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3:04-CV-02018 LITE POP LLC V. MALIBU TOYS INC

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CMP.

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *[Signature]* DEPUTY

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 LITE POP, LLC, a California Limited
12 Liability Company,

13 Plaintiff,

14 v.

15 MALIBU TOYS, INC, KAMI GILLMOUR-
16 BRYANT, OTIC TECHTIME, LYDIA
17 LOPEZ, KIDSMANIA, INC., FOREMAN
18 LAM, FRANKFORD CANDY &
19 CHOCOLATE CO. INC., STUART
20 SELARNICK, JACK HIMMELSTEIN,
21 SQUIRE BOONE CAVERNS, INC.,
22 WILLIAM FREDERICK CONWAY JR.,
23 QINGDAO QINGLU FOOD CO., LTD.,
24 DOES 1-100, INCLUSIVE

25 Defendants.

Case No. 04 CV 2018 JM (RBB)
COMPLAINT FOR PATENT
INFRINGEMENT, AND UNFAIR
BUSINESS ACTS

DEMAND FOR JURY TRIAL

26 Plaintiff, LITE POP, LLC ("Lite Pop"), hereby complains and alleges against the above
27 named defendants Malibu Toys, Inc., Kami Gillmour-Bryant, Otic Techtime, Lydia Lopez,
28 Kidsmania, Inc., Foreman Lam, Frankford Candy & Chocolate Co. Inc., Stuart Selarnick, Jack
Himmelstein, Squire Boone Caverns, Inc., William Frederick Conway Jr., Qingdao Qinglu Food
Co., Ltd., Does 1-100 (hereinafter collectively "Defendants" and, each, individually, a "defendant")
as follows:

THE PARTIES

1
2 1. Plaintiff LITE POP (“Lite Pop”) is a limited liability company organized and
3 existing under the laws of the State of California, with its principal place of business at 610 South
4 Figueroa Street, Los Angeles, 90017.

5 2. Upon information and belief, defendant MALIBU TOYS, INC., doing business as
6 OTIC TECHTIME (“Malibu”), is a corporation organized and existing under the laws of the State
7 of California, with a principal place of business at 21356 Nordhoff Street, Unit 11, Chatsworth, CA
8 91311.

9 3. Upon information and belief, defendant KAMI GILLMOUR-BRYANT (“Bryant”),
10 an individual who resides in the State of California, is the Chief Executive Officer (“CEO”) of
11 Malibu.

12 4. Upon information and belief, defendant Lydia Lopez (“Lopez”), an individual who
13 resides in the State of California, is an officer of Malibu.

14 5. Upon information and belief, defendant KIDSMANIA, INC. (“Kidsmania”), is a
15 corporation organized and existing under the laws of the State of California, with a principal place
16 of business at 9041 Dice Unit 1, Santa Fe Springs, CA 90670.

17 6. Upon information and belief defendant FOREMAN LAM (“LAM”), an individual
18 who resides in the State of California, is President of Kidsmania.

19 7. Upon information and belief, defendant FRANKFORD CANDY & CHOCOLATE
20 CO. INC. (“Frankford”), is a corporation organized and existing under the laws of the State of
21 Pennsylvania, with a principal place of business at 2101 Washington Avenue, Philadelphia,
22 Pennsylvania 19146.

23 8. Upon information and belief, defendant STUART SELARNICK (“Selarnick”), an
24 individual, is the Chief Executive Officer of Frankford.

25 9. Upon information and belief, defendant JACK HIMMELSTEIN (“Himmelstein”), an
26 individual, is President of Frankford.

FACTUAL BACKGROUND

1
2 17. Lite Pop was founded by its President, Richard Johnson, who is the inventor of the
3 confectionary product disclosed in United States Patent No. 6,619,816 B1 (“the ‘816 Patent”),
4 entitled “ILLUMINATED NOVELTY CONFECTION.” The ‘816 Patent was duly and legally
5 issued to Mr. Johnson on September 16, 2003. A true and correct copy of the ‘816 Patent is
6 attached as Exhibit 1 of this Complaint.

7 18. Lite Pop was assigned the ‘816 Patent and is the lawful owner of all rights, title, and
8 interest in the ‘816 Patent. Prior to being assigned all rights, title, and interest in the ‘816 Patent,
9 Lite Pop was the exclusive licensee of the ‘816 Patent. At all times relevant hereto, Lite Pop has
10 either been the exclusive licensee of or the lawful owner of all rights, title and interest in the ‘816
11 Patent.

12 19. Lite Pop has been engaged in the business of manufacturing, distributing and selling
13 lighted confectionary products for nearly two years, but it has already established a reputation in the
14 industry for making novel, safe and extremely high quality products. In fact, Lite Pop’s signature
15 product, LITE POP, a commercial embodiment of the ‘816 Patent, has been the subject of several
16 trade news articles because of its novel design and commercial success.

17 20. After Lite Pop began to market its LITE POP product, it learned Defendants were
18 manufacturing, offering for sale, selling or delivering to retail chains throughout the United States
19 “lighted confectionary products” that infringed the ‘816 Patent.

20 21. Defendants’ respective infringing “lighted confectionary products” are marketed
21 under, among others, the following names:

- 22 A. FINGERLITES and FLASH’N LIX (Defendant Malibu)
- 23 B. BLINK POP and FLASH POP (Defendant Kidsmania).
- 24 C. LIGHTUPZ (Defendant Frankford)
- 25 D. BLINK BLINK SUCKER (Defendant Squire Boone)
- 26 E. TWINKLE POP (Defendant Quingdao Food)

27 (hereinafter collectively referred to as “Infringing Products.”)
28

1 22. Each of Defendants' respective Infringing Products incorporate each and every
2 element of one or more claims of the '816 Patent.

3 23. The adverse impact these Infringing Products had on Lite Pop's sales of its LITE
4 POP product became particularly evident at a trade show in June of 2004, as several defendants
5 were present and marketing their infringing products, which trade show customers purchased
6 instead of Lite Pop's.

7 24. Wanting to protect its patents rights, preserve its claims and avoid a similar situation
8 at the upcoming National Candy Expo ('Expo') to be held in Chicago, Illinois from June 8 through
9 June 10, 2004, Lite Pop sent letters to Defendants (with the exception of Defendant Quingdao who
10 Lite Pop only recently learned was selling an Infringing Product) in or around April of 2004,
11 notifying them that their respective Infringing Products were infringing the '816 Patent and
12 providing each with an opportunity to amicably resolve the matter.

13 25. Each defendant responded to Lite Pop's respective letter, and although defendant
14 Frankford improperly filed a declaratory judgment action against Lite Pop in The United States
15 District Court for Eastern District of Pennsylvania, the remaining defendants reacted more
16 appropriately and they engaged in what appeared to be good faith settlement negotiations.

17 26. For instance, throughout May and early June of 2004, defendants Kidsmania and
18 Squire Boone engaged Lite Pop in written settlement and licensing negotiations concerning the '816
19 patent. Moreover, defendant Malibu Toys, although not providing any written settlement or
20 licensing discussions, engaged Lite Pop in what appeared to be an effort to resolve the dispute. Lite
21 Pop was encouraged by these apparent good faith efforts and therefore did not file suit at that time.

