

# newhorizonssucks.net

*Consumer information for people seeking computer instruction and certification*

127 Randall Street

Waukesha, WI 53188

(262) 574-1964

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Web Site: [www.newhorizonssucks.net](http://www.newhorizonssucks.net)

Email: [webmaster@newhorizonssucks.net](mailto:webmaster@newhorizonssucks.net)

Gene A. Longobardi  
Senior V.P. North American Operations  
New Horizons Computer Learning Centers, Inc.  
1231 E. Dyer Road, Suite 110  
Santa Ana, California 92705-5643

cc: File

October 16, 2000

Dear Mr. Longobardi:

On October 3, 2000, I engaged in a telephone conversation with Mr. Jerry Wright, Vice President of North American Field Support for New Horizons Worldwide, about my web site, [newhorizonssucks.net](http://newhorizonssucks.net). At the close of that conversation, Mr. Wright offered to mail to me the Indemnity and Release Agreement that New Horizons was proposing that I agree to and sign.

On October 10, 2000, I received that document by U.S. mail, and have reviewed it carefully. As you are the signatory listed for New Horizons on the document, I am sending this response to you. If it should be addressed to someone other than yourself, please let me know and I will send it again to the proper recipient.

I must decline this offer as proposed by New Horizons. As Mr. Wright and I discussed, the original amount proposed by New Horizons was insufficient to persuade me to part with my web site. In addition, the following errors, misstatements, and objectionable terms are contained within your proposal:

1. In the first paragraph, my wife's surname is incorrect.
2. Under the heading "Recitals", the only section that does not contain any errors of which I am aware is section III, which identifies New Horizons. In the remaining sections, the following is in error or objectionable:
  - a. In section I, the amounts listed for the amount of the settlement and the amount still owed are incorrect.

- b. In section II there were several errors, the least of which is the domain name listed (<http://www.newhorizonssucks.net>). The domain name is simply newhorizonssucks.net. The "www" refers to the machine name on which the web site is hosted, and "http" is a protocol for transferring hypertext documents over the Internet.

Section II also contains the statement "*Betz emailed California franchisees and NHCLC regional managers, informing them of this fact and demanded a refund under threat of further notification, through search engines, of the existence of the Web-site to the public.*"

The above is patently untrue. Neither my wife nor I have ever emailed anyone at New Horizons Worldwide, nor any franchisee of New Horizons. Apart from your Milwaukee franchisee, the only communications between us and any New Horizons employee, franchisee or affiliate have been three telephone conversations between myself and Jerry Wright, a fax from me to Mr. Wright containing a draft of a counter-proposal, the letter you are reading now, and a single letter sent by me to your President and CEO, Thomas Bresnan. The purpose of that letter was merely to notify Mr. Bresnan of the situation which prompted the creation of the web site and solicit his comments. That letter was cc'd to Curtis Lee Smith Jr., New Horizons Chairman.

Further, in no communication has either my wife or I demanded anything of New Horizons Worldwide, much less a refund. As far as we are concerned, the matter of negotiating refunds ended with the receipt of the check for \$6145.00 from your Milwaukee franchise, and the refusal of the management of your Milwaukee franchise to pay the amount originally promised. Neither my wife nor I have made any demands of anyone regarding this matter since Tuesday, August 15, 2000, the date on which your Milwaukee franchisee reneged on the refund agreement they had proposed, and we had accepted, on Friday, August 11, 2000.

Also inaccurate in your Section II, quoted above, is the alleged "*threat of further notification, through search engines, of the existence of the Web-site to the public.*" In no communication between us and New Horizons Worldwide did we make any threats. In point of fact, the site was submitted to several search engines on or shortly after the day it was created. It has not been submitted to every search engine on the Internet only because I haven't had the time to find every search engine and submit the site. As time permits, I will continue to submit the site to more search engines and indexes, as is my right as its owner. Any web site owner who makes information available to the public would naturally do the same. To withhold such information from the public defeats the purpose of placing it on a web server.

