals upon whom, in large measure, the sustained progress, growth and profitability of the Company depend.

SECTION 2. DEFINITIONS

As used in the Plan, the following terms shall have the meanings set forth below:

(a) "Board" shall mean the Board of Directors of the Company.

(b) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

(c) "Committee" shall mean a committee of the Board designated by the Board to administer the Plan and composed of not less than two (2) directors.

(d) "Fair Market Value" shall mean, with respect to Shares or other securities, the fair market value of the Shares or other securities determined by such methods or procedures as shall be established from time to time by the Committee in good faith or in accordance with applicable law. Unless otherwise determined by the Committee, the Fair Market Value of Shares shall mean (i) the closing price per Share of the Shares on the principal exchange on which the Shares are then trading, if any, on such date, or, if the Shares were not traded on such date, then on the next preceding trading day during which a sale occurred; or (ii) if the Shares are not traded on an exchange but are quoted on the Nasdaq Stock Market or a successor quotation system, (1) the last sales price (if the Shares are then listed as a National Market Issue on the Nasdaq Stock Market) or (2) the mean between the closing representative bid and asked prices (in all other cases) for the Shares on such date as reported by the Nasdaq Stock Market or such successor quotation system; or (iii) if the Shares are not publicly traded on an exchange and not quoted on the Nasdaq Stock Market or a successor quotation system, the mean between the closing bid and asked prices for the Shares on such date as determined in good faith by the Committee.

(e) "Incentive Stock Option" shall mean an option granted under the Plan that is designated as an incentive stock option within the meaning of Section 422 of the Code or any successor provision thereto.

(f) "Independent Director" shall mean each member of the Board who is not an employee of the Company or any Subsidiary Corporation of the Company.

(g) "Key Employee" shall mean any officer, director or other employee who is a regular full-time employee of the Company or its present and future Subsidiary Corporations.

(h) "Non-Qualified Stock Option" shall mean an Option granted under the Plan that is not designated as an Incentive Stock Option.

(i) "Option" shall mean an Incentive Stock Option or a Non-Qualified Stock Option.

(j) "Option Agreement" shall mean a written agreement, contract or other instrument or document evidencing an Option granted under the Plan.

(k) "Participant" shall mean a Key Employee or Independent Director who has been granted an Option under the Plan.

(l) "Person" shall mean any individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization or government or political subdivision thereof.

(m) "Rule 16b-3" shall mean Rule 16b-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, or any successor rule or regulation thereto.

(n) "Shares" shall mean the common stock of the Company, \$.01 par value, and such other securities or property as may become the subject of Options pursuant to an adjustment made under Section 4(b) of the Plan.

(o) "Subsidiary Corporation" shall have the meaning ascribed thereto in Code Section 424(f).

(p) "Ten Percent Stockholder" shall mean a Person, who together with his or her spouse, children and trusts and custodial accounts for their benefit, immediately at the time of the grant of an Option and assuming its immediate exercise, would beneficially own, within the meaning of Section 424(d) of the Code, Shares possessing more than ten percent (10%) of the total combined voting power of all of the outstanding capital stock of the Company or any Subsidiary Corporation of the Company.

SECTION 3. ADMINISTRATION

(a) Generally. The Plan shall be administered by the Committee. Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations and other decisions under or with respect to the Plan or any Option shall be within the sole discretion of the Committee, may be made at any time, and shall be final, conclusive, and binding upon all Persons, including the Company, any Participant, any holder or beneficiary of any Option, any stockholder of the Company and any employee of the Company.

(b) Powers. Subject to the terms of the Plan and applicable law and except as provided in Section 7 hereof, the Committee shall have full power and authority to: (i) designate Participants; (ii) determine the type or types of Options to be granted to each Participant under

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the Plan; (iii) determine the number of Shares to be covered by Options; (iv) determine the terms and conditions of any Option; (v) determine whether, to what extent, and under what circumstances Options may be settled or exercised in cash, Shares, other Options, or other property, or canceled, forfeited, or suspended, and the method or methods by which Options may be settled, exercised, canceled, forfeited, or suspended; (vi) interpret and administer the Plan and any instruments or agreements relating to, or Options granted under, the Plan; (vii) establish, amend, suspend, or waive such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan; and (viii) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan.

SECTION 4. SHARES AVAILABLE FOR OPTIONS

(a) Shares Available. Subject to adjustment as provided in Section 4(b):

(i) Limitation on Number of Shares. Options issuable under the Plan are limited such that the maximum aggregate number of Shares which may be issued pursuant to, or by reason of, Options is 800,000. Further, no Participant shall be granted Options to purchase more than 175,000 Shares in any one fiscal year; provided, however, that the Committee may adopt procedures for the counting of Shares relating to any grant of Options to ensure appropriate counting, avoid double counting, and provide for adjustments in any case in which the number of Shares actually distributed differs from the number of Shares previously counted in connection with such grant; provided further, however, that the options granted under the Company's 1994 Stock Option Plan shall not be treated as outstanding. To the extent that an Option granted to a (A) Key Employee or (B) an Independent Director ceases to remain outstanding by reason of termination of rights granted thereunder, forfeiture or otherwise, the Shares subject to such Option shall again become available for award under the Plan to (x) Key Employees and (y) Independent Directors,

respectively.