22 27. Disturbingly, however, Lite Pop soon realized Defendants' apparent good faith
23 settlement efforts were just a ploy to placate Lite Pop until after the Expo. In fact, defendants
24 Kidsmania, Squire Boone and Malibu Toys all discontinued negotiations with Lite Pop immediately
25 or soon thereafter. Defendant Kidsmania wrote to Lite Pop in or around July of 2004 indicating
26 that, while at the Expo, they had spoken with other alleged infringers who disagreed with Lite Pop's
27 allegations, and based merely on these conversations decided that it did not infringe the '816 patent.

1 Defendants' Kidsmania, Squire Boone and Malibu Toys have collectively undertaken to blatantly
2 disregard the '816 Patent and their infringement is and has been willful and deliberate.

3 28. Recent events between Lite Pop and defendant Frankford confirm Defendants'
4 collective action to willfully and deliberately infringe the '816 Patent and injure Lite Pop, a relative
5 new comer in the industry. Specifically, even though Frankford Candy allegedly disputes Lite
6 Pop's claims and filed a declaratory judgment action without proper jurisdiction or venue, it
7 nevertheless entered into settlement negotiations with Lite Pop. And until just recently, Lite Pop
8 was under the impression the parties had agreed to resolve their differences by working together. It
9 seems, however, that Frankford's settlement offer was disingenuous, as Lite Pop has since learned
10 that defendant Frankford continues to purchase its lighted confectionary products from another
11 source, with whom Lite Pop is already in litigation over the '816 Patent.

12 29. Upon information and belief, defendant Qingdao is also aware of the '816 Patent but
13 nevertheless manufactures and sells an Infringing Product.

14 30. Defendants' infringement of the '816 Patent is willful and deliberate. Moreover,
15 Defendants' disregard for Lite Pop's patent rights and collective bad faith negotiation tactics and
16 ploy to drive Lite Pop out of business make clear to Lite Pop that Defendants do not intend to
17 amicably settle this matter.

18 **FIRST CLAIM FOR RELIEF AGAINST ALL DEFENDANTS**

19 (Patent Infringement, 35 U.S.C. § 271 et al.)

20 31. Lite Pop realleges and incorporates the allegations of paragraphs 1 through 30 as if
21 fully set forth herein.

22 32. Lite Pop manufactures and sell the LITE POP lighted confectionary product, which
23 is a commercial embodiment of the '816 Patent.

24 33. Defendants have manufactured, offered for sale, sold and delivered in the United
25 States its respective Infringing Products, which infringe the claims of the '816 Patent in violation of
26 35 U.S.C. § 271. Defendants are actively inducing others to infringe, and/or committing acts of
27 contributory infringement, of one or more claims of the '816 Patent through its activities related to
28 making, using, importing, offering for sale, and/or selling its infringing products or causing

1 infringing products to be made, used, imported, offered for sale, and/or sold in the United States, all
2 in violation of 35 U.S.C. §271. Lite Pop has been damaged and has suffered irreparable injury due
3 to the acts of infringement by Defendants and will continue to suffer irreparable injury unless
4 Defendants' activities are enjoined.

5 34. Lite Pop has suffered and will continue to suffer substantial damages by reason of
6 Defendants' acts of patent infringement as alleged above and Lite Pop is entitled to recover from
7 Defendants the damages sustained as a result of Defendants' acts.

8 35. Defendants have willfully and deliberately infringed the '816 Patent in disregard of
9 Lite Pop's rights.

10 **SECOND CLAIM FOR RELIEF AGAINST ALL DEFENDANTS**

11 (Unfair Business Acts and Practices in Violation of § 17200 of the Cal. Bus. and Prof. Code)

12 36. Lite Pop repeats and realleges the allegations contained in paragraphs 1 through 35
13 of this complaint as if set forth herein.

14 37. The acts of Defendants, as described in the preceding paragraphs of this Complaint,
15 constitute unlawful and/or unfair business practices as defined by §17200 of the California Business
16 and Professions Code.

17 38. Defendants' conduct as alleged herein violates, and threatens to violate, consumer
18 protection laws, including patent laws, and the policy and spirit of such laws, and otherwise
19 threatens or harms competition.

20 39. Defendants' conduct as alleged herein is likely to mislead the general public and,
21 consequently, constitutes a fraudulent business act or practice within the meaning of §17200 of the
22 California Business and Professions Code.

23 40. As a direct and proximate cause of the aforementioned unfair and unlawful acts and
24 practices, Lite Pop and the general public have suffered injury. Unless Defendants are restrained
25 from the unfair, unlawful, and/or fraudulent business practices described herein, Lite Pop and the
26 public will continue to be irreparably harmed.

27 41. Lite Pop is informed and believes, and thereon alleges, that Defendants have
28 acquired excess earnings, profits, and/or benefits from the unlawful, unfair, and/or fraudulent

1 business acts and practices set forth in the preceding paragraphs of this Complaint. This unjust
2 enrichment continues to occur as Defendants continue to engage in said unlawful, unfair, and/or
3 fraudulent business acts and practices.

4 42. Lite Pop and the general public have no adequate remedy at law to compensate them
5 for the continued and irreparable harm they will suffer if Defendants' acts are allowed to continue.

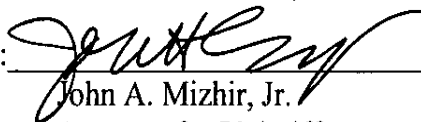
6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Lite Pop prays that the Court enter judgment:

- 8 a) In favor of Lite Pop and against Defendants on all of Lite Pop's claims;
- 9 b) That Defendants have infringed United States Patent No. 6,619,816;
- 10 c) That Defendants have induced infringement and/or contributorily infringed United
11 States Patent No. 6,619,816;
- 12 d) That Defendants and their respective agents, servants, officers, directors, employees,
13 and all persons acting in concert with them directly or indirectly, be enjoined from infringing the
14 '816 patent.
- 15 f) That Defendants be ordered to account for and pay to Lite Pop the damage to Lite
16 Pop arising out of their infringing activities, together with interest and costs;
- 17 g) That Defendants infringement of the '816 Patent was willful and that the damages to
18 Lite Pop be increased under 35 U.S.C § 284 to three times the amount found or measured;
- 19 h) For interest on said damages at the legal rate from and after the date such damages
20 were incurred;
- 21 k) That this is an exceptional case and that Lite Pop be awarded its attorneys' fees in
22 this action pursuant to 35 U.S.C §285; and
- 23 l) That Lite Pop be awarded such other and further relief as the Court may deem
24 appropriate.

25 Dated: October 7, 2004

MIZHIR & ASSOCIATES

26 By: 
27 John A. Mizhir, Jr.
28 Attorney for Plaintiff,
LITE POP, LLC


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DEMAND FOR JURY TRIAL

Plaintiff Lite Pop LLC hereby demands a jury trial as to all issues that are so triable.