- c. In section IV, the amount of the payment proposed on your written document is \$1955.00. In our telephone conversations, Mr. Wright offered the amount of \$5265.00. The latter amount was insufficient, so obviously the lesser amount in your printed document is insufficient. I will refrain from comment on the part of this section which refers to New Horizons' "*belief in customer satisfaction.*"
  - d. Section V states "*Betz has requested that NHCLC release him from all liability in relation to his actions and communications made to persons and entities disparaging NHCLC and its Network.*" This is also incorrect. In the fax of my draft of my counter-proposal to Mr. Wright, one of the conditions is that New Horizons and its affiliates would hold my wife and me harmless for the above actions. Since my draft offer was rejected without further negotiation or the submission of a completed proposal, the contents of the draft are moot.
  - e. Section VI contains the phrase "requested release" as something that is to be granted to me by New Horizons. See point (d) above.
3. Under the heading "1. REPRESENTATIONS AND WARRANTIES OF BETZ", the following errors or objectionable language exist:
- a. Sec 1.1 refers to an "Exhibit A" that I am to attach to the I&R agreement, containing the names of all persons and entities with whom I have shared my opinion of New Horizons. Apart from it being quite technologically impossible to fully comply with this clause, under no circumstances would I consider doing so. I fail to see why it would be to anyone's benefit to provide New Horizons with a list of people whom they could target for whatever harassment or barrage of marketing materials you would see fit to inflict upon them. I further believe that the names of the visitors to or correspondents with newhorizonssucks.net are, to put it bluntly, none of New Horizons' business. No consideration that New Horizons could offer would make this clause acceptable.
  - b. Sec 1.2 reads "*BETZ has communicated with all the persons and entities listed on Exhibit A and withdrawn his disparaging remarks.*" Under no circumstances would I attempt to contact all who've stumbled across newhorizonssucks.net, or even those people with whom I have conversed directly, to withdraw my honest opinion. Absent evidence that my opinion is in error, it will remain my opinion for as long as my mind is capable of forming coherent thought, and I will not lie about it.

- c. Sec 1.4, stated simply, provides that I agree to turn over the domain name newhorizonssucks.net to New Horizons before the execution of this agreement. This is, of course, unacceptable. If any transfer of the domain name were to take place, the procedure would be for the monetary consideration for the purchase to be placed in an escrow account, and released upon transfer of the domain name. I apologize if this type of arrangement strikes you as exceptionally paranoid, but my dealings thus far with New Horizons have placed in my mind a healthy skepticism of assurances that "the check is in the mail," even with a binding legal document that would earn me the right to waste several thousand dollars pursuing New Horizons in court.
- d. Sec 1.5 contains three errors and one item which may be of interest to you as an officer of New Horizons. The errors are the omission of the word "not" in the first sentence (between "has" and "taken"), and the use of the phrase "further infringe the trademarks of NHCLC" and the word "defame." Taking the latter first, I am not a lawyer, but to the best of my knowledge defame means *"to make a false written or oral statement that damages another's reputation,"* making defame synonymous with libel.

One of the tests of libel is that the utterance or printed words in question must be untrue. If you can find an untruth on the web site, I encourage you to notify me and I will remove it immediately. If the supposed defamation in question is in fact the name of the site, you will be relieved to know that each and every page of the site (excepting those which are scans or recreations of correspondence) contains a disclaimer including the following:

*" 'newhorizonssucks.net' is registered to Joseph Betz. All inferences contained herein that New Horizons Computer Learning Centers, New Horizons Worldwide, Inc., or any other person or entity 'suck' are the personal opinion of Joseph Betz and should not be construed otherwise."*

In addition, the <companyname>sucks.com model has become the defacto standard for consumer protest web site names. Also, I do not represent myself as an expert on things that suck (though I certainly have a *sucks / doesn't suck* opinion of most things), and believe that the term "sucks" is quite obviously subjective enough to avoid the type of legitimate libel charge that may result from registering, for example, new-horizons-hates-children-and-kills-puppies.net. PLEASE NOTE: I am not in this letter or in any other communication suggesting that New Horizons, its employees, officers, shareholders, directors, franchisees, agents, attorneys, accountants, representatives, any past, present or future associates, or their spouses and families, hate children or kill puppies.

As for the former statement, I am not infringing on your Trademarks. The rest of the disclaimer on each web page is devoted specifically to identifying New Horizons trademarks, disavowing any association between myself and those trademarks, and acknowledging that New Horizons is not responsible for with the content of my web site. I firmly believe that there will be no confusion among

consumers between my web presence and that of New Horizons, and you have my word that I shall correct any confusion that may arise among those who might mistake *newhorizonssucks.net* for *newhorizons.com*. I will even refer any such individual(s) specifically to New Horizons.