(ii) Sources of Shares Deliverable Under Options. Any Shares delivered pursuant to an Option may consist, in whole or in part, of authorized and unissued Shares or of treasury Shares.

(b) Adjustments. In the event that the Committee shall determine that any change in corporate capitalization, such as a dividend or other distribution of Shares, or a corporate transaction, such as a merger, consolidation, reorganization or partial or complete liquidation of the Company or other similar corporate transaction or event, affects the Shares such that an adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem necessary to prevent dilution or enlargement of the benefits or potential benefits intended to be made under the Plan, adjust any or all of (x) the number and type of Shares which thereafter may be made the subject of Options, (y) the number and type of Shares subject to outstanding Options, and (z) the grant, purchase, or exercise price with respect to any Option or, if deemed appropriate, make provision for a cash payment to the holder of an outstanding Option; provided, however, in each case, that (i) with

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respect to Incentive Stock Options no such adjustment shall be authorized to the extent that such adjustment would cause the Plan to violate Section 422 of the Code or any successor provision thereto; (ii) such adjustment shall be made in such manner as not to adversely affect the status of any Option as "performance-based compensation" under Section 162(m) of the Code; and (iii) the number of Shares subject to any Option denominated in Shares shall always be a whole number.

SECTION 5. ELIGIBILITY

In determining the Persons to whom Options shall be granted and the number of Shares to be covered by each Option, the Committee shall take into account the nature of the Person's duties, such Person's present and potential contributions to the success of the Company and such other factors as it shall deem relevant in connection with accomplishing the purposes of the Plan. A Key Employee who has been granted an Option or Options under the Plan may be granted an additional Option or Options, subject to such limitations as may be imposed by the Code on the grant of Incentive Stock Options. Notwithstanding anything herein to the contrary, Incentive Stock Options may be granted only to Key Employees of the Company or any Parent Corporation or Subsidiary Corporation.

SECTION 6. OPTIONS

The Committee is hereby authorized to grant Options to Participants upon the following terms and the conditions (except to the extent otherwise provided in Section 7) and with such additional terms and conditions, in either

case not inconsistent with the provisions of the Plan, as the Committee shall determine:

(a) Exercise Price. The exercise price per Share purchasable under Options shall be determined by the Committee at the time the Option is granted but generally shall not be less than the Fair Market Value of the Shares covered thereby at the time the Option is granted.

(b) Option Term. The term of each Non-Qualified Stock Option shall be fixed by the Committee but generally shall not exceed ten (10) years from the date of grant.

(c) Time and Method of Exercise. The Committee shall determine the time or times at which the right to exercise an Option may vest, and the method or methods by which, and the form or forms in which, payment of the option price with respect to exercises of such Option may be made or deemed to have been made (including, without limitation, (i) cash, Shares, outstanding Options or other consideration, or any combination thereof, having a Fair Market Value on the exercise date equal to the relevant option price and (ii) a broker-assisted cashless exercise program established by the Committee), provided in each case that such methods avoid "short-swing" profits to the Participant under Section 16(b) of the Securities Exchange Act of 1934, as amended. The payment of the exercise price of an Option may be made in a single payment or transfer, in installments, or on a deferred basis, in each case in accordance with rules and procedures established by the Committee.

(d) Incentive Stock Options. All terms of any Incentive Stock Option granted under the Plan shall comply in all respects with the provisions of Section 422 of the Code, or any successor provision thereto, and any regulations promulgated thereunder including that, (i) (A) in

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the case of a grant to a Person that is not a Ten Percent Stockholder the purchase price per Share purchasable under Incentive Stock Options shall not be less than the Fair Market Value of a Share on the date of grant and (B) in the case of a grant to a Ten Percent Stockholder the purchase price per Share purchasable under Incentive Stock Options shall not be less than 110% of the Fair Market Value of a Share on the date of grant and (ii) the term of each Incentive Stock Option shall be fixed by the Committee but shall in no event be more than ten (10) years from the date of grant, or in the case of an Incentive Stock Option granted to a Ten Percent Stockholder, five (5) years from the date of grant..