Dated: October 7, 2004

MIZHIR & ASSOCIATES

By: 

John A. Mizhir, Jr.
Attorney for Plaintiff,
LITE POP, LLC

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Pages 11 -21.....Exhibit 1 – A true and accurate copy of U.S. Patent No. 6,619,816 B1



US006619816B1

(12) **United States Patent**
Johnson

(10) **Patent No.:** **US 6,619,816 B1**
(45) **Date of Patent:** **Sep. 16, 2003**

(54) **ILLUMINATED NOVELTY CONFECTION**

6,050,697 A * 4/2000 Bennington 362/109
6,077,144 A * 6/2000 Fishman 40/442
6,135,606 A * 10/2000 Fernandez et al. 362/253

(76) **Inventor:** **Richard Johnson, P.O. Box R, Del Mar, CA (US) 92014**

* cited by examiner

(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

Primary Examiner—Y. My Quach-Lee
(74) *Attorney, Agent, or Firm—Burkhart & Burkhart; Anne K. McGovern Burkhart; Patrick N. Burkhart*

(21) **Appl. No.:** **09/538,329**

(57) **ABSTRACT**

(22) **Filed:** **Mar. 29, 2000**

An illuminated confection assembly includes a light device, a light transmission element attached to the light device, and an edible confection attached to the light transmission element. The confection has an interior portion that is adapted and constructed to receive light from the light device via the light transmission element. The confection further includes a light passage arrangement which permits light to pass from the interior portion of the confection to the ambient atmosphere and thus be generally observable. The confection can be transparent or translucent, or may be opaque with light passages formed therein. In various embodiments, the confection assembly can include a tube with a reflective inner coating, a confection specifically designed to fit tightly on the tube, a light bulb, a battery, and a switch.

Related U.S. Application Data

(60) **Provisional application No. 60/126,719, filed on Mar. 29, 1999.**

(51) **Int. Cl.⁷** **F21V 33/00**

(52) **U.S. Cl.** **362/253; 362/109**

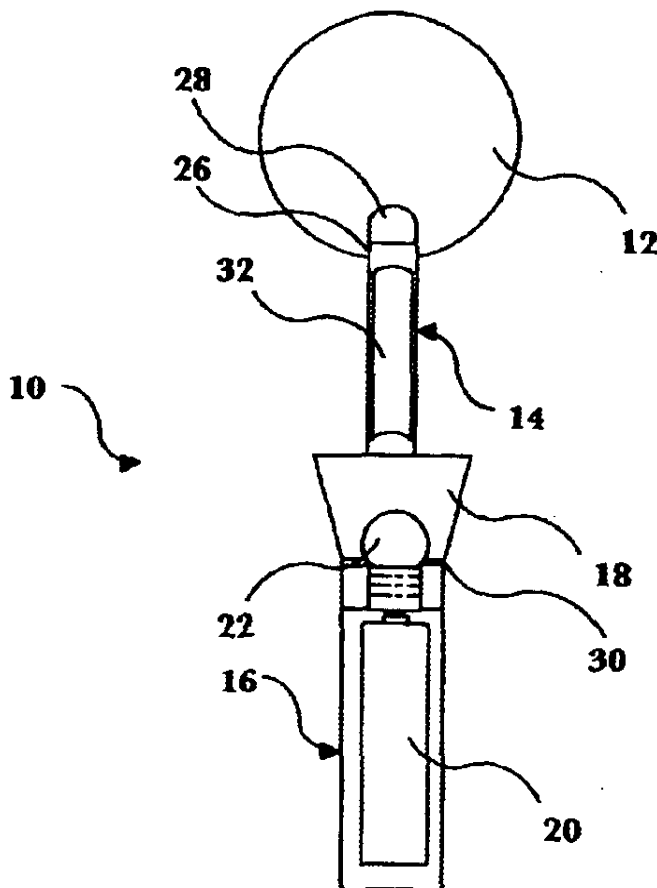
(58) **Field of Search** **362/109, 186, 362/202, 208, 253, 806, 190; 446/484, 485**

(56) **References Cited**

U.S. PATENT DOCUMENTS

4,914,748 A * 4/1990 Schlotter, IV et al. 362/806
5,860,732 A * 1/1999 Coleman et al. 362/253

10 Claims, 6 Drawing Sheets



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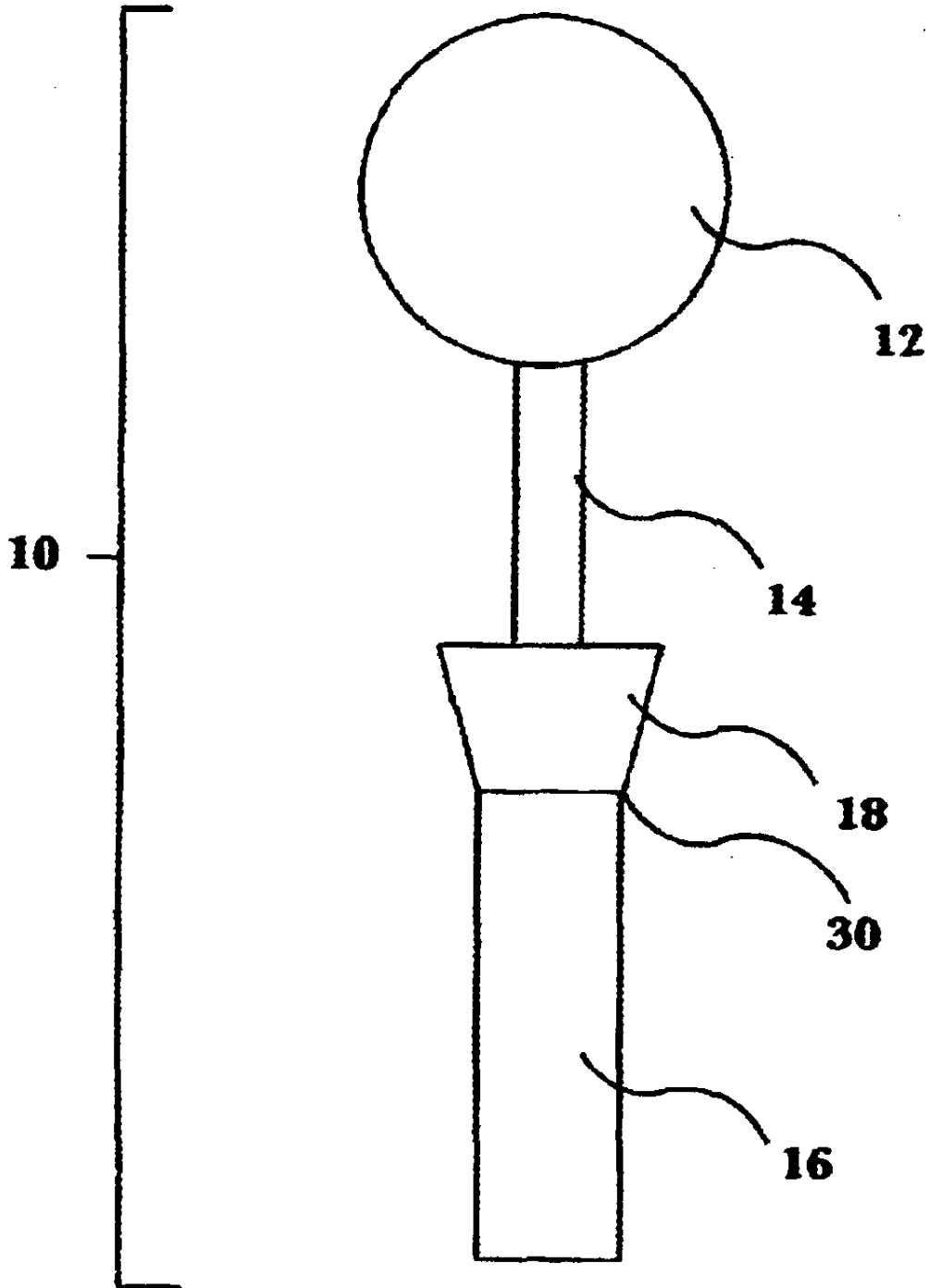