On to the item which may be of interest to you. Sec 1.5 also would enjoin me from registering another "derogatory" name regarding New Horizons. A check at the networksolutions web site indicates that even now, *newhorizonssucks.org* is still available. It would seem to me, since *newhorizonssucks.net* and *newhorizonssucks.com* have already been registered by dissatisfied former students or their agents, a prudent investment of forty dollars per year would be to register *newhorizonssucks.org* before another disgruntled student beats you to it. Given the history of New Horizons Sucks sites, it strikes me as at least foolish and at most a breach of fiduciary responsibility to refrain from doing so.

4. Under the heading "2. REPRESENTATIONS AND WARRANTIES OF ALL PARTIES" the following errors or objectionable language exist:
  - a. Sec. 2.4 is too restrictive, not allowing for even personal and private conversations.
  - b. Sec 2.5 is unacceptable in its entirety, as it provides no real protection against breach unless and until the injured party would commit countless thousands of dollars to pursuing the other party in court. As New Horizons has vastly more available resources to devote to fighting legal battles, it is apparent that this provision favors them excessively. The language of this section also provides New Horizons with an incentive to create nuisance or harassment suits or actions that would not only inconvenience, but potentially bankrupt, the other parties.
5. Under the heading "3. INDEMNITY", the following errors or objectionable language exist:
  - a. This section contains an incredible amount of verbiage devoted exclusively to the indemnification against harm of New Horizons by us. The only language that indemnifies us against harm by New Horizons is two very loosely worded sentences in the "Recitals" section. I would not be inclined to sign any document which gives the other party more protection than it gives me.
  - b. Buried in the text of this section is the sentence "*This indemnity will survive the termination of this Agreement.*" This may be legal boilerplate, but it still strikes me as an exceptionally bad idea to agree to this portion of the proposal, as it would leave me with no options in the event that New Horizons decided to violate the provisions of the agreement so severely as to void the entire agreement.

6. Under the heading "4. MUTUAL RELEASE"
  - a. The 200+ words of Sec 4.1, I confess, make my eyes spin. While I understand the lawyer's obligation to attempt to cover all contingencies, I cannot figure out whether this says, in a nutshell, "release all parties from all claims now and forever", or "release all parties from all claims relating to the invoice and the web site now and forever." If it is the former, I would object to signing it. If the latter, I would find it acceptable only if the objectionable provisions and errors in Sections 1, 2, and 3, referred to earlier in this letter, were removed.
7. Under the heading "5. PAYMENT TO MT";
  - a. In addition to the references to "Exhibit A", and the payment terms, addressed earlier in this letter, the amount specified matches neither the amount of the telephone offer by Mr. Wright, nor the amount of the consideration offered earlier in your proposal.
  - b. Prior to this clause, I can find no references to "MT" contained within your proposal, and I am puzzled as to what or to whom MT refers. The item under heading 6, "TIME", also refers to MT.
8. Under the heading "8. CALIFORNIA LAW ATTORNEYS FEES", the following is objectionable:
  - a. This section states, among other things, that the governing law regarding this agreement and all matters arising from this agreement would be the law of the State of California, and that any actions related to this agreement would have to be filed in Orange County, California.

Since New Horizons has a Wisconsin presence in the form of at least one franchisee, and because New Horizons is in a better position to hire local counsel in the event of problems with any agreement such as this, I would vastly prefer to let Wisconsin law govern this agreement, and to let Waukesha County, Wisconsin have exclusive jurisdiction. I would not agree to this provision which requires me to come to your back yard in order to receive a chance at justice in the event of problems.

The preceding information is provided as a courtesy, with the intention of making New Horizons aware of the errors and falsehoods contained within this document, and of the other reasons this proposal was rejected. It should not be construed as a counter offer to New Horizons, an invitation to further offers from New Horizons, or a solicitation of any offer from New Horizons. No response of any sort is necessary, although I once again invite, in the interest of fairness, comments from New Horizons Worldwide, Inc. management, board, or designated spokespersons, which will be posted on the web site at your request.

Sincerely,

Joseph J. Betz, owner  
newhorizonssucks.net