(e) Limits on Transfer of Options. Subject to Code Section 422, no Option and no right under any such Option, shall be assignable, alienable, saleable or transferable by a Participant otherwise than by will or by the laws of descent and distribution, and such Option, and each right under any such Option, shall be exercisable during the Participant's lifetime, only by the Participant or, if permissible under applicable law (including Code Section 422,

in the case of an Incentive Stock Option), by the Participant's guardian or legal representative. No Option and no right under any such Option, may be pledged, alienated, attached, or otherwise encumbered, and any purported pledge, alienation, attachment, or encumbrance thereof shall be void and unenforceable against the Company. Notwithstanding the foregoing, the Committee may, in its discretion, provide that Non-Qualified Stock Options be transferable, without consideration, to immediate family members (i.e., children, grandchildren or spouse), to trusts for the benefit of such immediate family members and to partnerships in which such family members are the only partners. The Committee may attach to such transferability feature such terms and conditions as it deems advisable. In addition, a Participant may, in the manner established by the Committee, designate a beneficiary (which may be a person or a trust) to exercise the rights of the Participant, and to receive any distribution, with respect to any Option upon the death of the Participant. A beneficiary, guardian, legal representative or other person claiming any rights under the Plan from or through any Participant shall be subject to all terms and conditions of the Plan and any Option Agreement applicable to such Participant, except as otherwise determined by the Committee, and to any additional restrictions deemed necessary or appropriate by the Committee.

(f) Tax Withholding. The Company or any Subsidiary is authorized to withhold from any Option granted any payment relating to an Option under the Plan, including from the exercise of an Option, amounts of withholding and other taxes due in connection with any transaction involving an Option, and to take such other action as the Committee may deem advisable to enable the Company and Participants to satisfy obligations for the payment of withholding taxes and other tax obligations relating to any Option. This authority shall include authority to withhold or receive Shares or other property and to make cash payments in respect thereof in satisfaction of a Participant's tax obligations.

(g) Loan Provisions. With the consent of the Committee, and subject at all times to laws and regulations and other binding obligations or provisions applicable to the Company, the Company may make, guarantee, or arrange for a loan or loans to a Participant with respect to the exercise of any Option, including the payment by a Participant of any or all federal, state, or local income or other taxes due in connection with the exercise of any Option. Subject to such limitations, the Committee shall have full authority to decide whether to make a loan or loans hereunder and to determine the amount, terms, and provisions of any such loan or loans,

including the interest rate to be charged in respect of any such loan or loans, whether the loan or loans are to be with or without recourse against the borrower, the terms on which the loan is to be repaid and the conditions, if any, under which the loan or loans may be forgiven.

SECTION 7. OPTIONS AWARDED TO INDEPENDENT DIRECTORS

Each Independent Director who is a member of the Board on July 1 of a

year during the term of the Plan shall automatically be granted a Non-Qualified Stock Option to purchase 5,000 Shares on July 1 of each year of service on the Board as an Independent Director. All Options granted pursuant to this Section 7 shall (a) be at an exercise price per Share equal to 100% of the Fair Market Value of a Share on the date of the grant; (b) have a term of ten (10) years; (c) terminate (i) upon termination of an Independent Director's service as a director of the Company for any reason other than mental or physical disability or death, (ii) three (3) months after the date the Independent Director ceases to serve as a director of the Company due to physical or mental disability or (iii) (A) twelve (12) months after the date the Independent Director ceases to serve as a director due to the death of the Independent Director or (B) three (3) months after the death of the Independent Director if such death shall occur during the three (3) month period following the date the Independent Director ceased to serve as a director of the Company due to physical or mental disability; and (d) be otherwise on the same terms and conditions as all other Options granted pursuant to the Plan.

SECTION 8. AMENDMENT AND TERMINATION

Except to the extent prohibited by applicable law and unless otherwise expressly provided in an Option Agreement or in the Plan:

(a) Amendments to the Plan. The Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board, but no amendment without the approval of the stockholders of the Company shall be made if such amendment would be required under Sections 162(m) or 422 of the Code, Rule 16b-3 or any other law or rule of any governmental authority, stock exchange or other self-regulatory organization to which the Company may then be subject. Neither the amendment, suspension nor termination of the Plan shall, without the consent of the holder of such Option, alter or impair any rights or obligations under any Option theretofore granted.

(b) Correction of Defects, Omissions, and Inconsistencies. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Option in the manner and to the extent it shall deem desirable to carry the Plan into effect.

SECTION 9. GENERAL PROVISIONS

(a) No Rights to Awards. No Key Employee shall have any claim to be granted any Option under the Plan, and there is no obligation for uniformity of treatment of Key Employees or holders or beneficiaries of Options under the Plan. The terms and conditions of Options need not be the same with respect to each recipient.

(b) No Right to Employment. The grant of an Option shall not be construed as giving a Participant the right to be retained in the employ of the Company. Further, the Company may

at any time dismiss a Participant from employment, free from any liability, or any claim under the Plan, unless otherwise expressly provided in the Plan or in any Option Agreement.