FIG. 1

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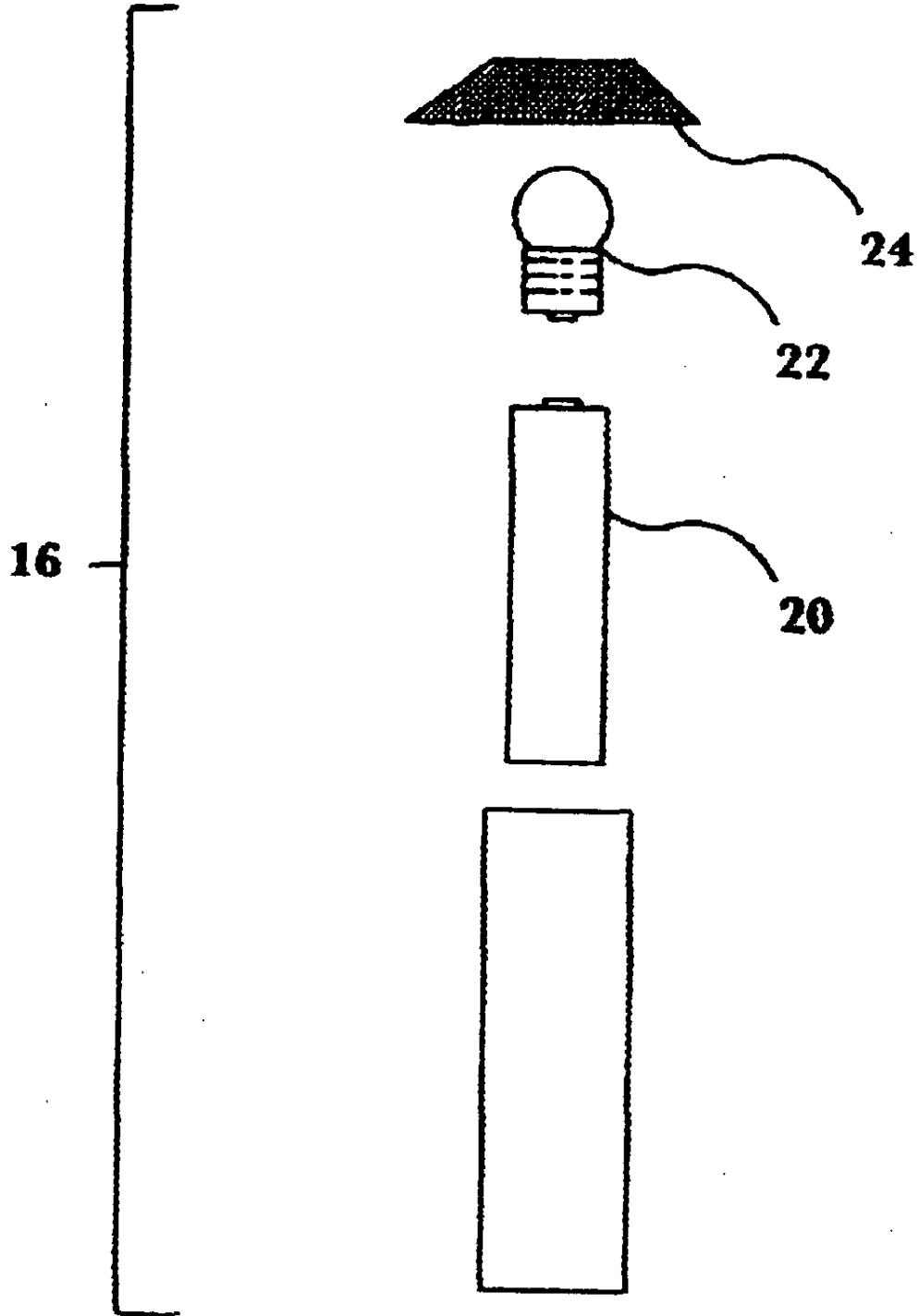


FIG. 2

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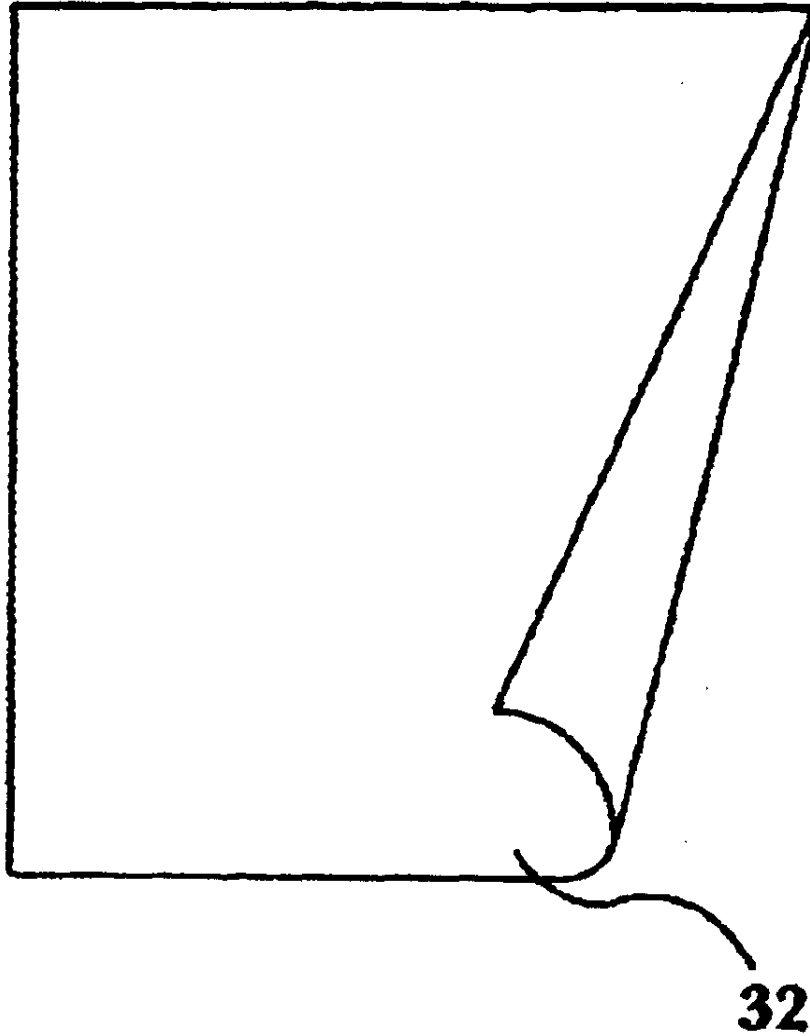


FIG. 3

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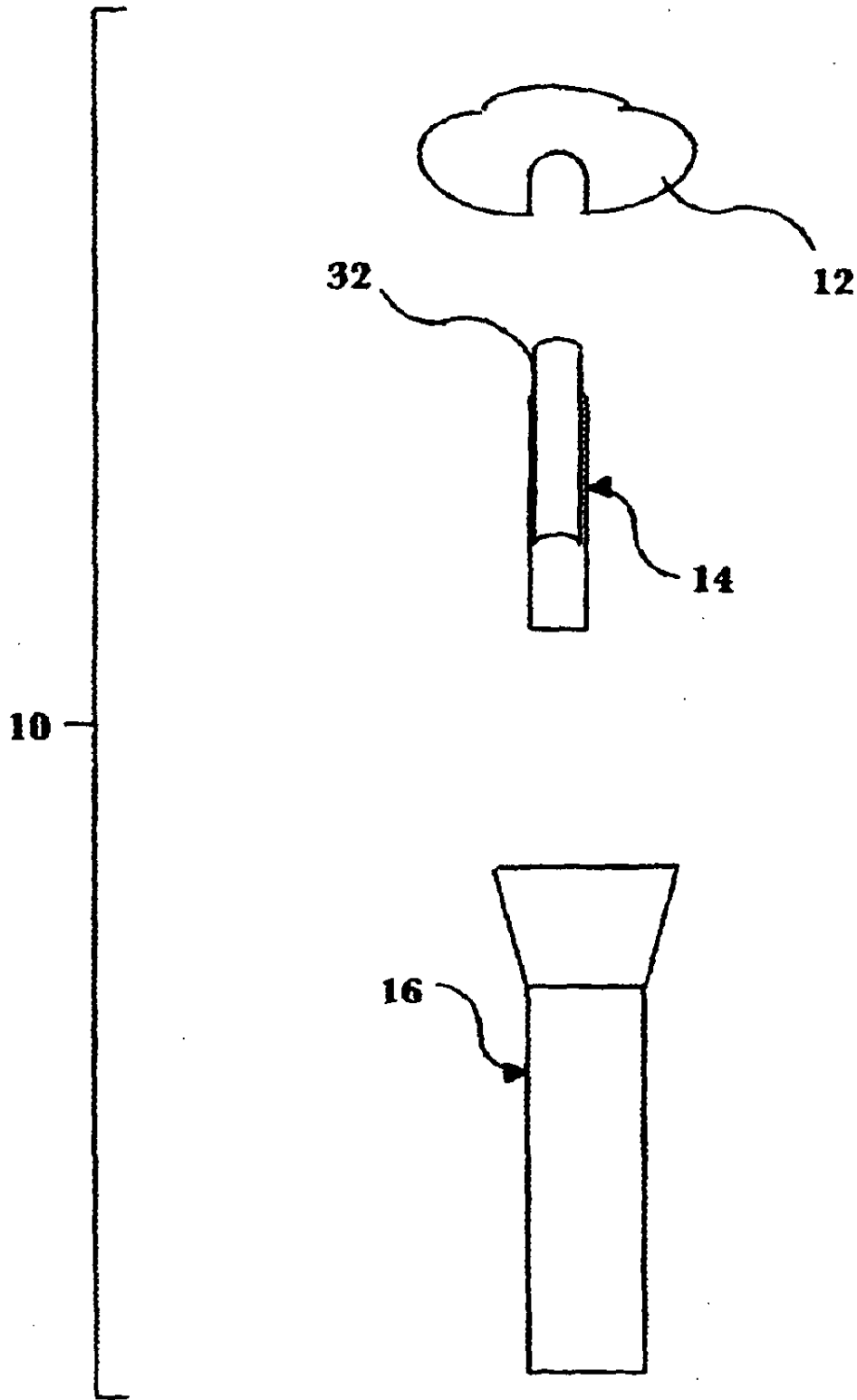


FIG. 5

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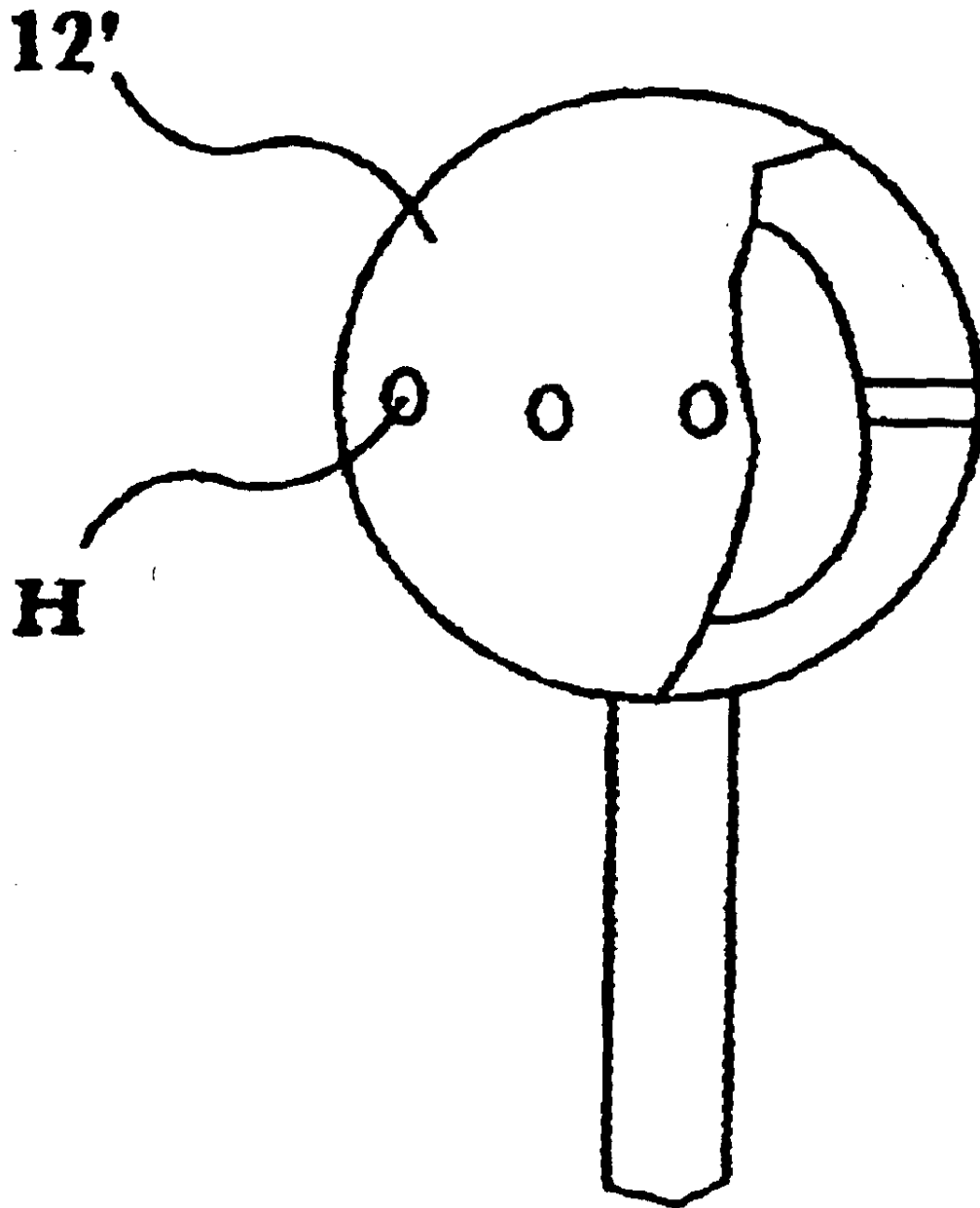