(c) Governing Law. The validity, construction, and effect of the Plan and any rules and regulations relating to the Plan shall be determined in accordance with the laws of the State of Delaware and applicable Federal law.

(d) Severability. If any provision of the Plan or any Option is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction, or would disqualify the Plan or any Option under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan, such provision shall be deemed void, stricken and the remainder of the Plan and any such Option shall remain in full force and effect.

(e) No Fractional Shares. No fractional Shares shall be issued or delivered pursuant to the Plan or any Option, and the Committee shall determine whether cash, other securities, or other property shall be paid or transferred in lieu of any fractional Shares or whether such fractional Shares or any rights thereto shall be cancelled, terminated, or otherwise eliminated.

(f) Headings. Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision hereof.

SECTION 10. EFFECTIVE DATE OF THE PLAN

The Plan is effective as of June 1, 1998, subject to stockholder approval of the Plan prior to such date.

SECTION 11. TERM OF THE PLAN

The Plan shall continue until the earlier of (i) the date on which all Options issuable hereunder have been issued, (ii) the termination of the Plan by the Board or (iii) March 9, 2008. However, unless otherwise expressly provided in the Plan or in an applicable Option Agreement, any Option theretofore granted may extend beyond such date and the authority of the Committee to amend, alter, adjust, suspend, discontinue, or terminate any such Option or to waive any conditions or rights under any such Option, and the authority of the Board to amend the Plan, shall extend beyond such date.

[As of June 21, 2001]

July 11, 2001

Fotoball USA, Inc.
6740 Cobra Way
San Diego, California 92121

Dear Sirs:

Fotoball USA, Inc., a Delaware corporation (the "Company"), intends to transmit for filing with the Securities and Exchange Commission a registration statement under the Securities Act of 1933, as amended, on Form S-8 (the "Registration Statement") which relates to 100,000 shares of the Company's common stock, par value \$.01 per share (the "Shares"), which are being offered pursuant to the Company's 1998 Stock Option Plan (the "Plan"). This opinion is an exhibit to the Registration Statement.

We have acted as counsel to the Company in connection with the proposed offer and sale of the Shares as contemplated by the Registration Statement. However, we are not general counsel to the Company and would not ordinarily be familiar with or aware of matters relating to the Company unless they are brought to our attention by representatives of the Company. We have examined copies (in each case signed, certified or otherwise proved to our satisfaction) of the Company's Certificate of Incorporation and By-Laws as presently in effect, minutes and other instruments evidencing actions taken by the Company's directors and stockholders, the Plan and a form of option agreement used by the Company for issuance of options under the Plan. In our examination of all such agreements, documents, certificates and instruments, we have assumed the genuineness of all signatures and the authenticity of all agreements, documents, certificates and instruments submitted to us as originals and the conformity with the originals of all agreements, instruments, documents and certificates submitted to us as copies. Insofar as this opinion relates to securities to be issued in the future, we have assumed that all applicable laws, rules and regulations in effect at the time of such issuance are the same as such laws, rules and regulations in effect as of the date hereof.

We note that we express no opinion on the laws of any jurisdiction other than the laws of the State of New York, the federal laws of the United States and, to the extent set forth in the succeeding sentence, the laws of the State of

Delaware. Insofar as the opinions set forth below

relate to the laws of the State of Delaware, we have relied solely upon our reading of standard compilations of the Delaware General Corporation Law, as presently in effect.

Based on the foregoing, and subject to and in reliance on the accuracy and completeness of the information relevant thereto provided to us, it is our opinion that:

The Shares to be issued upon the exercise of options issued pursuant to the Plan have been duly authorized and (subject to the effectiveness of the Registration Statement and compliance with applicable state securities laws), when issued and paid for in accordance with the terms of the Plan and option agreements relating thereto, will be legally and validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and as an exhibit to any filing made by the Company under the securities or "Blue Sky" laws of any state.

This opinion is furnished to you in connection with the filing of the Registration Statement, and is not to be used, circulated, quoted or otherwise relied upon for any other purposes, except as expressly provided in the preceding paragraph. This opinion is rendered as of the date hereof and we disclaim any obligation to update this opinion.

Very truly yours,

/s/ SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

SBSF:AMF:RAG:JSH:AS

CONSENT OF INDEPENDENT AUDITORS

We consent to the reference to our firm under the heading "Experts" and to the incorporation by reference of the report, dated February 2, 2001, prepared by Hollander, Lumer & Co., LLP (independent auditors that merged with and into our firm on March 26, 2001, "Hollander") with reference to Hollander's audit of the financial statements of Fotoball USA, Inc. as of December 31, 2000 and for the year then ended, in the Registration Statement on Form S-8 dated August 3, 2001.

/s/ GOOD, SWARTZ, BROWN, BERNS and CO. LLP

GOOD, SWARTZ, BROWN, BERNS and CO. LLP

Studio City, California
August 1, 2001