FIG. 6

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ILLUMINATED NOVELTY CONFECTION**CROSS-REFERENCE TO RELATED APPLICATIONS**

This application claims the benefit of provisional application Ser. No. 60/126,719 filed Mar. 29, 1999.

STATEMENT AS TO RIGHTS TO INVENTIONS MADE UNDER FEDERALLY-SPONSORED RESEARCH AND DEVELOPMENT

None

FIELD OF THE INVENTION

The invention relates generally to illuminated novelty items. In particular, the invention relates to illuminated novelty confections such as lollipops.

DESCRIPTION OF RELATED ART

As marketers of hula hoops, pet rocks, and yo-yos will attest, the popularity of most children's items is fleeting at best. The item that the child could not live without last month, which the child insisted that the parent acquire at all cost, sits neglected and abandoned a short time later, spurned for the Next Big Thing. Despite this ephemeral spotlight, a few items endure as "classics", guaranteed to delight no matter what the latest fad may be.

Among these classics are flashlights and candy. The universal appeal of flashlights may stem from their simplicity. In the hands of a child, a flashlight can become a spotlight one minute, a light saber the next, and a medium for shadow-puppets soon thereafter. In most households with children, it is next to impossible to maintain a flashlight for emergencies without securing it out of reach of small persons. Similarly, the popularity of candy is well-documented, and its appeal to children almost proverbial.

Understandably, there have been many attempts to enhance the appeal enjoyment of these items. Confectioners have introduced candy that explodes, spins, plays music, and emanates from the throats of cartoon characters. Flashlights with sirens, swords, and signal lights have all come and gone in the marketplace.

There have been some attempts in the art to combine these concepts. One example is set forth in U.S. Pat. No. 4,914,748 to Schlotter, et al. The Schlotter patent is directed to an illuminated candy holding device. The device includes a replaceable candy cylinder attached to the end of a flashlight which is turned on to make the candy cylinder glow brightly while being consumed. It can be used as a wand, and after the candy has been consumed, the device can be employed as a miniature flashlight. The battery may be permanently sealed inside the case and is not replaceable. The device is provided with a removable clear plastic cover which is placed over the candy and which is secured in place at one end, for protection and storage of the candy, by the flashlight end connector.

Another example is U.S. Pat. No. 5,471,373 to Coleman, et al. The Coleman patent is directed to a candy sucker holder entertainment device in which a light flashes pulses of light onto a candy sucker users face to the beat of music or as sounds made by an integrated circuit loaded with the different sounds. A switch is operated to activate the integrated circuit for the different sounds. The device is used mainly by children for amusement during eating a candy sucker.

There is a significant degree of amusement value provided in the devices described in these patents. However, it will be

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apparent to those of skill in the art that the opportunity exists for enhancing further the amusement and commercial viability of such products. For example, the shape of a lollipop on a "stick" is one with which consumers are manifestly satisfied. However, known illuminated lollipops either illuminate the candy portion from the outside (as in the Coleman patent) or alter the configuration of the candy (as in the Schlotter patent). Additionally, known devices fail to provide adequate media for advertising or other indicia, which would greatly affect the commercial versatility of the device.

It can be seen from the foregoing that the need exists for an illuminated confection that overcomes the shortfalls of known arrangements in this technology.

SUMMARY

In accordance with the principles of the present invention, an illuminated confection assembly is disclosed. The confection assembly includes a light device, a light transmission element attached to the light device, and an edible confection has an interior portion that is adapted and constructed to receive light from the light device via the light transmission element. The confection further includes a light passage arrangement which permits light to pass from the interior portion of the confection to the ambient atmosphere and thus be generally observable.

The confection can be transparent or translucent, or may be opaque with light passages formed therein.

In various embodiments, the confection assembly can include a tube with a reflective inner coating, a confection specifically designed to fit tightly on the tube, a light bulb, a battery, and a switch.

There are several designs, each with different mechanisms and switches to activate the light. One embodiment of the invention is designed to have a hollow tube with a reflective coating on the inside which is also the holder or handle for the confection. Another embodiment calls for the placement of a well-fitted two layer foil/paper piece rolled up and slid inside the tube. When rolled and placed inside the tube, the paper/foil piece will create a tension inside the tube which will hold it in place. The reflective foil has paper affixed to one side will create the spring tension necessary to keep the aluminum foil/paper tightly fitted to the inside of the tube as it is rolled like a poster or map in a cylindrical tube. The paper side of the paper/foil piece may contain writing or messages to be discovered after the pop has been removed or eaten.

In another embodiment, the confection with the tube attached slides over a common pen light. Another embodiment includes a light device that is mechanically affixed to the tube. Potential hazards or safety issues regarding the lighting aspects, batteries, bulbs or fiber optics are also addressed. The confection assembly can be provided with indicia such as messages or logos, and can take virtually any shape or color, or any possibility or combination of flavors. Frozen confections, even chocolate designs with holes allowing light to pass-through, are contemplated.

The confection does not necessarily have to be limited to candies, and could include virtually anything edible. It is contemplated that the illuminated confection could be formed as artificial foods such as plastic grapes or strawberries, or as other objects, any of which may be provided with scent or topical flavoring agents.

In addition to the entertainment value of the present invention, there are practical aspects as well. For example if a child in a crowd at night were difficult to find, the child

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could be instructed to hold up a "Light Pop", which would help parents or guardians find the child easily.

From a usage or demographic perspective, there are several possibilities including children's candies, specialty concessions, novelties, premiums, advertising and contest marketing. If the light transmission element is provided as a sealable tube, sales information or promotional material for other products, "secret messages", horoscope, or virtually any message, advertisement, map, logo, prize information or other printed material can be included with the confection assembly. In an embodiment, the messages can be seen only by using the remaining light after the confection has been consumed or removed.

The invention itself, however, both as to organization and method of operation, together with further objects and advantages thereof, may be best understood by reference to the following description taken in conjunction with the accompanying drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a schematic view of a confection assembly in accordance with the principles of the present invention.

FIG. 2 schematically illustrates an exploded view of a light device

FIG. 3 illustrates a reflective sheet.

FIG. 4 illustrates a sectional view of a confection assembly.

FIG. 5 illustrates a confection assembly after consumption of the confection.

FIG. 6 illustrates an opaque edible confection.

DETAILED DESCRIPTION OF PREFERRED EMBODIMENTS

While this invention is susceptible of embodiment in many different forms, there is shown in the drawings, and will herein be described in detail, exemplary embodiments, with the understanding that the present disclosure is to be considered as illustrative of the principles of the invention and not intended to limit the invention to the exemplary embodiments shown and described.

A confection assembly 10 in accordance with the principles of the present invention is illustrated generally in FIG. 1. A confection 12 is connected to a light transmission element 14, here provided as a tubular member. The light transmission element 14 is connected to a light device 16. The light device 16 is illustrated as a standard pen light. The inner dimension of the light transmission element 14 is chosen to provide a snug fit over the standard components of the light device 16.

The light transmission element 14 is provided with a safety ring or cone 18 to enhance the safety of the device for small children. Each of the components of the assembly 10 can be provided with a "snap-fit" design, which allows various combinations of the light transmission element 14 to be snapped onto various configurations of the light device 16, allowing for several variations on a basic platform. The light device 16 could be disposable, provided with "replacement" confections, or merely find residual use as a flashlight.

As shown in FIG. 2, the light device 16 also serves as a handle for the assembly 10. It is contemplated that the light device 16 would use a conventional power source, such as standard AA or AAA batteries 20. Other battery configurations could be utilized based on the market positioning and

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desired life of the light device 16. The light device 16 can be configured to use a standard incandescent bulb, LED, or any other suitable light-generating mechanism 22. In any event, the light device 16 advantageously should be prevented from any foreseeable shifting toward the confection 12. A transparent unbreakable nylon screen 24 is provided to inhibit the potential migration of particulate contaminants from the light device 16 to the confection 12.

The size of the light device 16 can be expanded to allow for enhanced heat dissipation. Another possible design for this section would call for small sized holes to allow for additional heat dissipation. There are other functional designs that could work well as a substitute for this particular section. For example, a mirror safety handle on top could give the midsection more of a diamond shape.

The light transmission element 14 can be affixed to the light device 16 by any suitable method, such as a glued or screw-threaded connection. Alternatively, the light transmission element 14 and the light device 16 can be molded as one piece. The light device 16 can include a switch 30, which can be provided as a "Turn Switch." The pivot or rotation to activate the switch would occur by twisting the safety handle opposing the housing base.

The specific dimensions of the assembly 10 can be varied in accordance with the size of the confection desired. It is contemplated that a suitable size would be in a range from 3.5-6 inches, with a spherical confection having a diameter of approximately 1.5 inches. Based upon the design of the edible top, just about design within reason could be utilized such as specific shapes like, animals, faces, fruit, logos virtually any shape or form that could be secured onto the top of the tube section.

The confection can include a mounting hole 26, as shown in FIG. 4. The mounting hole 26 is located at the bottom of the confection, here illustrated as having a depth of at least a quarter of an inch. The light transmission element 14 is inserted into the mounting hole 26, which is just slightly smaller than the diameter of the tube. An interior illumination hollow 28 is provided in the confection 12. The illumination hollow 28 allows better diffusion of the light from the light transmission element 14, thereby creating a more uniform luminous effect emanating from the confection 12. The confection 12 could also be opaque with holes or transparent or translucent portions, wherein the light emanates from the holes. The confection 12 could also contain indicia that would be illuminated.

As shown in FIG. 3, a sheet 32 can be provided to be inserted in the light transmission element 14. The sheet 32 can be provided with a reflective "shiny" side, and a "paper" side containing indicia. The purpose of the shiny side of the foil is to act as a reflector for the light passing through. The paper side has two functional characteristics which are to act as creating tension against the rolling up of the foil and as a means to supply written information. The sheet 32 is rolled and placed inside the light transmission element 14 in the mid section. The shiny or reflect inside of the sheet would be placed on the inside surface, and the paper on the outside when rolled into position.

FIG. 5 illustrates the potential "byproducts" after the consumption of the confection 12. The light transmission element 14 can be removed, leaving the light device 16 as a mini flashlight with a reflector at the end. Since the interior of the safety handle is able to have a reflective coating, the removal of the mid section tube will avail a separate and individual product. Once the consumer is finished with the candy, the flashlight is perfectly functional, providing

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enhanced value. The sheet 32 is capable of containing notes, coupons, or any type of print information that might help further market the product.

FIG. 6 illustrates a confection 12' that is opaque with holes H. Light emanates from the holes H, which could alternatively be provided as transparent or translucent portions.

While details of the invention are discussed herein with reference to some specific examples to which the principles of the present invention can be applied, the applicability of the invention to other devices and equivalent components thereof will become readily apparent to those of skill in the art.

Accordingly, it is intended that all such alternatives, modifications, permutations, and variations to the exemplary embodiments can be made without departing from the scope and spirit of the present invention as set forth in the appended claims.

What is claimed is:

1. An illuminated confection assembly comprising the following:

- a light device;
 - a light transmission element attached to the light device, the light transmission element including a reflective inner coating; and
 - an edible confection attached to the light transmission element, the confection having an interior portion that is adapted and constructed to receive light from the light device via the light transmission element;
- whereby light from the light device passes from the interior portion of the confection to the ambient atmosphere.

2. An illuminated confection assembly in accordance with claim 1, wherein the edible confection comprises a transparent edible confection.

3. An illuminated confection assembly in accordance with claim 1, wherein the edible confection comprises a translucent edible confection.

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4. An illuminated confection assembly in accordance with claim 1, wherein the edible confection comprises an opaque edible confection having light passages formed therein.

5. An illuminated confection assembly in accordance with claim 1, wherein the light transmission element comprises the following:

- a hollow tube; and
- a piece of indicia-bearing sheet material rolled up and slid inside the tube.

6. An illuminated confection assembly comprising the following:

- a light device;
 - a light transmission element attached to the light device, the light transmission element including a hollow tube with a piece of indicia-bearing sheet material rolled up and slid inside the tube; and
 - an edible confection attached to the light transmission element, the confection having an interior portion that is adapted and constructed to receive light from the light device via the light transmission element;
- whereby light from the light device passes from the interior portion of the confection to the ambient atmosphere.

7. An illuminated confection assembly in accordance with claim 6, wherein the edible confection comprises a transparent edible confection.

8. An illuminated confection assembly in accordance with claim 6, wherein the edible confection comprises a translucent edible confection.

9. An illuminated confection assembly in accordance with claim 6, wherein the edible confection comprises an opaque edible confection having light passages formed therein.

10. An illuminated confection assembly in accordance with claim 6, wherein the light transmission element includes a reflective inner coating.

* * * * *

AO 120 (3/85)

TO: Commissioner of Patents and Trademarks Washington, D.C. 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT
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In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised
 that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
04CV2018 JM (RBB)	10/07/04	United States District Court, Southern District of California
PLAINTIFF Lite Pop, LLC.		DEFENDANT Malibu Toys, Inc.
PATENT NO.	DATE OF PATENT	PATENTEE
1 6,619,816	9/16/03	Richard Johnson
2		
3		
4		
5		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY			
-	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT NO.	DATE OF PATENT	PATENTEE		
1				
2				
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Commissioner Copy 3 - Upon termination of action, mail this copy to Commissioner
 Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

LITE POP, LLC

DEFENDANTS
 MALIBU TOYS, INC, KAMI GILLMOUR-BRYANT, OTIC TECHTIME, LYDIA LOPEZ, KIDSMANI
 FOREMAN LAM, FRANKFORD CANDY & CHOCOLATE CO. INC., STUART SELARNICK, JAC
 HIMMELSTEIN, SQUIRE BOONE CAVERNS, INC., WILLIAM FREDERICK CONWAY JR., QIN
 QINGLU FOOD CO., LTD., DOES 1-100, INCLUSIVE
 COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Los Angeles
 BY: (IN U.S. PLAINTIFF CASES ONLY)

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
 (EXCEPT IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Mizhir & Associates
 135 So. Sierra Ave, Ste 27
 Solana Beach, CA 92075
 (858) 883-5594

ATTORNEYS (IF KNOWN)

'04 CV 2018 JM (RBB)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

For Diversity Cases Only		FOR PLAINTIFF AND ONE BOX FOR DEFENDANT	
PT	DEF	PT	DEF
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of This State	Incorporated or Principal Place of Business in This State	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Citizen or Subject of a Foreign Country	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Patent Infringement, 35 U.S.C. § 271 et al, and Unfair Business Acts and Practices in Violation of § 17200 of the Cal. Bus. and Prof. Code

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES								
<ul style="list-style-type: none"> • 110 Insurance • 120 Marine • 150 Miller Act • 140 Negotiable Instrument • 150 Recovery of Overpayment & Enforcement of Judgment • 151 Medicare Act • 152 Recovery of Defaulted Student Loans (Excl. Veterans) • 153 Recovery of Overpayment of Veterans Benefits • 160 Stockholders Suits • 190 Other Contract • 195 Contract Product Liability 	<table border="0"> <tr> <td>PERSONAL INJURY</td> <td>PERSONAL INJURY</td> </tr> <tr> <td> <ul style="list-style-type: none"> • 310 Airplane • 315 Airplane Product Liability • 320 Assault, Libel & Slander • 330 Federal Employers' Liability • 340 Marine • 345 Marine Product Liability • 350 Motor Vehicle • 355 Motor Vehicle Product Liability • 360 Other Personal Injury </td> <td> <ul style="list-style-type: none"> • 362 Personal Injury - Medical Malpractice • 365 Personal Injury - Product Liability • 368 Asbestos Personal Injury Product Liability </td> </tr> <tr> <td>CIVIL RIGHTS</td> <td>PRISONER PETITIONS</td> </tr> <tr> <td> <ul style="list-style-type: none"> • 441 Voting • 442 Employment • 443 Housing/Accommodations • 444 Welfare • 440 Other Civil Rights </td> <td> <ul style="list-style-type: none"> • 510 Motions to Vacate Sentence Habeas Corpus • 530 General • 535 Death Penalty • 540 Mandamus & Other • 550 Civil Rights • 555 Prisoner Conditions </td> </tr> </table>	PERSONAL INJURY	PERSONAL INJURY	<ul style="list-style-type: none"> • 310 Airplane • 315 Airplane Product Liability • 320 Assault, Libel & Slander • 330 Federal Employers' Liability • 340 Marine • 345 Marine Product Liability • 350 Motor Vehicle • 355 Motor Vehicle Product Liability • 360 Other Personal Injury 	<ul style="list-style-type: none"> • 362 Personal Injury - Medical Malpractice • 365 Personal Injury - Product Liability • 368 Asbestos Personal Injury Product Liability 	CIVIL RIGHTS	PRISONER PETITIONS	<ul style="list-style-type: none"> • 441 Voting • 442 Employment • 443 Housing/Accommodations • 444 Welfare • 440 Other Civil Rights 	<ul style="list-style-type: none"> • 510 Motions to Vacate Sentence Habeas Corpus • 530 General • 535 Death Penalty • 540 Mandamus & Other • 550 Civil Rights • 555 Prisoner Conditions 	<ul style="list-style-type: none"> • 610 Agriculture • 620 Other Food & Drug • 625 Drug Related Seizure of Property 21 USC881 • 630 Liquor Laws • 640 RR & Truck • 650 Airline Regs • 660 Occupational Safety/Health • 690 Other 	<ul style="list-style-type: none"> • 422 Appeal 28 USC 158 • 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <ul style="list-style-type: none"> • 820 Copyrights • 830 Patent • 840 Trademark <p>SOCIAL SECURITY</p> <ul style="list-style-type: none"> • 861 HIA (13958) • 862 Black Lung (923) • 863 DIWC/DIWW (405(g)) • 864 SSID Title XVI • 865 BSL (405(a)) <p>FEDERAL TAX SUITS</p> <ul style="list-style-type: none"> • 870 Taxes (U.S. Plaintiff or Defendant) • 871 IRS - Third Party 26 USC 7609 	<ul style="list-style-type: none"> • 400 State Reappointment • 410 Antitrust • 430 Banks and Banking • 450 Commerce/ICC Rates/etc. • 460 Deportation • 470 Racketeer Influenced and Corrupt Organizations • 810 Selective Service • 850 Securities/Commodities Exchange • 875 Customer Challenge 12 USC • 891 Agricultural Acts • 892 Economic Stabilization Act • 893 Environmental Matters • 894 Energy Allocation Act • 895 Freedom of Information Act • 900 Appeal of Pcc Determination Under Equal Access to Justice • 950 Constitutionality of State • 890 Other Statutory Actions
PERSONAL INJURY	PERSONAL INJURY											
<ul style="list-style-type: none"> • 310 Airplane • 315 Airplane Product Liability • 320 Assault, Libel & Slander • 330 Federal Employers' Liability • 340 Marine • 345 Marine Product Liability • 350 Motor Vehicle • 355 Motor Vehicle Product Liability • 360 Other Personal Injury 	<ul style="list-style-type: none"> • 362 Personal Injury - Medical Malpractice • 365 Personal Injury - Product Liability • 368 Asbestos Personal Injury Product Liability 											
CIVIL RIGHTS	PRISONER PETITIONS											
<ul style="list-style-type: none"> • 441 Voting • 442 Employment • 443 Housing/Accommodations • 444 Welfare • 440 Other Civil Rights 	<ul style="list-style-type: none"> • 510 Motions to Vacate Sentence Habeas Corpus • 530 General • 535 Death Penalty • 540 Mandamus & Other • 550 Civil Rights • 555 Prisoner Conditions 											

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND \$** _____ Check YES only if demanded in complaint. **JURY DEMAND:** YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE M. Faith Angell Docket Number 04-1845
 DATE October 7, 2004 SIGNATURE OF ATTORNEY OF RECORD John A. Mizhir

PD \$150.00 10/7/04 #107604 AB